

PREFILED REBUTTAL TESTIMONY

OF

**MEMBER OF THE YANKTON SIOUX TRIBE BUSINESS & CLAIMS COMMITTEE
(CONSISTING OF ELECTED MEMBERS: ROBERT FLYING HAWK,
QUENTIN JB BRUGIER, JR., MONA WRIGHT, JUSTIN SONGHAWK,
LEO O'CONNER, JEAN ARCHAMBEAU, GLENFORD SAM SULLY, JASON COOKE,
AND EVERDALE SONG HAWK)**

Docket No. HP14-001

**IN THE MATTER OF THE APPLICATION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR
ORDER ACCEPTING CERTIFICATION OF PERMIT ISSUED IN DOCKET HP09-001 TO
CONSTRUCT THE KEYSTONE XL PIPELINE**

1. Are you a member of the Yankton Sioux Tribe or any other tribe?

A. I am an enrolled member of the Yankton Sioux Tribe.

2. What is your occupation or what kinds of work do you do?

A. I am an elected member of the Yankton Sioux Tribe Business and Claims Committee.

3. On whose behalf was this testimony prepared?

A. This testimony was prepared on behalf of the Yankton Sioux Tribe.

4. Under what authority are you providing this testimony?

A. Pursuant to Article IV of the Amended Bylaws of the Yankton Sioux Tribal Business and Claims Committee, the Business and Claims Committee shall act as liaison between the Tribe and state governments.

5. Please state the purpose of your testimony in this proceeding.

A. The main objective of the Yankton Sioux Tribe through this testimony is to rebut the testimony provided by TransCanada and any other party providing testimony in support of TransCanada's position because TransCanada does not or cannot continue to meet all conditions upon which the permit was issued. I can provide testimony on subjects including the interactions between TransCanada and the Yankton Sioux Tribe, the status of the Tribe as a local unit of government (please see TransCanada's response to Interrogatory No. 11 of Exhibit A attached to this testimony), the position of the Yankton Sioux Tribe on the proposed Keystone XL pipeline, the Programmatic Agreements executed in conjunction with the Final Environmental Impact Statement and the Final Supplemental Environmental Impact Statement (attached to this prefiled testimony as Exhibits B and C, respectively), governing treaties between the United States and the Yankton Sioux Tribe, and the threats posed by the proposed project to the Yankton Sioux Tribe and its members as appropriate based on the testimony offered by TransCanada.

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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|----------------------------------|---|---------------------------|
| IN THE MATTER OF THE APPLICATION | : | HP 14-001 |
| BY TRANSCANADA KEYSTONE | : | |
| PIPELINE, LP FOR A PERMIT UNDER | : | KEYSTONE'S RESPONSES TO |
| THE SOUTH DAKOTA ENERGY | : | YANKTON SIOUX TRIBE'S |
| CONVERSION AND TRANSMISSION | : | FIRST INTERROGATORIES AND |
| FACILITIES ACT TO CONSTRUCT THE | : | REQUEST FOR PRODUCTION OF |
| KEYSTONE XL PROJECT | : | DOCUMENTS |
| | : | |
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Applicant TransCanada makes the following responses to interrogatories pursuant to SDCL § 15-6-33, and responses to requests for production of documents pursuant to SDCL § 15-6-34(a). These responses are made within the scope of SDCL 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule. Applicant objects to definitions and directions in answering the discovery requests to the extent that such definitions and directions deviate from the South Dakota Rules of Civil Procedure.

GENERAL OBJECTION

Keystone objects to the instructions and definitions contained in Yankton Sioux Tribe's First Set of Interrogatories and Requests for Production of Documents to the extent that they are inconsistent with the provisions of SDCL Ch. 15-6. See ARSD {01815089.1}

20:10:01:01.02. Keystone's answers are based on the requirements of SDCL §§ 15-6-26, 15-6-33, 15-6-34, and 15-6-36.

INTERROGATORIES

1. State the name, current address, and telephone number of the person answering these interrogatories.

ANSWER: Given the extremely broad scope volume of more than 800 discovery requests received by Keystone in this docket, a range of personnel were involved in answering the interrogatories. Keystone will designate the following witnesses with overall responsibility for the responsive information as related to the Conditions and proposed changes to the Findings of Fact, which are identified in Appendix C to Keystone's Certification Petition: Corey Goulet, President, Keystone Projects, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Steve Marr, Manager, Keystone Pipelines & KXL, TransCanada Corporation, Bank of America Center, 700 Louisiana, Suite 700, Houston, TX 77002; Meera Kothari, P. Eng., 450 1st Street, S.W., Calgary, AB Canada T2P 5H1; David Diakow, Vice President, Commercial, Liquids Pipeline, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Jon Schmidt, Vice President, Environmental & Regulatory, exp Energy Services, Inc., 1300 Metropolitan Boulevard, Suite 200, Tallahassee, FL 32308; Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528.

2. State the name, current address, and telephone number of any person, other than legal counsel, who Keystone talked with about answering these interrogatories, who assisted Keystone in answering these interrogatories, or who provided information that Keystone relied on in answering these interrogatories.

ANSWER: Given the extremely broad scope volume of more than 800 discovery requests received by Keystone in this docket, a range of personnel were involved in answering the interrogatories. Keystone will designate the following witnesses with overall responsibility for the responsive information as related to the Conditions and proposed changes to the Findings of Fact, which are identified in Appendix C to Keystone's Certification Petition: Corey Goulet, President, Keystone Projects, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Steve Marr, Manager, Keystone Pipelines & KXL, TransCanada Corporation, Bank of America Center, 700 Louisiana, Suite 700, Houston, TX 77002; Meera Kothari, P. Eng., 450 1st Street, S.W., Calgary, AB Canada T2P 5H1; David Diakow, Vice President, Commercial, Liquids Pipeline, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Jon Schmidt, Vice President, Environmental & Regulatory, exp Energy Services, Inc., 1300 Metropolitan Boulevard, Suite 200, Tallahassee, FL 32308; Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528.

3. Identify each witness that you will or may call as a fact witness or expert witness in any evidentiary hearing or trial of this matter. For each individual, identify and provide the name, business address, and business telephone and the name of his or her employer and/or other organization(s) with which he or she is associated in any professional capacity; the substance of the facts to which he or she is expected to testify and the substance of the opinions to which he or she is expected to testify; the individual's profession or occupation, educational background, specialized training, and employment history relevant to the proposed testimony; and the individual's previous publications within the preceding 10 years; and all other cases or proceedings in which the witness has testified as an expert within the preceding four years.

ANSWER: Keystone will offer prefiled direct testimony from the following persons, each of whom will testify to the changes identified in Keystone's tracking table for that person's area of expertise:

- (1) Corey Goulet, President, Keystone Projects, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; (403) 920-2546; Project purpose, Overall description; Construction schedule; Operating parameters; Overall design; Cost; Tax Revenues
- (2) Steve Marr, Manager, Keystone Pipelines & KXL, TransCanada Corporation, Bank of America Center, 700 Louisiana, Suite 700, Houston, TX 77002; (832) 320-5916; same; CMR Plan, Con/Rec Units, HDD's
- (3) Meera Kothari, P. Eng., 450 1st Street S.W., Calgary, AB Canada T2P 5H1; (832) 320-5190; same; Design and Construction; PHMSA compliance
- (4) David Diakow, Vice President, Commercial, Liquids Pipeline, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; (403) 920-6019; Demand for the Facility

(5) Jon Schmidt, Vice President, Environmental & Regulatory, exp Energy Services, Inc., 1300 Metropolitan Boulevard, Suite 200, Tallahassee, FL 32308; (850) 385-5441; Environmental Issues; CMR Plan, Con/Rec Units, HDD's

(6) Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528; (970) 449-8609; High Consequence Areas, Spill Calculations

4. Identify any other names that Keystone conducts business under, in the United States and Canada.

ANSWER: None.

5. Pursuant to Condition Two of the Commission's Amended Final Decision and Order, has Keystone received any communications from any regulatory body or agency that may have jurisdiction over the project which alleges that Keystone has failed to comply with any applicable permits, law, or regulation?

ANSWER: No.

6. Pursuant to Condition Two, has Keystone a permit by any regulatory body or agency that may have jurisdiction over the construction, maintenance, or operation of any pipeline located in the United States or Canada ever been denied, revoked, or suspended by the regulatory body or agency?

ANSWER: No.

7. Pursuant to Condition Two, has Keystone been given notice by any regulatory body or agency that may have jurisdiction over the construction, maintenance or operation of any pipeline located in the United States or Canada alleging that Keystone

{01815089.1}

has failed to comply with any applicable permits for the construction, operation or maintenance of any pipeline located in the United States?

ANSWER: No.

8. Pursuant to Condition One, please identify all required permits that Keystone has applied for within the State of South Dakota regarding the use of public water for construction, testing, drilling, or temporary discharges to waters of the state and temporary discharges of water from construction dewatering and hydrostatic testing.

ANSWER: Keystone has submitted a Notice and Intent and Certificate of Application Form to Receive Coverage Under the General Permit for Temporary Discharges and a Temporary Water Use Permit. Other permits, as required, will be filed closer to the time period of construction.

9. Pursuant to Condition Six, identify the most recent depiction of the Project route and facility locations as they currently exist as compared to the information provided in Exhibit TC-14.

ANSWER: Maps showing changes to the route since the permit was granted are attached as Keystone 0470-0583.

10. Pursuant to Condition Six, identify the dates, addresses, phone numbers, emails, and names of person(s) responsible for conducting surveys, addressing property specific issues and civil survey information.

{01815089.1}

OBJECTION AND RESPONSE: The identity of persons conducting civil surveys is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, American Burying Beetle Habitat Assessment was conducted by W. Wyatt Hoback, Department of Biology, University of Nebraska at Kearney; Biological Surveys (i.e., habitat, wetland delineations) were conducted by AECOM (Scot Patti was the principal investigator) and SCI (Scott Billing was the principal investigator); Phase I ESA Surveys were conducted by AECOM (Brian Bass was the principal investigator); Biological Surveys (i.e., threatened and endangered species, noxious weeds, reclamation) were conducted by Westech (John Beaver was the principal investigator); Cultural resources surveys were conducted by SWCA Environmental Consultants (principal investigator was Scott Phillips); the paleontological surveys were conducted by SWCA Environmental Consultants (principal investigator was Paul Murphey).

11. Pursuant to Condition Six, does Keystone recognize the Yankton Sioux Tribe, a federally recognized sovereign Indian Nation, as a "local governmental unit?"

ANSWER: Because the Project does not cross Tribal land and because the Yankton Sioux Tribe is a sovereign nation, Keystone does not consider the Tribe to be a "local governmental unit" as referenced in Condition 6.

12. Condition Seven requires Keystone to appoint a public liaison officer. Accordingly, has Keystone:

1. Appointed such public liaison officer, and if so please provide such officer's:

- a. Name;
- b. Address;
- c. Phone number; and
- d. Email address.

2. Directed such public liaison officer to contact and or consult with the Yankton Sioux Tribe?

ANSWER:

1.a. Sarah Metcalf's appointment was approved by the PUC by order dated June 2, 2010, in an order which is a matter of public record.

1.b. PO Box 904, Aberdeen, SD 57402.

1.c. 1-888-375-1370

1.d. smetcalf12@gmail.com

2. No. The project does not cross Yankton Sioux lands and Keystone does not consider the Tribe to be a "local government" in the vicinity of the project as stated in Amended Permit Condition 7.

13. Pursuant to Condition Thirteen, identify and provide the phone number, address, and email address of every each environmental inspector that Keystone has incorporated into the CMR.

OBJECTION AND ANSWER: The identity of environmental inspectors is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objection, no Environmental Inspectors have been identified or hired, because the construction of the Project has not yet started.

14. Pursuant to Condition Thirty-Seven, has Keystone ever been found non-compliant with any other permits, from any state regarding the Keystone XL Project?

ANSWER: No.

15. Pursuant to Conditions One and Two, have any contractors hired by Keystone to construct any pipeline owned or operated by Keystone or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in the United States.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It also seeks information that is not in Keystone's custody or control and is not maintained by Keystone in the ordinary course of business.

16. Pursuant to Conditions One and Two, have any contractors hired by Keystone to construct any pipeline owned or operated by Keystone or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in Canada.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It also seeks information that is not in Keystone's custody or control and is not maintained by Keystone in the ordinary course of business.

17. Pursuant to Condition Forty-Four, what steps has Keystone or any of its affiliates taken to ensure that the cultural and historic resources of the Yankton Sioux Tribe are protected?

OBJECTION AND ANSWER: Condition 44 refers to paleontological studies. Notwithstanding the objection, cultural resources survey reports are listed in Section 3.11 of the Department of State FSEIS (2014), with results of the SD surveys detailed in Table 3.11-3. Any further discussions regarding these surveys would be addressed through the course of government to government consultation with the DOS when the Yankton Sioux were afforded the opportunity to not only review those studies but also participate in the surveys themselves.

18. Pursuant to Condition Forty-Four, how many times has Keystone contacted the Yankton Sioux Tribe?

1. If Keystone did make such contact please provide the following:

- a. Name(s) of the person(s) notified;
- b. Title of the person(s) notified;
- c. The physical address of the person(s) notified;
- d. The telephone number(s) of the person(s) notified; and
- e. The means by which Keystone made notification, i.e. written,

oral, electronic, etc.;

ANSWER: A precise record of the number of contacts with the Yankton Sioux Tribe, either through the body politic or through tribal members does not exist. Typically contacts came through the TransCanada Tribal Liaison staff. See Keystone documents 1304-1340 that document some of the contacts. With respect to Condition 44, there may not have been any paleontological specific contacts.

19. Pursuant to Condition Forty-Four, has Keystone made any new cultural and/or historic surveys along the route of the Project since its original permit was granted?

OBJECTION AND ANSWER: Condition 44 refers to paleontological studies, not cultural studies. However, all cultural resources survey reports are listed in Section

3.11 of the Department of State FSEIS (2014), with results of the SD surveys detailed in Table 3.11-3.

20. According to Keystone's original application, Keystone began cultural and historic surveys in May 2008 and at that time it had found several pre-historic stone circles were uncovered. Please provide a detailed description of these sites, including location.

ANSWER: These sites are addressed during the course of government to government consultation with the DOS. Site locations are confidential and cannot be disclosed outside of the consultation process.

21. Pursuant to Condition Forty-Four, please provide the name, address, phone number, and email of all persons involved in any cultural or historic survey conducted by Keystone. In addition, please provide a detailed description of all pertinent professional training that qualifies the surveyor as a professional who meets the standards of the Secretary of the Interior's Historic Preservation Professional Qualification Standards (48 FR 44716, September 29, 1983).

OBJECTION AND ANSWER: The identity of the surveyors is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objection, SWCA Environmental Consultants performed the survey work. The cultural resources principal investigator was Scott Phillips; the paleontological principal

investigator was Paul Murphey. Both individuals meet the SOI standards for their particular field.

22. Pursuant to Condition Forty-Four, has Keystone made any attempt to contact the Yankton Sioux Tribe Business and Claims Committee, its officers, or its Tribal Historic Preservation Office? If so, please provide the following:

- a. Name(s) of the person(s) contacted;
- b. Title of the person(s) contacted;
- c. The physical address of the person(s) contacted;
- d. The telephone number(s) of the person(s) contacted; and
- e. The means by which Keystone made contact, i.e. written, oral, electronic, etc.;

ANSWER: *See response to interrogatory no. 18 above.*

23. Pursuant to Condition Forty-Four, provide a detailed description of cultural and historic training that Keystone provides to its construction personnel.

ANSWER: Training material developed by Keystone will be finalized and available for distribution to the construction personnel after the inventory phase is complete and prior to construction.

24. Pursuant to Condition Forty-Four, does Keystone or any of its affiliates recognize that if approved and constructed, the Keystone Pipeline will travel through the

identified Indian Country territory from the Fort Laramie Treaty of 1851 and 1868, and as such will likely encounter undiscovered cultural and/or historic sites?

ANSWER: Keystone recognizes that the KXL Pipeline will travel through territory considered in the Treaties of Fort Laramie of 1851 and 1868. Keystone does not believe that any part of its route as currently permitted passes through Indian Country or across tribally owned lands. Keystone recognizes the possibility that undiscovered cultural and/or historic sites may be found in the course of construction. Keystone believes Conditions 43 and 44, and the provisions provided for therein, suitably accommodate cultural and paleontological resource discoveries. Tribal monitors will be hired by Keystone to monitor designated areas during ground disturbing activities relating to construction to assist in managing previously undiscovered cultural and/or historic sites that are found in the course of construction and in complying with the unanticipated discoveries plan.

25. Pursuant to Condition Forty-Four, does Keystone plan to consult with the Yankton Sioux Tribe and its General Council, Business and Claims Committee, and its Tribal Historic Preservation Office in the future?

ANSWER: Condition 44 applies to paleontological discoveries. Condition 43 applies to unanticipated discoveries. See the answer to Interrogatory 24 above.

26. Pursuant to Conditions One and Two, does Keystone recognize and acknowledge that the Yankton Sioux Tribe has federally protected Winters Doctrine water rights and that these rights apply to any permit application to use water for the construction, operation or maintenance of the Keystone Pipeline project?

ANSWER: Keystone recognizes the so-called Winters Doctrine arising from *Winters v. The United States*, 207 U.S. 564 (1908) and its progeny. Keystone does not believe that the Yankton Sioux Tribe's Winters Doctrine water rights are affected by Keystone's use of water for construction, operation, or maintenance.

27. Pursuant to Conditions One and Two, what steps, if any, has Keystone or any of its affiliates taken to ensure that the Yankton Sioux Tribe's federally protected Winters Doctrine water rights are be protected?

ANSWER: Keystone does not believe that the Yankton Sioux Tribe's Winters doctrine water rights are affected by the use of water for the construction, operation, or maintenance of the Keystone Pipeline.

28. Pursuant to Conditions One and Two, are any waterways situated on or near the Pipeline route subject to designation under the Wild and Scenic River Act of 1968? If so, identify each of the waterways.

OBJECTION AND RESPONSE: To the extent that it seeks information on the Pipeline route outside South Dakota, this request is not relevant or reasonably likely to

lead to the discovery of admissible evidence. Without waiving the objection, the Project route does not cross any waterways that are subject to designation under the Wild and Scenic River Act of 1968. There are no waterways that are subject to designation under the Wild and Scenic River Act of 1968 near the Project route in South Dakota. An evaluation of Wild and Scenic Rivers as per related to the Project is found on page 4.3-24 of the Department of State FSEIS (2014).

29. Pursuant to Conditions One and Two, are there any land areas along or near the Keystone Pipeline route that have been designated as critical habitat under the Endangered Species Act? If so identify each of the land areas.

OBJECTION AND RESPONSE: To the extent that it seeks information on the Pipeline route outside South Dakota, this request is not relevant or reasonably likely to lead to the discovery of admissible evidence. Without waiving the objection, there are no lands along or near the Project route in South Dakota that are designated as critical habitat under the Endangered Species Act. Endangered species are discussed in Section 4.8 of the Department of State FSEIS (2014).

30. Pursuant to Conditions One and Two, are there any land areas along or nearby the Keystone Pipeline route that have any Endangered Species located in that area? If so, identify the land areas and the endangered species.

OBJECTION AND RESPONSE: To the extent that it seeks information on the Pipeline route outside South Dakota, this request is not relevant or reasonably likely to lead to the discovery of admissible evidence. Without waiving the objection, the following federally-listed threatened or endangered species have the potential to occur along the Project route in South Dakota: interior least tern; piping plover; rufa red knot; whooping crane; and the American burying beetle. Section 4.8.3 of the Department of State FSEIS (2014) and Appendix H, Biological Opinion in the Department of State FSEIS (2014) discusses the potential occurrence of these federally-listed threatened and endangered species along the Project route in South Dakota and Sections 4.8.3 and 4.8.4 and Appendix H of the Department of State FSEIS (2014) discusses the potential impacts and conservation measures the Project will implement to protect listed species.

31. Pursuant to Condition Twenty-Three, will employees of Keystone or any of its contractors or subcontractors enter the exterior boundaries of the Yankton Sioux Reservation during construction of the Project? If so, for what purposes?

ANSWER: Employees of Keystone or any of its contractors or subcontractors will not enter the exterior boundaries of the Yankton Sioux Reservation during construction.

32. Pursuant to Conditions One, Two, and Thirty-Six, identify the location of all equipment staging areas, construction staging areas, construction camps, and housing

camps in South Dakota that will be used for emergency response, construction, and/or temporary housing.

OBJECTION AND RESPONSE: The request for the location of equipment and construction staging areas is not relevant and not likely to lead to the discovery of admissible evidence. It is confidential for reasons related to security. Keystone currently has not determined the specific locations that will be used for emergency response, but as required by Permit Condition 10, will timely consult with the appropriate agencies. Without waiving the objection, emergency response locations will be determined prior to the project going into service and will be in determined in accordance with Federal response requirements.

Construction

Keystone has leased 11 pipe yards and 6 contractor yards in South Dakota. Pipe yards are planned in Harding, Meade, Butte, Haakon, Jones and Tripp counties. The 6 contractor yards are located in Harding, Meade, Haakon and Tripp counties. Each pipe yard is approximately 30 acres in size.

Temporary Housing

Some areas within Montana, South Dakota, and Nebraska do not have sufficient temporary housing in the vicinity of the proposed route for all construction personnel working in those areas. Temporary work camps would be constructed to meet the housing

needs of the construction workforce in these remote locations. A total of eight temporary construction camps would be established. It is currently anticipated that four construction camps would be needed in Montana (McCone, Valley [two], and Fallon counties), three camps would be required in South Dakota (Tripp, Harding, and Meade counties), and one camp would be required in Nebraska (Holt county). Figure 2.1.5-1 shows the anticipated location of six of the eight camps. The locations of two camps are unknown at this time (one in Montana and one in Nebraska). The final number and size of camps would be determined based on the time available to complete construction and to meet Keystone's commercial commitments. All construction camps would be permitted, constructed, and operated consistent with applicable county, state, and federal regulations. (FSEIS, page 2.1-31)

33. Pursuant to Condition Thirty-Six and Changed Finding of Fact No. 107, identify the contractor or company that is responsible for providing emergency response services.

ANSWER: TransCanada has agreements/contracts with corporations such as the National Response Copr. that meet the Oil Spill Response Organization (OSRO) requirements (Keystone ERP, Appendix I to the FSEIS).

The resources will be secured from a Company approved contractor.

34. Pursuant to Changed Finding of Fact No. 107, provide a breakdown of crime statistics (including violent crimes, sexual crimes, and drug and/or alcohol-related crimes) for areas in which temporary housing camps have been located for construction of comparable projects showing crime rates both before and during construction of said projects. Please also identify the source of this data and the method used to collect this data.

OBJECTION: This request seeks information that is not in Keystone's custody or control and is not maintained by Keystone in the ordinary course of business. It is also overlybroad and unduly burdensome.

35. Pursuant to Changed Finding of Fact No. 107, identify the precautionary measures Keystone has or will implement at the temporary housing camps to protect the surrounding area from crime resulting from the temporary influx of construction workers at the temporary housing camps.

ANSWER: TransCanada Keystone will implement policies and procedures that all residents will be required to comply with during their residency at the camp. Violations may lead to removal from the camp or the appropriate level of disciplinary action. TransCanada will liaise with and engage law enforcement if any issues arise from the man-camps, as appropriate. TransCanada will consider augmenting local law enforcement staffing impacts resulting from camp operations.

Ref: FSEIS 4.10-13

Each camp site would be fully fenced and have a guard house at a single entrance. A contract security officer manning the guard house would be provided on a 24/7 basis. In addition, at all times there would be at least one additional roving security officer supplemented with off-duty law enforcement personnel, as needed. Local law enforcement agencies would also respond to violent, criminal, or illegal activities.

36. Pursuant to Changed Finding of Fact No. 107, identify the protocols and guidelines that will be utilized to respond to reports of crime in or near the temporary housing camps that reportedly involve temporary construction workers or other employees of Keystone or of its contractor or subcontractor.

ANSWER: Any reports of crime or criminal activity in or near temporary housing camps will be reported to local law enforcement for investigation and follow up. TransCanada is committed to cooperating with and assisting law enforcement with their investigation, where appropriate.

Ref: FSEIS 4.10.33

Each camp site would be fully fenced and have a guard house at a single entrance. A contract security officer manning the guard house would be provided on a 24/7 basis. In addition, at all times there would be at least one additional roving security officer

supplemented with off-duty law enforcement personnel, as needed. Local law enforcement agencies would also respond to violent, criminal, or illegal activities.

37. Pursuant to Condition Twenty-Three and the changed Finding of Fact Number Forty-One, will any of Keystone's construction equipment or crew access the Project from trust land? If so, has Keystone received the necessary consent of the United States government to access trust land on the Yankton Sioux Reservation or the affected Reservation?

ANSWER: Keystone does not cross any trust land with access to the Project in South Dakota.

38. Pursuant to Condition Twenty-Three, has Keystone made contact with or otherwise taken any action to plan for road closures which may affect the Yankton Sioux Tribe? If so, does Keystone plan to notify, coordinate or otherwise consult with the Yankton Sioux Tribe?

ANSWER: Keystone does not expect any road closures will affect the Yankton Sioux Tribe, but if such road closures should occur, Keystone will consult with the Yankton Sioux Tribe regarding same.

39. Pursuant to Condition Twenty-Three, has Keystone made contact with or otherwise taken any action to plan for emergency response which may affect the Yankton

Sioux Tribe? If so, does Keystone plan to notify, coordinate, or otherwise consult with the Yankton Sioux Tribe?

ANSWER: Yes, the Yankton Sioux Tribe will be notified if the tribe is affected by an incident. The final version of the Keystone Pipeline Emergency Response Plan (ERP) is complete and complies with 49 C.F.R. Part 194. The Keystone ERP will be amended to include Keystone XL. A redacted version of the ERP is found at Appendix I of the FSEIS.

40. Pursuant to Condition Two, please provide the following information with respect to each instance of tribal consultation with the Yankton Sioux Tribe referenced in Appendix E of the Final Supplemental Environmental Impact Statement.

- a. Name(s) of the Tribal official(s) or other person(s) contacted;
- b. Title of the Tribal official(s) or other person(s) contacted;
- c. The physical address of the Tribal official(s) or other person(s) contacted;
- d. The telephone number(s) of the Tribal official(s) or other person(s) contacted;
- e. The means by which contact with the Tribe was made, i.e. written, oral, electronic, etc.;

f. Whether any employee, official, or other agent of Keystone was present during the particular instance of consultation and if so, the name and contact information for that individual(s); and

g. Whether Keystone actively or otherwise participated during the particular instance of consultation.

ANSWER: Tribal consultation is the responsibility of the Department of State.

41. Pursuant to Conditions 6 and 43 how much land along Keystones proposed route for the KXL Project has yet to be TCP surveyed. If any, identify the land.

ANSWER: The status of TCP surveys can be found in Table 3.11-8 of the Department of State FSEIS (2014). The Yankton Sioux Tribe's report was received and accepted in March and April 2011. Any outstanding issues would be addressed through the course of government to government consultation with the DOS.

42. Pursuant to Condition 2, how many other state permits and federal permits are pending or not yet received by Keystone for the Keystone XL project.

ANSWER: The Presidential Permit is currently pending before the United States Department of State. Permit authorization from the USACE under Section 404 of the Clean Water Act has not yet been sought.

43. Pursuant to Conditions 6 and 43, have any tribes surveyed the land along the proposed route for the KXL Project? If so, which tribes and for what portion of the route, respectively?

ANSWER: Yes. The route surveys performed are summarized in Keystone documents 1151-1169.

44. Pursuant to Condition 10, has Keystone yet commenced a program of contacts with state, county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies serving the Project area? If so, please describe the program and any steps taken in furtherance of meeting Condition 10. If not, when does Keystone plan to do so?

ANSWER: No. Keystone will commence such a program not later than six months before commencing construction.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents that Keystone intends to offer as exhibits at the evidentiary hearing in this matter.

ANSWER: Keystone has not yet identified hearing exhibits, but will disclose them as required by the PUC.

2. All documents relating to environmental and hydrological surveys. Changed Finding of Fact Number Forty-One.

OBJECTION: This request is overlybroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). The request is unlimited in time and does not refer to any specific project.

3. All documents relating to cultural and historic surveys, training, and response plans. Condition Forty-Four.

OBJECTION: This request is overlybroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). The request is unlimited in time and does not refer to any specific project.

4. All documents relating to required permits, both in South Dakota and outside South Dakota, including permit applications which were denied, revoked, or suspended.

OBJECTION: This request is overlybroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b).

5. All documents related to Interrogatory No. 40, including but not limited to any correspondence between any employee, official, or other agent of Keystone and any other party pertaining to each instance of consultation and any notes or other documents generated by any employee, official, or other agent of Keystone pertaining to each instance of consultation.

ANSWER: As indicated in the answer to number 40, consultation is the responsibility of the Department of State.

6. All documents constituting Keystone's Emergency Response Plan.

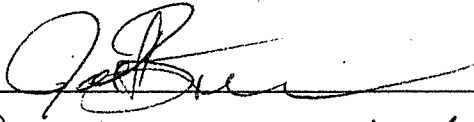
OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the exclusive province of PHMSA. The PUC's jurisdiction over the emergency response plan is preempted by federal law, which has exclusive jurisdiction over issues of pipeline safety. *See* 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. See Amended Final Order, HP 09-001, Condition ¶ 36. Public disclosure of the emergency response plan would commercially disadvantage Keystone. In addition, Keystone is not required to submit its Emergency Response Plan to PHMSA until sometime close to when the Keystone Pipeline is placed into operation. Keystone's Emergency Response Plan is addressed in The Final Supplemental Environmental Impact Statement at <http://keystonepipeline-xl.state.gov/documents/organization/221189.pdf>.

7. All documents that support the proposed changes to the Findings of Fact identified in Appendix C to Keystone's application filed on September 14, 2014 with the PUC.

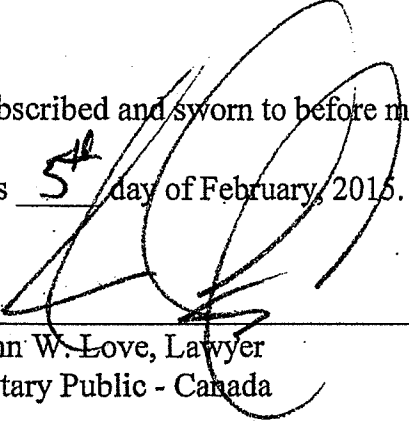
OBJECTION: This request is overlybroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). Appendix C to Keystone certification petition includes citations to sources for many of the statements in the document.

Dated this 5th day of February, 2015.

TRANSCANADA KEYSTONE PIPELINE, LP
by its agent, TC Oil Pipeline Operations, Inc.

By 
Its Director, Authorized Signatory

Subscribed and sworn to before me
this 5th day of February, 2015.

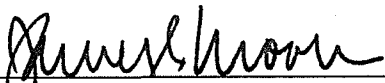

John W. Love, Lawyer
Notary Public - Canada

OBJECTIONS

The objections stated to Yankton Sioux Tribe's Interrogatories and Request for Production of Documents were made by James E. Moore, one of the attorneys for Applicant TransCanada herein, for the reasons and upon the grounds stated therein.

Dated this 6th day of February, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By 

William Taylor

James E. Moore

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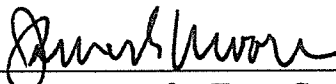
James.Moore@woodsfuller.com

Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2015, I sent by e-mail transmission, a true and correct copy of Keystone's Responses to Yankton Sioux Tribe's First Interrogatories and Request for Production of Documents, to the following:

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville, CO 80027
trealbird@ndnlaw.com



One of the attorneys for TransCanada

EXHIBIT B

Appendix S

Programmatic Agreement and Record of Tribal Contact

Programmatic Agreement

Among

The U.S. Department of State,
U.S. Bureau of Land Management,
U.S. Army Corps of Engineers,
U. S. Bureau of Reclamation,
National Park Service,
Western Area Power Administration,
U.S. Department of Agriculture Rural Utilities Service,
U.S. Department of Agriculture Natural Resources Conservation Service,
U.S. Department of Agriculture Farm Service Agency
U.S. Bureau of Indian Affairs
Montana Department of Natural Resources and Conservation,
Montana Department of Environmental Quality,
Advisory Council on Historic Preservation,
Montana State Historic Preservation Officer,
Kansas State Historic Preservation Officer,
Texas State Historic Preservation Officer,
Nebraska State Historic Preservation Officer,
Oklahoma State Historic Preservation Officer,
South Dakota State Historic Preservation Officer, and
TransCanada Keystone Pipeline, LP
Regarding the Keystone XL Pipeline Project

WHEREAS, the U.S. Department of State (DOS) receives and considers applications for permits for cross border oil pipelines pursuant to the authority delegated by the President of the United States under Executive Order (EO) 13337 (69 Federal Register 25299); and

WHEREAS, on September 19, 2008, the DOS received an application for a Presidential Permit from TransCanada Keystone Pipeline, LP (Keystone) for the Keystone XL Pipeline Project (Keystone XL Project or the Project); and

WHEREAS, DOS has determined that issuance of a Presidential Permit for the Keystone XL Project includes review under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f, as amended) and its implementing regulations, "Protection of Historic Properties," (36 CFR Part 800); and

WHEREAS, the Project undertaking consists of construction of approximately 1,375 miles of new crude oil pipeline in the United States and utilizes 298 miles of the previously approved Keystone Cushing Extension, associated aboveground facilities (such as pump stations and transmission facilities and substations), and ancillary facilities (such as lateral pipeline, temporary workplace areas and pipe storage, access roads, and contractor yards); and

WHEREAS, the proposed Keystone XL Project pipeline alignment crosses Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas; and

WHEREAS, the proposed Keystone XL Project pipeline alignment crosses seven National Historic Trails: the Lewis and Clark National Historic Trail (LCNHT); Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails; the Santa Fe National Historic Trail; and the El Camino Real de los Tejas National Historic Trail (ELTE). Each of these trails was designated by the U.S. Congress and have as their purpose “the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment;” (National Trails System Act, P.L. 90-543, as amended); and

WHEREAS, on February 2, 2011, the Advisory Council on Historic Preservation (ACHP) entered consultation finding that criteria 3 and 4 of Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of the regulations (36 CFR Part 800) implementing Section 106 of NHPA, had the potential to be met; and

WHEREAS, the United States Army Corps of Engineers (USACE) has determined that the approval for the Keystone XL Project to cross USACE administered lands (30 U.S.C. § 185) and to place structures in, under, or over navigable waters of the United States, as defined under 33 CFR 329, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and a permit for the placement of dredge or fill material in waters of the United States as part of the Keystone XL Project in accordance with Section 404 of the Clean Water Act (33 U.S.C. § 344; see 33 CFR 323), are federal actions related to the undertaking that require the USACE to comply with Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the U.S. Bureau of Land Management (BLM) has determined the approval of the Keystone XL Project to cross Federal lands administered by the BLM would require authorization under Section 28 of the Mineral Leasing Act of 1920, as amended [(MLA) 30 USC 185]; and

WHEREAS, the BLM has determined that Keystone will require access roads crossing public lands administered by the BLM in support of the Keystone XL Pipeline Project and that the access roads will require authorization under Title V of the Federal Land Policy and Management Act, as amended [(FLMPA) 43 USC 1701]; and

WHEREAS, the BLM has determined that the Keystone XL Project will require electrical power from rural electrical cooperatives and that portions of the transmission lines will cross public lands administered by the BLM and that the transmission lines crossing public lands will require authorization under Title V of the Federal Land Policy and Management Act, as amended [(FLMPA) 43 USC 1701]; and

WHEREAS, the BLM approvals of these Project crossings in areas under its jurisdiction is a federal action associated with the undertaking that requires the BLM to comply with Section 106 of the NHPA and 36 CFR Part 800; and

WHEREAS, the U.S. Bureau of Reclamation (RECLAMATION) manages lands and facilities that will be crossed by the Keystone XL Project and this is a federal action related to the undertaking that requires RECLAMATION to comply with Section 106 of the NHPA and 36

CFR Part 800; and

WHEREAS, the Natural Resources Conservation Service (NRCS) has determined that it retains rights to a 2,693 acre parcel subject to the Wetlands Reserve Program (WRP) (16 U.S.C. 3837 et. seq.) easements in Fannin County, Texas and that the installation and maintenance of the Project pipeline on this WRP easement is a federal action associated with the undertaking that requires compliance with Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the Farm Service Agency (FSA), manages private lands with federal easements along the Project APE as part of its Grasslands Reserve Program (jointly administered with the NRCS) as well as the Conservation Resource Program, and the Farmable Wetlands Program; and

WHEREAS, the FSA approval of the Project crossings in these areas is a federal action associated with the undertaking that requires the FSA to comply with Section 106 of the NHPA and 36 CFR Part 800; and

WHEREAS, the Rural Utilities Service (RUS) has determined that the financial assistance it may provide to rural electric cooperatives and other entities for construction or modification of electrical transmission facilities (including transmission lines and substations) to power some Keystone XL Project pump stations or to ensure transmission system reliability, under USDA Rural Development's Utilities Programs, are Federal actions related to the undertaking that require RUS to comply with Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the Bureau of Indian Affairs (BIA) has responsibility for approving any right-of-ways crossing Indian Trust lands and this is a federal action related to the undertaking that requires the BIA to comply with Section 106 of the NHPA and 36 CFR Part 800; and

WHEREAS, the Western Area Power Administration (WESTERN) has determined that the modification and construction of substations and transmission lines that WESTERN will own and that will provide power to the Keystone XL project, will require review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the National Park Service (NPS) has been invited to consult with the DOS concerning the Project due to the potential for adverse effects to several National Historic Trails including the LCNHT and ELTE; and

WHEREAS, the Montana Department of Natural Resources and Conservation has participated in consultation and has been invited by DOS under 36 CFR § 800.6(c) (2) to sign this Programmatic Agreement (PA) as an invited signatory; and

WHEREAS, the Montana Department of Environmental Quality has participated in consultation and has been invited by DOS under 36 CFR § 800.6(c) (2) to sign this PA as an invited signatory; and

WHEREAS, the USACE, BLM, RUS, BIA, NRCS, WESTERN, RECLAMATION, and FSA have designated the DOS as the lead federal agency for purposes of Section 106 of the NHPA in

accordance with 36 CFR § 800.2(a)(2); and

WHEREAS, the Keystone XL Project area of potential effect (APE) includes: (1) in Montana – a 300 foot wide corridor, 150 feet on each side from the centerline; (2) in South Dakota – a 300 foot wide corridor, 150 feet on each side from the centerline; (3) in Nebraska – a 300 foot wide corridor, 150 feet from each side from the centerline; (4) in Kansas – all areas of disturbance related to the construction of two pump stations; (5) in Oklahoma – a 300 foot wide corridor, from centerline of outermost existing pipeline; and (6) in Texas - a 300 foot wide corridor, with 200 feet from the existing infrastructure feature centerline on the side where the proposed pipeline is to be collocated and 100 feet from the existing feature centerline on the opposite side, or, if the route is not collocated with existing infrastructure, then the survey area will be centered on the proposed pipeline (150 feet on each side). For transmission lines and access roads in each state, a 100 foot wide corridor centered on the Project centerline will be used. For pumping stations and other areas that are to be disturbed by construction related activities and ancillary facilities (including construction camps and pump stations), the APE will include all areas of disturbance and areas to be indirectly affected; and

WHEREAS, the DOS has determined that the construction of the Keystone XL Project may have an adverse effect on properties listed in or eligible for listing in the National Register of Historic Places (NRHP), and has consulted with the Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Indian Tribes, and the ACHP, pursuant to 36 CFR Part 800; and

WHEREAS, the BLM will incorporate this PA into its decisional process on any authorization under the MLA or FLPMA it may issue for the Keystone XL Project, and will include in any authorization it issues on the Keystone XL Project, a condition that Keystone will abide by its commitments in this PA; and

WHEREAS, in accordance with 36 CFR §§ 800.4(b)(2) and 800.5(a)(3), the DOS has elected to phase identification and evaluation of historic properties, and application of the criteria of adverse effect, respectively, because access to those areas identified in Attachment A has been restricted by property owners' refusal to grant Keystone permission to enter their private property; and

WHEREAS, Attachment G includes summary information on the identification, evaluation, and effect assessment updates on the Project that were included in the Final Environmental Impact Statement (FEIS); and

WHEREAS, additional identification, evaluation and effect assessments for the Project will need to be undertaken as all areas of construction have yet to be determined; and

WHEREAS, pursuant to 36 CFR § 800.14(b), the DOS has elected to execute this PA for the Keystone XL Project because effects on historic properties cannot be fully determined prior to the issuance of a permit for the undertaking; and

WHEREAS, Attachment G also summarizes consultation with Indian tribes and Nations,

SHPOs, and other agencies; and

WHEREAS, the DOS will incorporate this PA into its decisional process on any Presidential Permit that it may issue for the Keystone XL Project and will include in any permit it issues on the Keystone XL Project a condition that Keystone will abide by its commitments in this PA; and

WHEREAS, Keystone, which will construct the Keystone XL Project pipeline, has participated in consultation, has been invited by DOS under 36 C.F.R. §§ 800.2(c)(4) and 800.6(c)(2) to sign this agreement as an invited signatory and intends to sign this agreement as an invited signatory; and

WHEREAS, for the purposes of this agreement, “Indian tribes and Nations” shall have the same definition as “Indian tribes” which appears in Section 301(4) of the NHPA; and

WHEREAS, DOS invited the Indian tribes listed in Attachment B to participate in consultation; and

WHEREAS, the Absentee-Shawnee Tribe of Indians of Oklahoma; the Alabama-Coushatta Tribe of Texas, Blackfeet Tribe, Caddo Nation of Oklahoma, Cheyenne River Sioux, Cheyenne-Arapaho Tribe of Oklahoma, Chippewa-Cree Indians, Choctaw Nation of Oklahoma, Crow Tribe of Indians, Delaware Nation, Fort Peck Tribes, Gros Ventre and Assiniboine Tribe of Ft. Belknap, Ho-Chunk Nation of Wisconsin, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Kaw Nation, Kialegee Tribal Town of the Creek Nation in Oklahoma, Kickapoo Tribe of Kansas, Kiowa Indian Tribe of Oklahoma, Lower Sioux Indian Community, Miami Tribe of Oklahoma, Mille Lacs Band of Ojibwe, Muscogee (Creek) Nation, Northern Arapaho Tribe, Northern Cheyenne Tribe, Northern Ute Tribe, Oglala Sioux Tribe, Osage Nation, Pawnee Nation of Oklahoma, Ponca Tribe of Indians of Oklahoma, Ponca Tribe of Nebraska, Rosebud Sioux Tribe, Sac & Fox Nation of Oklahoma, Santee Sioux Tribe of Nebraska, Shoshone-Bannock Tribe, Sisseton-Wahpeton Oyate Sioux, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes, Tonkawa Tribe, Turtle Mountain Band of Chippewa, Wichita and Affiliated Tribes, Winnebago Tribe, and Yankton Sioux have participated in consultation and have been invited to concur in this PA, in accordance with 36 C.F.R. §§ 800.2(c)(2) and 800.6(c)(3);

NOW, THEREFORE, the DOS, USACE, BLM, RUS, BIA, FSA, NRCS, WESTERN, RECLAMATION, NPS, ACHP, and the Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas SHPOs agree that the following stipulations will be implemented in order to take into account the effect of the undertaking on historic properties and to satisfy all responsibilities under Section 106 of the NHPA.

STIPULATIONS

The DOS, BLM, RUS, BIA, FSA, NRCS, WESTERN, USACE, RECLAMATION, and NPS as appropriate, will ensure that the following stipulations are carried out.

I. STANDARDS AND DEFINITIONS

- A. Identification and evaluation studies and treatment measures required under the terms of this PA will be carried out by or under the direct on-site supervision of a professional(s) who meets, at a minimum, the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* (48 FR 44716, September 29, 1983).
- B. In developing scopes of work for identification and evaluation studies, and treatment measures required under the terms of this PA, Keystone and RUS applicants will take into account the following regulations and guidelines:
1. The ACHP's guidance on conducting archaeology under Section 106 (2007);
 2. The ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007);
 3. Applicable SHPO guidance;
 4. The Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983);
 5. The "*Treatment of Archaeological Properties*" (ACHP 1983);
 6. The *Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects*" (Federal Energy Regulatory Commission, Office of Energy Projects, December 2002);
 7. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403);
 8. Section 404 of the Clean Water Act (33 U.S.C. § 344);
 9. BLM 8110 Manual: Identifying and Evaluating Cultural Resources;
 10. Montana/Dakotas Cultural Resources Handbook 8110-1: Guidelines for Identifying Cultural Resources;
 11. The National Trails System Act (P.L. 90-543, as amended);
 12. Section 28 of the Mineral Leasing Act of 1920 (30 USC 185);
 13. Title V of the Federal Land Policy and Management Act of 1976 (43 USC 1701); and
 14. *National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties* (NPS 1990; Revised 1992: 1998)

C. Definitions

Coordination Plan: A plan (more fully explained in Stipulation V.B and V.D.) that describes the coordination of construction with identification and evaluation of cultural resources, treatment of adverse effects, and protection of unanticipated discoveries.

Concurring Parties: An invited consulting party to this PA that agrees with the content of the PA. The refusal of a concurring party to sign the PA does not invalidate this PA as noted in 36 C.F.R. § 800.6(c)(3). Concurring parties may not terminate the PA.

Construction spread: A construction unit or segment of a pipeline alignment or corridor to be determined by Keystone prior to construction.

Consulting Parties: Parties that have consultative roles in the Section 106 process, as defined in 36 C.F.R. § 800.2(c).

Data Recovery: The recovery of archaeological information from a historic property subject to an adverse effect.

Determination of Effect: A determination made by a federal agency in regards to a Project's effect upon a historic property as defined in 36 C.F.R. Part 800.

Determination of Eligibility: A determination made by a federal agency in regards to a cultural resource's eligibility for inclusion in the National Register of Historic Places (NRHP) and more fully described in 36 C.F.R. Part 60 and 36 C.F.R. § 800.16(1)(2).

Effect: An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 C.F.R. § 800.16(i)).

Environmental Impact Statement: An analysis of a major federal action's environmental impacts conducted consistent with NEPA.

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria (see 36 C.F.R. § 800.16(1)(a)).

Invited Signatory: The DOS has invited TransCanada Keystone Pipeline LP, the Montana Department of Natural Resources and Conservation, and the Montana Department of Environmental Quality to be signatories to this PA pursuant to 36 C.F.R. § 800.6(c)(2). The refusal of any invited signatory to sign the PA does not invalidate the PA.

Historic Trail and Archaeological Monitoring Plan: A plan (more fully described in Stipulation V.E and Attachment F.) that identifies appropriate areas for monitoring construction by professionals under the supervision of individuals that meet the professional qualifications in Stipulation I. The plan's principal goal is to reduce the potential for impacts to unidentified historic properties.

Signatory Parties: All signatories to this PA, which includes the DOS, BLM, RECLAMATION, USACE, NPS, WESTERN, RUS, NRCS, FSA, BIA, Montana Department of Natural Resources and Conservation, Montana Department of Environmental Quality, and the SHPOs of Montana, South Dakota, Nebraska, Kansas,

Oklahoma, and Texas. (Signatory parties include the federal agency(ies), SHPOs, THPOs (or designee) if the undertaking is carried out on Tribal land or affects historic properties on Tribal land, and also any invited signatories [not including invited concurring parties]).

Tribal Monitoring Plan: A plan (more fully described in Stipulation V.E. and Attachment E) that identifies appropriate areas for monitoring construction by tribal members appointed by their respective tribes. These tribal members shall meet the qualifications as noted in Stipulation V.E.3. The plan's principal goal is to reduce the potential for impacts to previously unidentified historic properties that may also be properties of religious and cultural significance that meet the National Register criteria (see 36 CFR § 800.16(1)(a)).

Treatment Plan: A plan developed in consultation with the parties to this PA that identifies the minimization, and mitigation measures for historic properties located within the APE that will be adversely affected by the Project.

II. CONFIDENTIALITY

DOS, BLM, NRCS, BIA, RUS, WESTERN, RECLAMATION, NPS and USACE will safeguard information about historic properties of religious and cultural significance to Indian tribes, including location information, or information provided by Indian tribes to assist in the identification of such properties, to the extent allowed by Section 304 of NHPA [16 U.S.C. 470w3] and other applicable laws.

III. THE RESPONSIBILITIES OF FEDERAL AGENCIES WITH LAND MANAGEMENT AND OTHER PERMITTING AUTHORITIES

- A. The USACE will ensure that the requirements of this PA have been met for that part of the APE under its jurisdiction, pursuant to Section 10 and Section 404 permitting authority.
- B. The USACE will comply with Section 106 and its implementing regulations (36 CFR Part 800) for the issuance of permits for those actions under its jurisdiction.
- C. The BLM will comply with Section 106 and its implementing regulations (36 CFR Part 800) for the issuance of permits for those actions under its jurisdiction.
- D. RECLAMATION will review and comment on the evaluation and treatment of any historic properties managed by RECLAMATION.
- E. Attachment H includes maps that illustrate the Project areas cross lands managed by the BLM and RECLAMATION.

- F. Consultation for this Project between Indian tribes and federal land management and permitting agencies will be coordinated through the DOS.

IV. KEYSTONE XL PROJECT – CONSTRUCTION OR MODIFICATION OF ELECTRICAL DISTRIBUTION/TRANSMISSION FACILITIES

- A. Prior to granting approval of financial assistance to construct or modify electrical transmission facilities by rural electric cooperatives or other entities, RUS will complete the requirements of 36 CFR §§ 800.3 through 800.7.
- B. In implementing Stipulation IV.A, RUS may authorize an applicant to initiate Section 106 consultation in accordance with 36 CFR § 800.2(c) (4). In doing so, RUS may not delegate its responsibility to conduct government-to-government consultation with Indian tribes to an applicant, unless RUS and that tribe agree, in writing, to conduct consultation in that manner.
- C. Prior to construction of the 230kV transmission line WESTERN will own, WESTERN will complete the requirements of 36 CFR §§ 800.3 through 800.7. In implementing Stipulation IV.C., WESTERN will serve as a signatory party under the DOS PA. WESTERN shall coordinate implementation of Stipulation IV.C with the DOS.
- D. RUS will ensure that the terms of Stipulation VI.B and Attachment C are incorporated into construction contracts to ensure that its applicants and construction contractors meet their responsibility for notification of any unanticipated discoveries. When RUS funded projects occur on BLM land, the RUS will coordinate with BLM to ensure compliance with Stipulation VI.B. and Attachment C of this Agreement.
- E. Prior to granting approval or financial assistance for construction or modification of electrical distribution/transmission facilities that are necessary components of the pipeline project and therefore considered within the Project APE, any federal agency that is incorporated into this agreement pursuant to Stipulation XIV will complete the requirements of 36 CFR §§ 800.3 through 800.7 for those facilities under its jurisdiction if not already carried out elsewhere in this agreement.
- F. DOS retains responsibility for completing the requirements of 36 CFR §§ 800.3 through 800.7 for those electrical distribution/transmission facilities that are necessary components of the Project if they are not under the jurisdiction of any federal agency and not referenced in Stipulation IV. A through E above.

V. KEYSTONE XL PROJECT – PIPELINE CONSTRUCTION

- A. The DOS provided SHPOs, consulting Indian tribes, and other consulting parties with an opportunity to provide their views on the identification and evaluation of historic properties (as defined in 36 CFR § 800.16(l), including historic properties of religious and cultural significance to Indian tribes, and the treatment of affected historic properties,

in connection with the construction of the Keystone XL Project as described in Stipulation V.C of this PA.

B. Identification and Evaluation of Historic Properties

1. In consultation with the SHPOs, consulting Indian tribes, and other consulting parties, the DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties within the APE for each construction spread prior to the initiation of construction of that spread, in accordance with 36 CFR §§ 800.4(a), (b) and (c). On federal lands, the scope of the identification effort will be determined by the appropriate federal land managing agency in consultation with the DOS, applicable SHPOs, consulting Indian tribes, and other consulting parties.
2. For the APE in Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, in accordance with 36 CFR §§ 800.4(a), (b) and (c), before Keystone initiates construction activities (including vegetative clearing to comply with the Migratory Bird Treaty Act if clearing is undertaken).
 - a. In the identification and evaluation of historic properties to which Indian tribes attach religious and cultural significance, the DOS will take into consideration information submitted by Indian tribes to DOS prior to construction.
 - b. In the event identification of historic properties cannot be completed for any construction spreads prior to construction, Keystone will develop and submit a Coordination Plan to DOS for review and approval pursuant to Stipulation V.D that describes the measures it will implement to complete the identification and evaluation of historic properties before such properties are adversely affected by vegetation clearing and construction activities related to that spread.

C. Treatment of Historic Properties

1. Whenever feasible, avoidance of adverse effects to historic properties will be the preferred treatment. In consultation with the DOS, ACHP, SHPOs, THPOs, and consulting parties, Keystone may elect to consider and implement avoidance measures prior to completing the evaluation of historic properties.

Avoidance and minimization measures may include:

- a. Avoidance through pipeline or access road route variation or Project feature relocation;
- b. Avoidance through abandonment;
- c. Avoidance through bore or horizontal directional drill;
- d. Avoidance by narrowing the construction corridor (“neck down”); and
- e. Avoidance through the use of existing roadways as Project access roads to the extent practicable.

2. When historic properties are identified in the APE pursuant to Stipulation V.B, DOS will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) in consultation with the ACHP, SHPO and other consulting parties. If DOS finds that historic properties might be adversely affected by actions covered under this PA and within the APE, DOS will consult with the ACHP, SHPOs, consulting Indian tribes, and other consulting parties to determine prudent and feasible ways to avoid adverse effects.
 - a. Once DOS approves avoidance measures, Keystone will implement those measures.
3. If DOS determines that the adverse effect cannot be avoided, DOS will consult with the ACHP, SHPOs, consulting Indian tribes, and other consulting parties to determine those measures to be implemented by Keystone to minimize and mitigate adverse effects on affected historic properties identified in the APE.
4. If, after consultation, DOS determines that the adverse effect cannot be avoided, Keystone will draft a comprehensive Treatment Plan for each adversely affected historic property. The Treatment Plan describes the measures identified by DOS under Stipulation V.C.3 to minimize and mitigate the adverse effect of pipeline construction activities on historic properties, the manner in which these measures will be carried out, and a schedule for their implementation.
 - a. When mitigation consists of or includes data recovery, the Treatment Plan also will identify the specific research questions to be addressed by data recovery with an explanation of their relevance, the archaeological methods to be used, and provisions for public interpretation and education, subject to Stipulation II restrictions, if any.
 - b. A Treatment Plan may also include mitigation for adverse effects to historic districts, buildings and structures. This mitigation may include the recordation of historic properties according to Historic American Building Survey/Historic American Engineering Record Standards and Guidelines for Architectural and Engineering Documentation. Other types of mitigation for adverse effects to historic districts, buildings, and structures may also be described in the Treatment Plan. The mitigation proposed for an adverse effect to a historic district, building, and/or structure will be commensurate with the level of significance and extent of adverse effect and will be determined in a manner consistent with Stipulation V.C.4.c.
 - c. Keystone will submit the draft Treatment Plan to the DOS, BLM (if applicable), ACHP, THPOs, the SHPO of the applicable state, MT DEQ (if applicable), MT DNRC (if applicable), and other applicable consulting parties for a thirty (30) calendar day review. Keystone shall address timely comments and recommendations submitted by SHPOs, consulting Indian tribes, and other consulting parties in preparation of the Final Treatment Plan.

- d. When it has addressed all of the timely comments and recommendations, Keystone will submit the Final Treatment Plan to DOS for review and approval. Keystone will also submit the Final Treatment Plan to BLM for review and approval when involving lands subject to Stipulation III.C. DOS and BLM shall issue their final decision on the Treatment Plan within thirty (30) calendar days. Once the Final Treatment Plan is approved by DOS (and the BLM if involving BLM-managed lands), copies of the Treatment Plan will be distributed to all SHPOs, consulting Indian tribes, and other consulting parties.
5. Keystone will make a reasonable and good faith effort to complete implementation of the Final Treatment Plan approved by DOS prior to beginning construction of any spread for which the Treatment Plan is required. If it is not possible to meet this schedule, Keystone will develop a Coordination Plan in accordance with Stipulation V.D that establishes how appropriate treatment will be determined and implemented during construction of the respective spread.

D. Coordination of Construction and Historic Preservation Activities

1. The DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, and the mitigation of adverse effects to them in accordance with Stipulations V.B and V.C prior to the initiation of vegetative clearing if vegetative clearing and construction on the Keystone XL spreads, including the Montana, South Dakota, Nebraska, Kansas, Oklahoma and Texas spreads, is to be undertaken.
2. If these DOS activities cannot be completed prior to the start of vegetative clearing and construction of these spreads, Keystone shall develop and provide to DOS a detailed plan describing how the requirements of Stipulations V.B and V.C – identification, evaluation and treatment of historic properties – will be completed in coordination with vegetative clearing and construction activities in such a way that historic properties will not be adversely affected prior to the implementation of any mitigation measures.
 - a. A Coordination Plan will be prepared for each state and will include those measures developed by Keystone pursuant to Stipulations V.B and V.C to complete the identification and evaluation of historic properties, and, as appropriate, mitigation of adverse effects to them during and coordinated with vegetation clearing and construction activities. In addition, the Coordination Plan will include a schedule for all proposed activities and recommended measures for the protection of unanticipated discoveries in accordance with Attachment C, as appropriate.
 - b. Keystone will submit the draft Coordination Plan for each state for such spreads, including the Montana, South Dakota, Nebraska, Kansas, Oklahoma and Texas spreads, to the DOS, BLM (as applicable) ACHP, SHPOs, THPOs, and consulting

parties for thirty (30) calendar day review. Keystone shall address timely comments and recommendations submitted by the applicable SHPO, consulting Indian tribes, and other consulting parties in preparation of the Final Coordination Plan for each state. When it has addressed all of the comments and recommendations, Keystone will submit the Final Coordination Plan for each state to DOS for review. DOS shall issue its final decision on the Coordination Plan for each state within thirty (30) calendar days. Following approval by DOS, the Final Coordination Plan for each state will be distributed to all of the SHPOs, consulting Indian tribes, and other consulting parties.

3. Keystone will complete implementation of the Final Coordination Plan approved by DOS during construction of the Montana, South Dakota, Nebraska, Kansas, Oklahoma and Texas spreads.

E. Historic Trail and Archaeological Monitoring Plan (“HTAM Plan”) and Tribal Monitoring Plan

1. In consultation with the SHPOs and Indian tribes, Keystone will monitor construction in selected areas of the APE of each spread as a supplement to identification efforts. Any historic properties identified by Keystone during monitoring will be treated in accordance with Stipulation VI.A and C.
 - a. The HTAM Plan outlines areas that have been previously identified by DOS during identification and evaluation efforts that warrant monitoring during soil disturbing activities for potential effects to historic properties.
 - b. The Tribal Monitoring Plan outlines areas that have been previously identified by Indian Tribes, either through the preparation of Traditional Cultural Property reports or through consultation, that warrant monitoring during clearing and trenching for potential effects to previously unidentified historic properties that may include properties of religious and cultural importance to an Indian tribe and that meet the National Register criteria (See 36 C.F.R. § 800.16(1)(a)).
2. Historic Trail monitoring will be performed by a professional who either meets the qualification standards for archaeology established in Stipulation I.A or is under the on-site supervision of such a professional. When the monitoring occurs on BLM managed lands, all monitors must have a valid Archaeological Resources Protection Act (ARPA) permit or be included on a BLM Cultural Resource Use Permit.
3. For tribal monitoring, other types of experience with construction monitoring and/or traditional cultural knowledge may be substituted for degrees required by the Standards at the discretion of the DOS. When the monitoring occurs on BLM managed lands, all monitors must have a valid Archaeological Resources Protection Act (ARPA) permit or be included on a BLM Cultural Resource Use Permit.

4. Keystone shall consider information provided by Indian tribes in a timely manner when completing the identification of historic properties before construction begins under Stipulation V.B and in implementing a HTAM Plan and Tribal Monitoring Plan provided for under Stipulation V.E. Keystone shall provide Indian tribes a reasonable opportunity to participate as monitors during Project construction. In those areas previously identified by Indian tribes as needing monitoring, the Tribal Monitoring Plan stipulates that at least one and at most two monitors will be used per construction spread depending upon the extent and location of construction activities.
5. Keystone has submitted a plan for historic trail and archaeological monitoring and tribal monitoring for each spread to the DOS, BLM, ACHP, SHPO, THPOs, and Consulting Parties for review and comment prior to the signing of this Agreement. The Tribal Monitoring Plan and HTAM Plan are attached to this agreement in Attachments E and F.
6. Keystone will implement the HTAM Plan and Tribal Monitoring Plan for each spread that has been approved by DOS.

F. Construction

1. Lead Environmental Inspector (EI): Prior to initiating vegetative clearing or construction, Keystone will employ the Lead EI whose responsibilities will include ensuring compliance with the terms of this PA. In meeting this responsibility, the Lead EI will rely on the technical expertise of on-site professionals who meet the standards established in Stipulation I.A and tribal monitors with experience outlined in Stipulation V.E.3.
 - a. The Lead EI will monitor construction activities on-site and prepare a daily log reporting to Keystone on activities performed to implement the terms of this PA, as appropriate. Keystone will make the daily log available to the DOS and SHPOs, consulting Indian tribes, and other consulting parties upon request.
 - b. Keystone will ensure through the construction contract that the Lead EI will possess the authority to stop construction in the event of an inadvertent discovery in accordance with Stipulation VI.A and Attachment C.
2. Training: Keystone will ensure that if the Lead EI does not meet the professional qualification standards established in Stipulation I.A, the Lead EI receives appropriate training in historic preservation from a professional who meets the standards established in Stipulation I.A in order to perform the requirements of this PA. Keystone also will provide an appropriate level of training in historic preservation conducted by a professional who meets the standards established in Stipulation I.A to all construction personnel (including new, added, replaced workers) so that PA requirements are understood and unanticipated discoveries quickly identified. Keystone will conduct this training prior to initiating vegetative clearing or

construction activities on a spread, and conduct periodic refresher training during construction of the spread.

3. This Programmatic Agreement and Attachment E, the Tribal Monitoring Plan, have given tribes the opportunity to provide information about historic properties of concern to the tribe(s).
4. Construction Contract: Keystone will incorporate the terms of Stipulation VI.A and Attachment C into construction contracts to ensure that its Lead EI and construction contractors meet their responsibility for notification of the unanticipated discoveries.

G. Scheduling

The DOS may authorize the start of vegetative clearing and construction for an individual spread when the plans prepared in accordance with Stipulations V.D and V.E as appropriate for that spread, have been submitted by Keystone and approved by DOS in accordance with the terms of this PA.

VI. UNANTICIPATED DISCOVERIES DURING CONSTRUCTION OF THE KEYSTONE XL PROJECT

A. Pipeline Construction

1. “Applicable federal agency” is the federal agency with jurisdiction for the land on which construction is occurring or, in the absence of such an agency, DOS, as appropriate.
2. If previously unidentified historic properties are discovered by monitors or construction personnel unexpectedly as pipeline construction activities are carried out within the one-hundred and ten (110) foot-wide construction corridor or other ancillary facilities and access roads within the APE, the construction contractor will immediately halt all construction activity within a one-hundred and fifty (150) foot radius of the discovery, notify Keystone’s Lead EI of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the Lead EI shall:
 - a. Inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
 - b. Clearly mark the area of the discovery;
 - c. Implement additional measures other than those mentioned above, as appropriate, to protect the discovery from looting and vandalism; and
 - d. Notify the applicable federal agency SHPOs, consulting Indian tribes, and other consulting parties of the discovery.

3. The applicable federal agency shall notify all consulting parties that it will be receiving comments concerning the unanticipated discovery and provide contact information. The applicable federal agency will have seven (7) calendar days following notification provided in accordance with Stipulation VI.A.2 to determine the National Register eligibility of the discovery after considering the timely filed views of the SHPOs, consulting Indian tribes, and other consulting parties and Keystone . The applicable federal agency may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).
4. For properties determined eligible or assumed to be eligible pursuant to Stipulation VI.A.3, the applicable federal agency will notify the ACHP, SHPOs, consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.
 - a. SHPOs, consulting Indian tribes, and other consulting parties will have forty-eight (48) hours to provide their views on the proposed actions.
 - b. The applicable federal agency will ensure that the timely filed recommendations of SHPOs, consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to resolve adverse effects.
 - c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. Dispute Resolution: The applicable federal agency will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding resolution of adverse effects that relate to the implementation of Stipulation VI. The applicable federal agency will use the contact information provided in Attachment C or D in order to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide the applicable federal agency with recommendations on resolving the dispute. The applicable federal agency will take into account any timely filed recommendations provided by the ACHP in making a final decision about how to proceed.

B. Construction or Modification of Electrical Transmission Facilities

1. If previously unidentified historic properties are discovered unexpectedly during construction or modification of transmission facilities funded by RUS, the RUS applicant's construction contractor will immediately halt all construction activity within a one-hundred and fifty (150) foot radius of the discovery, notify the RUS applicant of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the RUS applicant shall:
 - a. Notify the RUS Contact (and BLM Contact if discovery occurs on BLM land);

- b. Inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
 - c. Clearly mark the area of the discovery; and
 - d. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism.
2. Upon receipt of such notification RUS and BLM (if applicable) will coordinate the notification of SHPOs, consulting Indian tribes, and other consulting parties and notify the SHPOs, consulting Indian tribes, and other consulting parties of the discovery.
3. RUS and BLM (if applicable) will have seven (7) calendar days following notification provided in accordance with Stipulation VI.B.1 to determine the National Register eligibility of the discovery in consultation with the SHPOs, consulting Indian tribes, other consulting parties, and Keystone. RUS may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).
4. For properties determined eligible pursuant to Stipulation VI.B.3, RUS, in coordination with the BLM (if applicable), will notify the SHPOs, consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects. SHPOs, consulting Indian tribes, and other consulting parties will provide their views on the proposed actions within forty-eight (48) hours. RUS will ensure that the timely filed recommendations of the SHPOs, consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of those actions that the applicant will implement to resolve adverse effects. Once RUS approval has been granted, its applicant will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. Dispute Resolution: RUS and BLM (if applicable) will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding the resolution of adverse effects that relate to the implementation of Stipulation VI. The applicable federal agency will use the contact information provided in Attachment D in order to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide RUS and BLM (if applicable) with its recommendations for resolving the dispute. RUS and BLM (if applicable) will take into account any recommendations provided by the ACHP in making a final decision about how to proceed.
6. Reporting: No later than six (6) months following the resumption of construction within the location of the discovery, RUS will submit a final report to the SHPOs, consulting Indian tribes, and other consulting parties describing implementation of the actions taken in accordance with Stipulation VI.B and, as appropriate, the analysis and interpretation of recovered information.

C. Unanticipated Discovery of Human Burials and Remains, and Funerary Objects

1. When Native American human remains or funerary objects or objects of cultural patrimony are unexpectedly discovered during construction of the Keystone XL Project on federal or tribal lands within the APE, Keystone or a RUS applicant, as appropriate, will notify immediately the federal agency responsible for compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001 et. seq.] and its implementing regulations, 43 C.F.R. Part 10.
2. Non-Native American human burials and remains, and funerary objects discovered on federal lands within the APE will be treated by the federal agency having jurisdiction of the remains in accordance with applicable federal law, taking into account the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).
3. DOS, WESTERN, and RUS will treat human burials and remains discovered on non-federal land in accordance with the provisions of Attachment C and any applicable laws. In those instances where the USACE has jurisdiction under Section 10 or 404 permitting authority for non-federal lands in the APE, the applicable federal agencies will ensure that Keystone complies with the provisions of Attachment C acting in the place of the DOS. In determining appropriate actions to be carried out, DOS, RUS, and/or other federal agencies will be guided by the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).

VII. CURATION

- A. Federal agencies will curate any artifacts, materials or records resulting from archaeological identification and mitigation conducted on federal lands under their jurisdiction in accordance with 36 CFR Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections.*" Federal agencies with jurisdiction over the federal lands will consult with Indian tribes as required in 36 CFR 79.
- B. Keystone and RUS applicants will return all artifacts recovered from private lands to the respective landowner after analysis is complete, unless applicable state law requires otherwise. Keystone and RUS applicants will encourage and assist landowners in donating any returned artifacts to a local curation facility identified by the respective SHPO. Keystone and RUS applicants shall pay all required curation fees associated with the donation of artifacts to the local curation facility.
- C. On federally controlled or owned properties, federal agencies will determine the disposition of human burials, human remains and funerary objects in accordance with applicable federal law.

VIII. REPORTING

- A. Within three months of completion of pipeline construction of a spread, Keystone will submit a comprehensive draft report to DOS describing the results and findings of the implementation of the actions and plans specified in Stipulations V.C through G, VI.A, including Attachment C.
- B. Keystone will submit a draft comprehensive report for each spread to the SHPOs, consulting Indian tribes, and other consulting parties of the respective states in which the spread is located, for thirty (30) day review and comment. Keystone shall address timely comments and recommendations submitted by SHPOs, consulting Indian tribes, and other consulting parties in preparation of the Final Comprehensive Report for that spread. Keystone will submit the final report to DOS for review and approval. The final comprehensive report will be provided by DOS to the SHPOs, consulting Indian tribes, and other consulting parties once approved.

IX. MONITORING IMPLEMENTATION OF THE PA

Each quarter following the execution of this PA until it expires or is terminated, the DOS with the assistance of the USACE, BLM, RUS, FSA, NRCS, BIA, and RECLAMATION as necessary will provide the SHPOs, consulting Indian tribes, and other consulting parties to this PA a progress report summarizing the work carried out pursuant to its terms. Such report will include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the efforts to carry out the terms of this PA. DOS will maintain and update a list of the current contact for the SHPOs, consulting Indian tribes, and other consulting parties and will be distributed in each quarterly report.

X. DISPUTE RESOLUTION

- A. “Appropriate federal agency” refers to the DOS, BLM, RUS, RECLAMATION, and USACE, or other federal land managing and/or permitting agency as applicable.
- B. Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the appropriate federal agency will consult with such party to resolve the objection. If the appropriate federal agency determines that such objection cannot be resolved, the appropriate federal agency will:
 - 1. Forward all documentation relevant to the dispute, including the applicable federal agency’s proposed resolution, to the ACHP. The ACHP will provide the appropriate federal agency with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the appropriate federal agency will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The appropriate federal agency will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, the applicable federal agency may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the appropriate federal agency will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. The federal agencies are responsible for carrying out all other actions subject to the terms of this PA that are not the subject of the dispute.
 - D. The process of dispute resolution outlined in Stipulation X does not pertain to disputes that arise from unanticipated discoveries covered in Stipulation VI.

XI. DURATION

This PA will be null and void if all of its stipulations have not been carried out within five (5) years from the date of its execution. At such time, and prior to work continuing on the Keystone XL Project, the DOS, USACE, BLM, RUS, WESTERN, RECLAMATION and NPS will either (a) execute a Memorandum of Agreement (MOA) or PA pursuant to 36 CFR §§ 800.6 or 800.14(b), respectively, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR. § 800.7. Prior to such time, the DOS may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XII. The DOS, USACE, BLM, RUS, WESTERN, RECLAMATION and NPS will notify the signatories and concurring parties as to the course of action they will pursue.

XII. AMENDMENT

Any signatory party to this PA may propose in writing to the other signatory parties that it be amended. The signatory parties will consult in an effort to reach agreement on an amendment. Any amendment will be effective on the date it is signed by all of the signatories and filed with the ACHP.

XIII. TERMINATION

- A. If any signatory to this PA determines that its terms will not or cannot be carried out, that party will immediately consult with the other parties to attempt to develop an amendment per Stipulation XII. If within thirty (30) calendar days an amendment cannot be reached, any signatory may terminate its participation in the PA upon written notification to the other signatories.
- B. Termination by an individual SHPO shall only terminate the application of this Agreement within the jurisdiction of the SHPO.

- C. If the PA is terminated in its entirety, and prior to work continuing on the undertaking, the DOS shall request, take into account, and respond to the comments of the ACHP in accordance with 36 CFR § 800.7(a). Following consultation with the ACHP, the DOS will notify the signatories and concurring parties as to the course of action it will pursue.

XIV. COORDINATION WITH OTHER FEDERAL REVIEWS

In the event that Keystone or a federal agency applies for additional federal funding or approvals for the Keystone XL Project and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with the applicable SHPO and the ACHP. Any necessary modifications will be considered in accordance with Stipulation XII.

XV. SCOPE OF THE PA

This Agreement is limited in scope to actions that will facilitate the construction of the Keystone XL Project and related facilities, and is entered into solely for that purpose.

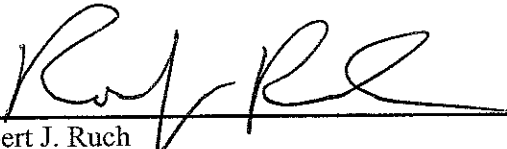
EXECUTION of this PA by the DOS, ACHP, BLM, RUS, WESTERN, USACE, RECLAMATION, NPS, NRCS, FSA, BIA, the Montana SHPO, South Dakota SHPO, Nebraska SHPO, Kansas SHPO, Oklahoma SHPO, and Texas SHPO and implementation of its terms evidence that the DOS, WESTERN, BLM, RUS, NRCS, FSA, BIA, USACE, RECLAMATION, and NPS have taken into account the effects of the Keystone XL Project on historic properties and afforded the ACHP an opportunity to comment.



United States Department of State

4 Aug 2011

Date


Robert J. Ruch
Colonel, Corps of Engineers
District Commander

2 Aug 11
Date


Deborah K. Johnson Morford

Aug. 10, 2011

Deborah Johnson Morford
Field Manager, Miles City Field Office
Bureau of Land Management

Date

008035

 July 14, 2011
Date

Michael J. Ryan
Regional Director, Great Plains Region
Bureau of Reclamation

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JUL 14 2011

**Cardno ENTRIX
Seattle**

Alice A. Herwood

7/15/11

Weldon Loudermilk
Great Plains Regional Director
United States Bureau of Indian Affairs

Date

Mark S. Plank

7/12/11

Mark S. Plank

Date

Director, Engineering and Environmental Staff

United States Department of Agriculture Rural Utilities Service



Matthew T. Ponish
National Environmental Compliance Manager
United States Department of Agriculture Farm Service Agency

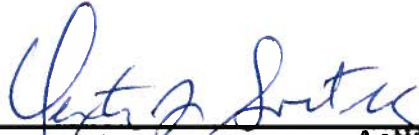
July 21, 2011

Date

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AUG 01 2011

Cardno ENTRIX
Seattle



AUG 03 2011

~~Don Gohmert~~ Salvador Salinas **Acting**

Date

State Conservationist

United States Department of Agriculture Natural Resources Conservation Services

Robert J. Harris

2/14/11

Robert Harris

Date

Regional Manager, Upper Great Plains Region
Western Area Power Administration (WESTERN)

for Charles Dwin Vaughan
John M. Fowler
Executive Director
Advisory Council on Historic Preservation

8/12/11
Date

Mark Wolfe

7/21/11

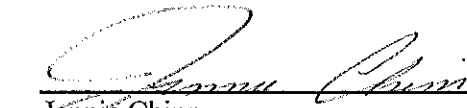
Mark Wolfe
State Historic Preservation Officer
Texas

Date

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Seattle


Jennie Chinn
State Historic Preservation Officer
Kansas

7-7-11
Date

Mark Baumber

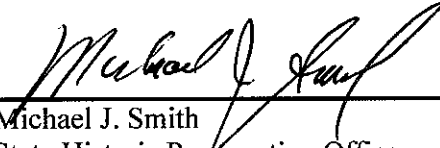
7/8/2011

Mark Baumber, Ph.D.
State Historic Preservation Officer
Montana

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**Cardno ENTRIX
Seattle**


Michael J. Smith
State Historic Preservation Officer
Nebraska

08-03-2011
Date



July 13, 2011

Dr. Bob L. Blackburn
State Historic Preservation Officer
Oklahoma

Date

Jay D. Vogt
Mr. Jay D. Vogt
State Historic Preservation Officer
South Dakota

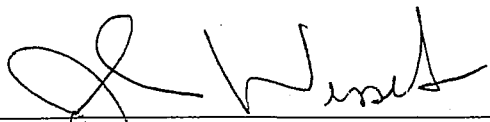
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Date

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Seattle



4 August 2011

John Wessels
Regional Director, Intermountain Region
National Park Service
(invited signatory)

Date



7-25-2011

Mary Sexton

Date

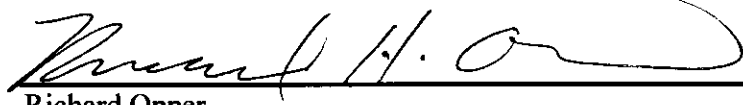
Director

Montana Department of Natural Resources and Conservation
(invited signatory)

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JUL 29 2011

Cardno ENTRIX
Seattle



7/18/11

Richard Opper

Date

Director

Montana Department of Environmental Quality
(invited signatory)



David Montemurro
TransCanada Keystone XL Pipeline, L.P.
(invited signatory)

July 21/2011
Date



Robert Jones
Vice President

21-July-2011

Carlos Bullock

8-8-11

Carlos Bullock, Tribal Council Chairman
Alabama-Coushatta Tribe of Texas
(concurring party)

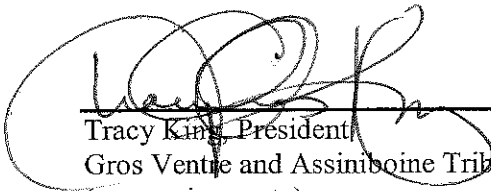
Date

Willie Sharp

Willie Sharp, Chairman
Blackfeet Nation
(concurring party)

8/4/11

Date



Tracy King, President
Gros Ventre and Assiniboine Tribe of Ft. Belknap
(concurring party)

7/28/2011

Date



Tim Rhodd, Chairman
Iowa Tribe of Kansas and Nebraska
(concurring party)

7-8-11

Date

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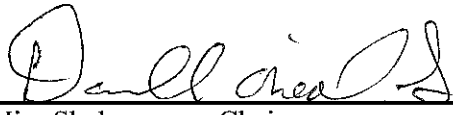
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Seattle

Thomas Gamble

11-25-11

Thomas Gamble, ~~Chairman~~ Chief
Miami Tribe of Oklahoma
(concurring party)

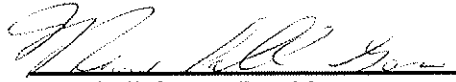
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Per 

8/5/11

Jim Shakespeare, Chairman
Northern Arapaho Tribe
(concurring party)

Date



8-2-11

Marshall Gover, President
Pawnee Nation of Oklahoma
(concurring party)

Date

ATTACHMENT A

The following Tables show properties for which Keystone has been denied access to conduct identification and evaluation studies as of the finalization of the PA.

| Table 1: Areas Not Surveyed along Mainline Route in Montana | | | | | |
|--|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Montana | Fallon | 249.1 | 250.2 | Needs survey | 1.1 |
| Montana | Fallon | 227.2 | 227.4 | Needs survey | 0.2 |
| Montana | Fallon | 228.1 | 228.1 | Surveyed on November 2010 CL; Addendum 6 in progress | 0.01 |
| Montana | Dawson | 0.2 | 1.4 | Needs survey | 1.2 |
| Montana | Dawson | 4.8 | 6.3 | Needs survey | 1.5 |
| Montana | Dawson | 7.6 | 9.1 | Needs survey | 1.5 |
| Montana | Dawson | 17.2 | 17.6 | Needs survey | 0.5 |
| Montana | Dawson | 17.9 | 18.4 | Needs survey | 0.5 |
| Montana | Dawson | 18.4 | 19.1 | Needs survey | 0.7 |
| Montana | Dawson | 20.4 | 20.7 | Surveyed on November 2010 CL; Addendum 6 in progress | 0.3 |
| Montana | Dawson | 21.7 | 22.2 | Surveyed on November 2010 CL; Addendum 6 in progress | 0.4 |
| Montana | McCone | 148.4 | 149.7 | Needs survey; Incorporated into November 2010 CL | 1.3 |
| Montana | McCone | 144.4 | 144.5 | Needs survey; Incorporated into November 2010 CL | 0.1 |
| Montana | Valley | 1.1 | 1.2 | Needs survey; Incorporated into November 2010 CL-MT-LO-01 | 0.1 |
| Montana | Dawson | 1.9 | 2 | Needs survey; Incorporated into November 2010 CL | 0.1 |
| Montana | Fallon | 0 | 0.01 | Needs survey | 0.01 |
| Montana | McCone | 0 | 0.5 | Needs survey | 0.5 |

| Table 1: Areas Not Surveyed along Mainline Route in Montana | | | | | |
|--|---------------|----------------------|--------------------|--|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Montana | McCone | 0 | 2.2 | Surveyed on November 2010 CL; Addendum 6 in progress | 2.2 |
| Montana | Dawson | 0 | 1.9 | Surveyed on November 2010 CL; Addendum 6 in progress | 1.9 |
| Montana | Dawson | 1 | 2 | Surveyed on November 2010 CL; Addendum 6 in progress | 2 |
| Montana | Sheridan | | | Surveyed on November 2010 CL; Addendum 6 in progress | |
| Montana | Roosevelt | | | Surveyed on November 2010 CL; Addendum 6 in progress | |
| Montana | Prairie | | | Needs survey | |

| Table 2: Areas Not Surveyed along Mainline Route in South Dakota | | | | | |
|---|---------------|----------------------|--------------------|--|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| South Dakota | Harding | 352.8 | 353.7 | Needs survey | 0.9 |
| South Dakota | Meade | 417.9 | 418.2 | Needs survey | 0.3 |
| South Dakota | Haakon | 481.4 | 481.5 | Surveyed on November 2010 CL; Addendum 7 in progress | 0.1 |
| South Dakota | Jones | 492 | 492.6 | Needs survey | 0.6 |
| South Dakota | Dawson | 194 | 194.5 | Surveyed on November 2010 CL; Addendum 7 in progress | 0.5 |
| South Dakota | Harding | 2.9 | 3.2 | Needs survey | 0.3 |
| South Dakota | Harding | 3.8 | 4.4 | Needs survey | 0.3 |
| South Dakota | Meade | 1.1 | 1.3 | Surveyed on November 2010 CL; Addendum 7 in progress | 0.1 |

| Table 2: Areas Not Surveyed along Mainline Route in South Dakota | | | | | |
|---|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| South Dakota | Hughes | | | Surveyed on November 2010 CL; Addendum 7 in progress | |

| Table 3: Areas Not Surveyed along Mainline Route in Nebraska | | | | | |
|---|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Nebraska | Keya Paha | 599.70 | 600.50 | Surveyed 6-4-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.80 |
| Nebraska | Keya Paha | 600.90 | 601.50 | Needs survey | 0.60 |
| Nebraska | Keya Paha | 614.20 | 614.45 | Needs survey | 0.25 |
| Nebraska | Holt | 630.80 | 631.65 | Surveyed 6-2-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.85 |
| Nebraska | Holt | 632.70 | 633.15 | Surveyed 6-7-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.45 |
| Nebraska | Holt | 634.75 | 635.45 | Surveyed 6-3-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.70 |
| Nebraska | Holt | 653.55 | 655.45 | Surveyed 6-7-11 on Nov 2010 CL; Addendum No. 7 report in progress | 1.90 |
| Nebraska | Holt | 656.80 | 657.90 | Surveyed 6-3-11 on Nov 2010 CL; Addendum No. 7 report in progress | 1.10 |
| Nebraska | Garfield | 672.55 | 679.50 | Not on Nov 2010 CL | 6.95 |
| Nebraska | Wheeler | 687.60 | 687.90 | Surveyed 6-10-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.30 |
| Nebraska | Wheeler | 688.15 | 688.35 | Surveyed 6-10-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.20 |

| Table 3: Areas Not Surveyed along Mainline Route in Nebraska | | | | | |
|---|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Nebraska | Wheeler | 688.70 | 688.95 | Surveyed 6-10-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.25 |
| Nebraska | Wheeler | 691.40 | 691.65 | Surveyed 6-11-11 on Nov 2010 CL; Addendum No. 7 report in progress by applicant | 0.25 |
| Nebraska | Wheeler | 692.70 | 693.35 | Surveyed 6-11-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.65 |
| Nebraska | Greeley | 698.35 | 698.70 | Surveyed 6-6-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.35 |
| Nebraska | Greeley | 700.10 | 700.35 | Surveyed 6-6-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.25 |
| Nebraska | Greeley | 700.55 | 702.55 | Surveyed 6-6-11 on Nov 2010 CL; Addendum No. 7 report in progress | 2.00 |
| Nebraska | Greeley | 703.25 | 705.35 | Partially surveyed 6-6-11 on Nov 2010 CL with 1.35 miles no access from MP 704.0 to 705.35; Addendum No. 7 report in progress | 1.35 |
| Nebraska | Greeley | 709.80 | 709.80 | Surveyed 5-31-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.00 |
| Nebraska | Greeley | 716.40 | 717.10 | Surveyed 6-1-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.70 |
| Nebraska | Greeley | 799.00 | 799.10 | Surveyed 5-27-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.10 |
| Nebraska | Fillmore | 799.40 | 799.60 | Not on Nov 2010 CL | 0.20 |
| Nebraska | Fillmore | 800.15 | 800.60 | Needs survey | 0.45 |

| State | County | From Milepost | To Milepost | Status | Miles |
|--------------|---------------|----------------------|--------------------|---------------|--------------|
| Oklahoma | Seminole | 42.460 | n/a | Needs survey | 0.39 ac |
| Oklahoma | Grady | Offline | n/a | Needs survey | 74.2 ac |
| Oklahoma | Hughes | 75.650 | n/a | Needs survey | 0.250 |
| Oklahoma | Hughes | 75.70 | 75.80 | Needs survey | 0.100 |
| Oklahoma | Pottawatomie | Offline | n/a | Needs survey | 17 ac |
| Oklahoma | Pittsburg | Offline | n/a** | Needs survey | 9.12 ac |
| Oklahoma | Coal | 88.640 | n/a | Needs survey | 0.122 |
| Oklahoma | Atoka | 127.440 | n/a | Needs survey | 3.1 ac |
| Oklahoma | Atoka | 127.60 | 128.34 | Needs survey | 0.737 |
| Oklahoma | Bryan | 132.800 | n/a** | Needs survey | 2.529 |

**Not applicable

| State | County | From Milepost | To Milepost | Status | Miles |
|--------------|---------------|----------------------|--------------------|---------------|--------------|
| Texas | Fannin | 160.650 | n/a | Needs survey | 3 ac |
| Texas | Fannin | 161.85 | n/a | Needs survey | 0.65 ac |
| Texas | Lamar | 162.30 | 162.43 | Needs survey | 0.130 |
| Texas | Lamar | 173.980 | n/a | Needs survey | 2 ac |
| Texas | Lamar | 185.110 | n/a | Needs survey | 2 ac |
| Texas | Hopkins | 206.880 | n/a | Needs survey | 0.48 ac |
| Texas | Franklin | 231.31 | n/a | Needs survey | 0.049 |
| Texas | Wood | 233.42 | n/a | Needs survey | 0.082 |
| Texas | Wood | 251.34 | 251.55 | Needs survey | 0.210 |
| Texas | Upshur | 262.31 | 262.35 | Needs survey | 0.040 |
| Texas | Upshur | 262.42 | n/a | Needs survey | 0.002 |
| Texas | Upshur | 262.580 | n/a | Needs survey | 1.29 ac |
| Texas | Smith | 274.64 | 275.18 | Needs survey | 0.540 |
| Texas | Smith | 275.19 | n/a | Needs survey | 0.880 |
| Texas | Nacogdoches | Offline | n/a | Needs survey | 12.8 ac |
| Texas | Houston | Offline | n/a | Needs survey | 8.3 ac |
| Texas | Polk | 392.290 | n/a | Needs survey | 0.62 ac |
| Texas | Liberty | Offline | n/a | Needs survey | 13.4 ac |
| Texas | Jefferson | Offline | n/a | Needs survey | 72.6 ac |
| Texas | Jefferson | 453.44 | n/a | Needs survey | 0.755 |

| Table 5: Areas Not Surveyed along Mainline Route in Texas | | | | | |
|--|---------------|----------------------|--------------------|---------------|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Texas | Jefferson | 480.77 | 481.43 | Needs survey | 0.665 |
| Texas | Jefferson | 483.49 | 483.80 | Needs survey | 0.300 |
| Texas | Jefferson | 482.970 | n/a | Needs survey | 4.9 ac |

ATTACHMENT B

List of Indian Tribes Invited by the Department of State to Participate in Consultation:

Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama Quassarte Tribal Town, Alabama-Coushatta Tribe of Texas, Apache Tribe, Blackfeet Nation, Caddo Nation of Oklahoma, Cherokee Nation, Cheyenne River Sioux, Cheyenne-Arapaho Tribe of Oklahoma, Chickasaw Nation of Oklahoma, Chippewa-Cree Indians, Choctaw Nation of Oklahoma, Citizen Potawatomi Nation, Comanche Nation, Confederated Salish and Kootenai Tribes of the Flathead Indian Nation, Crow Creek Reservation, Crow Creek Sioux Tribe, Crow Tribe of Indians, Delaware Nation, Delaware Tribe of Indians, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe, Eastern Shoshone Tribe, Flandreau Santee Sioux Tribe, Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Fort Berthold Reservation, Fort Peck Tribes, Fort Sill Apache Tribe, Gros Ventre and Assiniboine Tribe of Ft. Belknap, Gun Lake Potawatomi, Hannahville Indian Community of Michigan, Ho-Chunk Nation of Wisconsin, Huron Potawatomi Nation, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Jena Band of Choctaw Indians, Jicarilla Apache Tribe, Kaw Nation, Kialegee Tribal Town of the Creek Nation of Oklahoma, Kickapoo Traditional Tribe of Texas, Kickapoo Tribe of Kansas, Kickapoo Tribe of Oklahoma, Kiowa Indian Tribe of Oklahoma, Lower Brule Sioux Tribe, Lower Sioux Indian Community, Miami Tribe of Oklahoma, Mille Lacs Band of Ojibwe, Modoc Tribe of Oklahoma, Muscogee Creek Nation, Nez Perce, Northern Arapaho Tribe, Northern Cheyenne Tribe, Northern Ute Tribe, Oglala Sioux, Omaha Tribe of Nebraska, Osage Nation, Otoe-Missouri Tribe, Ottawa Tribe of Oklahoma, Pawnee Nation of Oklahoma, Peoria Indian Tribe of Oklahoma, Poarch Band of Creek Indians, Pokagon Band of Potawatomi Indians of Michigan, Ponca Tribe of Indians of Oklahoma, Ponca Tribe of Nebraska, Prairie Band of Potawatomi Indians, Prairie Island Indian Community, Quapaw Tribal Business Committee, Quapaw Tribe, Red Lake Band of Chippewa Indians of Minnesota, Rosebud Sioux Tribe, Sac & Fox Nation of Oklahoma, Sac & Fox Nation of Missouri in Kansas and Nebraska, Sac & Fox Tribe of the Mississippi in Iowa, Santee Sioux Tribe of Nebraska, Seminole Nation, Seneca-Cayuga Tribe of Oklahoma, Shakopee Mdewakanton Sioux, Shawnee Tribe, Shoshone-Bannock Tribe, Sisseton-Wahpeton Oyate Sioux, Sisseton-Wahpeton Oyate Wahpeketze, Southern Ute Indian Tribe, Spirit Lake Tribe, Standing Rock Sioux Tribe, Stockbridge-Munsee Tribe, Thlopthlocco Tribal Town, Three Affiliated Tribes, Tonkawa Tribe, Trenton Indian Service Area, Turtle Mountain Band of the Chippewa, United Keetoowah Band of Cherokee Indians, Upper Sioux -Pezihutazizi Kapi, Ute Mountain Tribe, White Earth Band of Minnesota Chippewa, Wichita and Affiliated Tribes, Winnebago Tribe, Wyandotte Nation, Yankton Sioux, Ysleta del Sur Pueblo

ATTACHMENT C

STATE-BY-STATE PLANS FOR THE UNANTICIPATED DISCOVERY OF HUMAN REMAINS OR BURIALS ON NON-FEDERAL LANDS DURING CONSTRUCTION OF THE KEYSTONE XL PIPELINE PROJECT

I. For construction of the Keystone XL Project in Montana, Keystone will implement the following measures:

1. When an unmarked human burial or unregistered grave is encountered during construction activities, Keystone will comply with the Human Skeletal Remains and Burial Site Protection Act (Montana Code Ann. §22-3-801 through §22-3-811).
2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead Environmental Inspector (EI). The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Lead EI will ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The Lead EI will notify the county coroner, the DOS, ACHP, SHPO, consulting Indian tribes, and other consulting parties within forty-eight (48) hours of the discovery.
5. Within seventy-two (72) hours after notification, the county coroner will determine jurisdiction. If the coroner refers the matter to the SHPO, the SHPO will determine the treatment, including mitigation and disposition of the unmarked human burial or unregistered grave in accordance with Montana Code Ann. §22-3-801 through §22-3-811. Keystone will implement the treatment and disposition measures deemed appropriate by the SHPO.
6. Keystone will resume construction activities in the area of the discovery upon receipt of written authorization from either the county coroner or the Montana SHPO, whoever has jurisdiction under state law.

II. For construction of the Keystone XL Project in Kansas, Keystone will implement the following measures:

1. When unmarked human burial sites or human skeletal remains are encountered during construction activities, Keystone will comply with Kansas' Unmarked Burial Sites Preservation Act (KSA 75-2741 to 75-2754) and its implementing regulations (KAR 126-1-1 through 126-1-2).
2. Upon encountering unmarked human burials or unregistered graves during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI.

The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

3. Immediately following receipt of such notification, the Lead EI will:
 - a. Ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery;
 - b. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - c. Notify the appropriate county sheriff's office, the chairperson of the Unmarked Burial Sites Preservation Board (Kansas State Archaeologist), the DOS, the ACHP SHPOs, consulting Indian tribes, and other consulting parties of the discovery.
4. If Keystone determines that disturbance to the unmarked burial site or human remains cannot be avoided, Keystone will consult with the DOS, the SHPO, consulting Indian tribes, and other consulting parties to develop a detailed work plan for treatment of the burial site or human remains that includes provisions for the removal, treatment and disposition of human remains. In accordance with state law, Keystone will submit this work plan to the Unmarked Burial Sites Preservation Board as part of its request for a permit under KAR 126-1-2.
5. Keystone will resume construction activities in the area of the discovery once implementation of the measures authorized under the permit has been completed.

III. For construction of the Keystone XL Project in Nebraska, Keystone will implement the following measures:

1. When unmarked human skeletal remains or burial goods are discovered during construction activities, Keystone will comply with Nebraska Rev. Stat. § 12-1201 through § 12-1212, et seq. and § 28-1301.
2. Upon encountering unmarked human skeletal remains or burial goods during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Lead EI will ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. Keystone will notify the local law enforcement officer in the county, the DOS, the ACHP, the SHPO, consulting Indian tribes, and other consulting parties within forty-eight (48) hours of the discovery.
5. If local law enforcement determines that the remains are not associated with a crime, Keystone will determine if it is prudent and feasible to avoid disturbing the remains. If Keystone

determines that disturbance cannot be avoided, the Nebraska State Historical Society will notify the Commission on Indian Affairs in writing and seek associated tribes or kin.

6. Keystone will resume construction activities in the area of the discovery when the human skeletal remains or burial goods have been accepted by the Nebraska State Historical Society for the purposes of disposition.

IV. For construction of the Keystone XL Project in Texas, Keystone will implement the following measures:

1. When unmarked human burials or human remains are discovered during construction activities, Keystone will comply with Antiquities Code (Texas Code Ann. §191); Health and Safety (Texas Code Ann. §711.004).
2. Upon encountering unmarked human burials or human remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Lead EI will:
 - a. Ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery;
 - b. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - c. Notify the local law enforcement agency, the DOS, the ACHP, the State Historic Preservation Office (SHPO)/Texas Historical Commission (THC), consulting Indian tribes, and other consulting parties and the State Department of Health of the discovery.
4. If local law enforcement determines that the remains are not associated with a crime, Keystone will determine if it is prudent and feasible to avoid disturbing the remains. If Keystone determines that disturbance cannot be avoided, Keystone will remove and reinter the human remains in accordance with rules adopted by the SHPO and the State Health Department.
5. Keystone will resume construction activities in the area of the discovery once implementation of the measures required by the SHPO/THC and State Health Department has been completed.

V. For construction of the Keystone Project in Oklahoma, Keystone will implement the following measures:

1. When a burial ground, human remains or burial furniture is discovered during construction activities, Keystone will comply with Okla. Stat. Ann. 21 §1161-1168.7 (Oklahoma Burial Law).
2. Upon encountering a burial ground, human remains or burial furniture during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI. The construction contractor will implement interim measures to protect the discovery from

vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

3. Immediately following receipt of such notification, the Environmental Inspector will
 - a. ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery;
 - b. implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - c. notify the appropriate law enforcement officer in the county in which the remains have been discovered, the Chief Medical Examiner, the DOS, the ACHP, the SHPO, consulting Indian tribes, other consulting parties, and the landowner of the discovery.
4. Upon learning that remains are not associated with a crime, Keystone has fifteen (15) calendar days within which to notify the SHPO and the Oklahoma State Archaeologist. If the remains have a direct historical relationship to a tribe, the State Archaeologist will notify the SHPO and consults with the tribal leader within fifteen (15) calendar days. If Keystone determines that disturbance cannot be avoided, Keystone will treat the burial site or human remains in accordance with procedures established by the SHPO, the Oklahoma State Archaeologist, and consultation with the tribal leader.
5. Keystone will resume construction activities in the area of the discovery upon completion of the measures authorized by the SHPO and Oklahoma State Archaeologist.

VI. For construction of the Keystone XL Project in South Dakota, Keystone will implement the following measures:

1. When unmarked human skeletal remains and/or funerary objects are discovered during construction activities, Keystone will comply with South Dakota State Law Chapter 34-27.
2. Upon encountering an unmarked human skeletal remains and/or funerary objects during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Lead EI will ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The Lead EI will notify the local law enforcement agency, the DOS, the ACHP, the SHPO, the South Dakota State Archaeologist, consulting Indian tribes, and other consulting parties within forty-eight (48) hours of the discovery.
5. If local law enforcement determines that the remains are not associated with a crime, Keystone will determine if it is prudent and feasible to avoid disturbing the remains. If Keystone determines that disturbance cannot be avoided, Keystone will consult with the South Dakota State Archaeologist, SHPOs, consulting Indian tribes, and other consulting parties to determine

acceptable procedures for the removal, treatment and disposition of the human skeletal remains and funerary objects within five (5) calendar days. Keystone will implement the plan for removal, treatment, and disposition of the human skeletal remains and funerary objects as authorized by the South Dakota State Archaeologist.

6. Keystone may resume construction activities in the area of the discovery upon completion of the plan authorized by the State Archaeologist.

EXHIBIT C

APPENDIX E

Amended Programmatic Agreement and Record of Consultation

E1 Amended Programmatic Agreement

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Programmatic Agreement

Among
The U.S. Department of State,
National Park Service,
U.S. Army Corps of Engineers,
U.S. Department of Agriculture Farm Service Agency,
U.S. Department of Agriculture Natural Resources Conservation Service,
U.S. Department of Agriculture Rural Utilities Service,
U.S. Bureau of Indian Affairs,
U.S. Bureau of Land Management,
U. S. Bureau of Reclamation,
Western Area Power Administration,

Advisory Council on Historic Preservation,
Kansas State Historic Preservation Officer,
Montana Department of Environmental Quality,
Montana Department of Natural Resources and Conservation,
Montana State Historic Preservation Officer,
Nebraska State Historic Preservation Officer,
South Dakota State Historic Preservation Officer,
and
TransCanada Keystone Pipeline, LP

Regarding the Keystone XL Pipeline Project

WHEREAS, the U.S. Department of State (DOS) receives and considers applications for permits for cross-border oil pipelines pursuant to the authority delegated by the President of the United States under Executive Order (EO) 13337 (69 Federal Register 25299); and

WHEREAS, the DOS received an application for a Presidential Permit from TransCanada Keystone Pipeline, LP (Keystone) in September 2008 for the Keystone XL Pipeline Project (Keystone XL Project or the Project) which consisted of approximately 1,375 miles of new crude oil pipeline in Montana, South Dakota, Nebraska, Oklahoma, and Texas with associated effects in Kansas; and

WHEREAS, the DOS determined that issuance of a Presidential Permit for the proposed Keystone XL Project include a consultation and review process consistent with Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f, as amended) and its implementing regulations, "Protection of Historic Properties"; and

WHEREAS, the DOS developed a Programmatic Agreement (PA) in consultation with relevant state and federal agencies, Indian tribes, Keystone, and the public and executed this PA in August 2011; and

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WHEREAS, the Keystone XL Project Presidential Permit application was denied in January 2012; and

WHEREAS, on May 4, 2012, Keystone submitted an application for a revised Keystone XL Pipeline Project using a route in Montana and South Dakota largely unchanged from that proposed in the 2008 Keystone application and a substantially changed route in Nebraska that sought to avoid the Sands Hills Region identified by the Nebraska Department of Environmental Quality and terminates at Steele City, Nebraska; and

WHEREAS, the Oklahoma and Texas sections of the pipeline proposed in the 2008 Keystone application are no longer part of the application received in 2012 and, therefore, the Oklahoma and Texas State Historic Preservation Offices have no further obligations under this PA; and

WHEREAS, the proposed Project undertaking consists of construction of approximately 875 miles of new crude oil pipeline in the United States, as described in section 2.1 of the Final Supplemental Environmental Impact Statement (SEIS) and Attachment H, of which approximately 209 miles (24%) were not part of the 2008 Keystone XL Presidential Permit application; and

WHEREAS, the revised Keystone XL Project Area of Potential Effects (APE) includes: (1) in Montana—a 300-foot-wide corridor, 150 feet on each side of the centerline; (2) in South Dakota—a 300-foot-wide corridor, 150 feet on each side of the centerline; (3) in Nebraska—a 300-foot-wide corridor, 150 feet on each side of the centerline in areas consistent with the route evaluated in the Final EIS for the 2008 Keystone XL application. Within those areas outside the route evaluated in the Final EIS for the 2008 Keystone XL application, the APE consists of a 500-foot-wide corridor, 250 feet on each side of the centerline. For construction or modification of electrical facilities (including distribution lines, transmission lines, and substations), a 100-foot-wide corridor centered on the Project centerline will be used. For pumping stations, including two new pump stations in Kansas on the existing Keystone Cushing Extension pipeline, and other areas that are to be disturbed by construction-related activities and ancillary facilities (including construction camps and pump stations), the APE will include all areas of disturbance and areas to be indirectly affected; and

WHEREAS, the DOS, in consultation with the Advisory Council on Historic Preservation (ACHP), has determined that the Keystone XL PA executed in August 2011 should be amended to reflect the route proposed in the new Presidential Permit application and input from subsequent consultation; and

WHEREAS, the DOS has determined that the construction of the Keystone XL Project may have an adverse effect on historic properties listed in or eligible for listing in the National Register of Historic Places (NRHP), as defined in Stipulation I.C below, and has consulted with the Montana, South Dakota, Nebraska, and Kansas State Historic Preservation Officers (SHPOs), Indian tribes who may ascribe religious and cultural significance to historic properties that may be affected by the undertaking, the ACHP, other federal agencies with actions related to this undertaking, and other consulting parties consistent with 36 C.F.R. Part 800; and

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WHEREAS, consistent with 36 C.F.R. §§ 800.4(b)(2) and 800.5(a)(3), the DOS has elected to phase identification and evaluation of historic properties, and application of the criteria of adverse effect, respectively, because the undertaking and APE have changed necessitating additional efforts to identify historic properties and because access to some areas as identified in Attachment A has been restricted by property owners' refusal to grant Keystone permission to enter their private property; and

WHEREAS, consistent with 36 C.F.R. § 800.14(b), the DOS has elected to execute this PA for the Keystone XL Project because effects on historic properties cannot be fully determined prior to the issuance of a permit for the undertaking; and

WHEREAS, on February 2, 2011 the ACHP entered consultation for the Keystone XL pipeline as originally proposed finding that criteria 3 and 4 of Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of the regulations (36 C.F.R. Part 800) implementing Section 106 of NHPA, had the potential to be met; and

WHEREAS, the United States Army Corps of Engineers (USACE) has determined that the approval for the Keystone XL Project to cross USACE-administered lands (30 U.S.C. § 185) and to place structures in, under, or over navigable waters of the United States, as defined under 33 C.F.R. Part 329, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and a permit for the placement of dredge or fill material in waters of the United States as part of the Keystone XL Project in accordance with Section 404 of the Clean Water Act (33 U.S.C. § 344), are Federal actions related to the undertaking that require the USACE to comply with Section 106 of NHPA; and

WHEREAS, the U.S. Bureau of Land Management (BLM) has determined that approving the Keystone XL Project to cross Federal lands administered by the BLM would require authorization under Section 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185, as amended; and

WHEREAS, the BLM has determined that Keystone will require access roads crossing public lands administered by the BLM in support of the Keystone XL Pipeline Project and that the access roads will require authorization under Title V of the Federal Land Policy and Management Act (FLMPA), 43 U.S.C. § 1701, as amended; and

WHEREAS, the BLM has determined that the Keystone XL Project will require electrical power from rural electrical cooperatives and that portions of the transmission lines will cross public lands administered by the BLM and that the transmission lines crossing public lands will require authorization under Title V of the FLMPA; and

WHEREAS, the BLM approvals of these Project crossings in areas under its jurisdiction is a Federal action associated with the undertaking that requires the BLM to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the U.S. Bureau of Reclamation (USBR) manages lands and facilities that will be crossed by the Keystone XL Project and USBR approval of such crossings is a Federal action

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related to the undertaking that requires the USBR to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Farm Service Agency (FSA), assists landowners on private lands and may have federal responsibilities and requirements on some of these lands, which are part of the Project APE, as part of its loan and conservation programs, including the Conservation Reserve Program and the Farmable Wetlands Program; and

WHEREAS, the FSA approval of the Project crossings in these areas is a Federal action associated with the undertaking that requires the FSA to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Rural Utilities Service (RUS) has determined that the financial assistance it may provide to rural electric cooperatives and other entities for construction or modification of electrical facilities (including distribution lines, transmission lines, and substations) to power some Keystone XL Project pump stations or to ensure transmission system reliability, under the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, are Federal actions related to the undertaking that require the RUS to comply with Section 106 of NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Bureau of Indian Affairs (BIA) has responsibility for approving any right-of-ways crossing Indian Trust lands, such as those being considered as part of the route for a 230-kilovolt (kV) transmission line in south-central South Dakota associated with the Keystone project and described in Appendix J to the SEIS, and this is a Federal action related to the undertaking that requires the BIA to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Western Area Power Administration (Western) has determined that the modification and construction of substations and transmission lines that Western will own and that will provide power to the Keystone XL Pipeline Project, will require review under Section 106 of NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Natural Resources Conservation Service (NRCS) has conservation easement interests in the states through which the Keystone XL pipeline will traverse; and

WHEREAS, the NRCS has determined that approving the Keystone XL Pipeline to cross an NRCS easement constitutes a federal action associated with the undertaking that requires NRCS to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the proposed revised Keystone XL Project pipeline alignment crosses five National Historic Trails (the Lewis and Clark, Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails), all of which were designated by the U.S. Congress and have as their purpose “the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment” (National Trails System Act, P.L. 90-543, as amended); and

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WHEREAS, the National Park Service (NPS) administers National Historic Trails and is a signatory to this PA due to the potential for adverse effects to five National Historic Trails including the Lewis and Clark National Historic Trail; and

WHEREAS, the USACE, BLM, RUS, BIA, NRCS, NPS, Western, USBR, and FSA have designated the DOS as the lead Federal agency for purposes of Section 106 of the NHPA consistent with 36 C.F.R. § 800.2(a)(2); and

WHEREAS, the DOS will incorporate this PA into its decisional process on any Presidential Permit that it may issue for the Keystone XL Project and will include in any permit it issues on the Keystone XL Project a condition that Keystone will abide by its commitments in this PA; and

WHEREAS, the USACE, BLM, RUS, BIA, NRCS, NPS, Western, USBR, and FSA will each incorporate this PA into its decisional process on any authorization, approval, permit, or assistance it may issue for the Keystone XL Project, and will include in any authorization, approval, permit, or assistance it issues on the Keystone XL Project, a condition that Keystone will abide by its commitments in this PA; and

WHEREAS, cultural resource identification, evaluation, and effect assessment efforts, including those needed to address the changes in the APE, are summarized in Section 3.11 of the SEIS and Attachment G of this PA; and

WHEREAS, additional efforts to identify, evaluate and assess effects to historic properties for the Project will take place after the execution of this PA because access to some areas has been restricted, as summarized in Attachment A, and all areas of construction have yet to be determined; and

WHEREAS, for the purposes of this PA, “Indian tribes and Nations” shall have the same definition as “Indian tribes” which appears in Section 301(4) of the NHPA; and

WHEREAS, the DOS invited the 84 Indian tribes listed in Appendix B to participate in consultation; and

WHEREAS, the DOS provided Indian tribes the opportunity to provide information about historic properties of concern to Indian tribes and conduct Traditional Cultural Property (TCP) studies within the proposed Project APE, as summarized in Attachment I; and

WHEREAS, the DOS invited Indian tribes that participated in consultation in 2011 and 2013 to sign as Concurring Parties to this PA, consistent with 36 C.F.R. §§ 800.2(c)(2) and 800.6(c)(3); and

WHEREAS, other federal agencies that develop actions related to this undertaking subsequent to the execution of this PA may comply with Section 106 by following the requirements set forth in Stipulation XIV of this PA; and

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WHEREAS, the Montana Department of Natural Resources and Conservation has participated in consultation and was invited by the DOS consistent with 36 C.F.R. § 800.6(c)(2) to sign the PA in 2011 and amendments to the PA in 2013 as an invited signatory; and

WHEREAS, the Montana Department of Environmental Quality has participated in consultation and was invited by the DOS consistent with 36 C.F.R. § 800.6(c)(2) to sign the PA in 2011 and amendments to the PA in 2013 as an invited signatory; and

WHEREAS, Keystone, which would construct the Keystone XL Project pipeline if approved, has participated in consultation, and was invited by the DOS consistent with 36 C.F.R. §§ 800.2(c)(4) and 800.6(c)(2) to sign the PA in 2011 and amendments to the PA in 2013 as an invited signatory; and

WHEREAS, the DOS has provided the public with information about the undertaking and its effects on historic properties and sought public comment and input consistent with 36 C.F.R. §§ 800.2(d) from April 2009 through Federal Register notices, direct mailings, extensive scoping and comment meetings, and inviting comments from the public by phone, mail, fax, and email during public comment periods on the Keystone XL Pipeline Presidential Permit applications; and

NOW, THEREFORE, the DOS, USACE, BLM, RUS, BIA, FSA, NRCS, Western, USBR, NPS, ACHP, and the Montana, South Dakota, Nebraska, and Kansas SHPOs agree that the following stipulations will be implemented in order to take into account the effect of the undertaking on historic properties and to ensure actions consistent with Section 106 of the NHPA.

STIPULATIONS

The DOS, BLM, RUS, BIA, FSA, NRCS, Western, USACE, USBR, and NPS as appropriate, will ensure that the following stipulations are carried out.

I. STANDARDS AND DEFINITIONS

- A. Identification and evaluation studies and treatment measures required under the terms of this PA will be carried out by or under the direct on-site supervision of a professional who meets, at a minimum, the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* (48 FR 44716, September 29, 1983). These qualification standards do not apply to individuals recognized by consulting Indian tribes to have expertise in identification, evaluation, assessment of effect, and treatment of effects to historic properties of religious and cultural significance to Indian tribes.
- B. In developing scopes of work for identification and evaluation studies, and treatment measures required under the terms of this PA, Keystone and RUS borrowers, and other contractors working with Federal agencies, will take into account the following regulations and guidelines:

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1. The ACHP's guidance on conducting archaeology under Section 106 (2007);
2. The ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007);
3. Applicable SHPO and Tribal Historic Preservation Office guidance;
4. The Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983);
5. The "*Treatment of Archaeological Properties*" (ACHP 1983);
6. The *Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects*" (Federal Energy Regulatory Commission, Office of Energy Projects, December 2002);
7. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403);
8. Section 404 of the Clean Water Act (33 U.S.C. § 344);
9. BLM 8110 Manual: Identifying and Evaluating Cultural Resources;
10. Montana/Dakotas Cultural Resources Handbook 8110-1: Guidelines for Identifying Cultural Resources;
11. The National Trails System Act (P.L. 90-543, as amended);
12. Section 28 of the Mineral Leasing Act of 1920 (30 USC 185);
13. Title V of the Federal Land Policy and Management Act of 1976 (43 USC 1701); and
14. *National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties* (NPS 1990; Revised 1992: 1998)

C. Definitions

Coordination Plan: A plan that, pursuant to Stipulations V.B and V.D, describes the coordination of construction with identification and evaluation of cultural resources, treatment of adverse effects, and protection of unanticipated discoveries.

Concurring Parties: An invited consulting party to this PA that agrees with the content of the PA. Consistent with 36 C.F.R. § 800.6(c)(3), the refusal of a Concurring Party to sign the PA does not invalidate this PA. Concurring Parties may not terminate the PA.

Construction Spread: A construction unit or segment of a pipeline alignment or corridor to be determined by Keystone prior to construction.

Consulting Indian Tribes: Indian tribes that have consultative roles in the Section 106 process consistent with 36 C.F.R. § 800.2(c).

Consulting Parties: Parties that have consultative roles in the Section 106 process consistent with 36 C.F.R. § 800.2(c).

Data Recovery: The recovery of archaeological information from a historic property subject to an adverse effect.

Determination of Effect: A determination made by a Federal agency in regards to a Project's effect upon a historic property consistent with 36 C.F.R. Part 800.

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Determination of Eligibility: A determination made by a Federal agency, in coordination with the SHPO and/or designated representatives of consulting Indian tribes, as appropriate, respecting a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 C.F.R. Part 60 and 36 C.F.R. § 800.16(1)(2).

Effect: An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 C.F.R. § 800.16(i)).

Environmental Impact Statement: An analysis of a major Federal action's environmental impacts conducted consistent with NEPA.

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (see 36 C.F.R. § 800.16(1)(1)).

Invited Signatory: The DOS has invited Keystone, the Montana Department of Natural Resources and Conservation, and the Montana Department of Environmental Quality to sign this PA consistent with 36 C.F.R. § 800.6(c)(2). The refusal of any invited signatory to sign the PA does not invalidate the PA. An invited signatory, listed above, that has signed the PA, may terminate the PA consistent with 36 C.F.R. § 800.6(c)(8).

Historic Trail and Archaeological Monitoring Plan: A plan that, pursuant to Stipulation V.E and Attachment F, identifies appropriate areas for monitoring construction by professionals under the supervision of individuals who meet the professional qualifications in Stipulation I. The plan's principal goal is to reduce the potential for impacts to unidentified historic properties.

Signatory: The signatories are: the DOS, BLM, USBR, USACE, NPS, Western, RUS, NRCS, FSA, BIA, ACHP, and the SHPOs of Kansas, Montana, South Dakota, and Nebraska. Only signatories and the invited signatories, as defined, may terminate the PA consistent with 36 C.F.R. § 800.6(c)(8).

Tribal Monitoring Plan: A plan that, pursuant to Stipulation V.E and Attachment E, identifies appropriate areas for monitoring construction by tribal members appointed by their respective Indian tribes. These tribal members shall meet the qualifications as noted in Stipulation V.E.3. The plan's principal goal is to reduce the potential for impacts to previously unidentified historic properties that may also be properties of religious and cultural significance to Indian tribes that meet the National Register criteria (see 36 C.F.R. § 800.16(1)(a)).

Treatment Plan: A plan developed in consultation with the parties to this PA that identifies the minimization and mitigation measures for historic properties located within the APE that will be adversely affected by the Project.

II. CONFIDENTIALITY

The DOS, BLM, NRCS, BIA, FSA, RUS, Western, USBR, NPS, USACE, and Keystone will safeguard information about historic properties of religious and cultural significance to Indian tribes, including location information, or information provided by Indian tribes to assist in the identification of such properties, consistent with Section 304 of NHPA, 16 U.S.C. § 470w3, and all other applicable laws.

III. THE RESPONSIBILITIES OF FEDERAL AGENCIES WITH LAND MANAGEMENT AND OTHER PERMITTING AUTHORITIES

- A. The USACE will ensure, for that part of the APE under its jurisdiction, that it has met its compliance obligations pursuant to Section 10 and Section 404 permitting authority.
- B. The BLM will comply with Section 106 and its implementing regulations (36 C.F.R. Part 800) for the issuance of permits for those actions under its jurisdiction.
- C. The USBR will review and comment on the evaluation and treatment of any historic properties managed by the USBR.
- D. Attachment H includes maps that illustrate the Project areas that cross lands managed by the BLM and the USBR.
- E. Consultation for this Project between Indian tribes and Federal land management and permitting agencies will be coordinated through the DOS.

IV. KEYSTONE XL PROJECT—CONSTRUCTION OR MODIFICATION OF ELECTRICAL DISTRIBUTION/TRANSMISSION FACILITIES

- A. Prior to granting approval of financial assistance to construct or modify electrical facilities by rural electric cooperatives or other entities, the RUS will complete the requirements of 36 C.F.R. §§ 800.3 through 800.7 and notify the DOS of the outcome.
- B. In implementing Stipulation IV.A, the RUS may authorize a borrower to initiate Section 106 consultation in accordance with 36 C.F.R. § 800.2(c) (4). The RUS issued a blanket delegation for its borrowers to initiate Section 106 consultation in July 2009 and reissued the blanket delegation with some revision in August 2012. As the RUS recognized in those memos, the RUS may not delegate its responsibility to conduct government-to-government consultation with Indian tribes to a borrower, unless the RUS and that Indian tribe agree, in writing, to conduct consultation in that manner.
- C. Prior to construction of the 230-kV transmission line that Western will own, Western will complete the requirements of 36 C.F.R. §§ 800.3 through 800.7. In implementing

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Stipulation IV.C., Western will serve as a signatory under the PA. Western shall coordinate implementation of Stipulation IV.C with the DOS.

- D. The RUS will ensure that the terms of Stipulations VI.B and VI.C are incorporated into construction contracts to ensure that its borrowers and construction contractors meet their responsibility for notification of any unanticipated discoveries. When RUS-funded projects occur on BLM land, the RUS will coordinate with the BLM to ensure compliance with Stipulations VI.B and VI.C of this PA.
- E. Prior to granting approval or financial assistance for construction or modification of electrical distribution/transmission facilities that are necessary components of the pipeline project and therefore considered within the Project APE, any Federal agency that is incorporated into this PA pursuant to Stipulation XIV will complete the requirements of 36 C.F.R. §§ 800.3 through 800.7 for those facilities under its jurisdiction and notify the DOS of the outcome if not already carried out elsewhere in this PA.
- F. The DOS retains responsibility for completing the requirements of 36 C.F.R. §§ 800.3 through 800.7 for those electrical distribution/transmission facilities that are necessary components of the Project if they are not under the jurisdiction of any Federal agency and not referenced in Stipulation IV, A through E above.

V. KEYSTONE XL PROJECT – PIPELINE CONSTRUCTION

- A. The DOS has provided SHPOs, designated representatives of consulting Indian tribes, and other consulting parties with an opportunity to provide their views on the identification and evaluation of historic properties, consistent with 36 C.F.R. § 800.16(l)(1), including historic properties of religious and cultural significance to Indian tribes, and the treatment of affected historic properties, in connection with the construction of the Keystone XL Project. It will continue to provide all consulting parties with an opportunity to provide their views on the identification and evaluation of historic properties, assessment of effects, and treatment of adverse effects after approval of amendments to this PA.
- B. Identification and Evaluation of Historic Properties
 - 1. In consultation with the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties, the DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties within the APE for each construction spread, including in areas yet to be surveyed outlined in Attachment A, prior to the initiation of construction of that spread, consistent with 36 C.F.R. §§ 800.4(a), (b), and (c). On Federal lands, the scope of the identification effort will be determined by the DOS in consultation with the appropriate Federal land managing agency, applicable SHPOs, designated representatives of consulting Indian tribes, and other consulting parties.

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2. The DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, as appropriate, consistent with 36 C.F.R. §§ 800.4(a), (b), and (c), before Keystone initiates construction activities (including vegetative clearing to comply with the Migratory Bird Treaty Act, if clearing is undertaken).
 - a. In the identification and evaluation of historic properties to which Indian tribes may attach religious and cultural significance, the DOS will take into consideration information submitted by Indian tribes to the DOS prior to construction through consultations and through the protocols for TCP studies, post-review discovery, and the Tribal Monitoring Plan, as set forth in this PA.
 - b. In the event identification of historic properties cannot be completed for any Construction Spreads prior to construction, Keystone will develop and submit a Coordination Plan to the DOS for review and approval pursuant to Stipulation V.D. The Coordination Plan must describe the measures Keystone will use to implement and complete the identification and evaluation of cultural resources and appropriate consultation before any historic properties are adversely affected by vegetation clearing and construction activities related to that spread.

C. Treatment of Historic Properties

1. Whenever feasible, avoidance of adverse effects to historic properties will be the preferred treatment. In consultation with the DOS, ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties, Keystone may elect to consider and implement avoidance measures prior to completing the evaluation of historic properties.

Avoidance measures may include:

- a. Avoidance through pipeline or access road route variation or Project feature relocation;
 - b. Avoidance through abandonment;
 - c. Avoidance through bore or horizontal directional drill;
 - d. Avoidance by narrowing the construction corridor (“neck down”); or
 - e. Avoidance through the use of existing roadways as Project access roads to the extent practicable.
2. When historic properties are identified in the APE pursuant to Stipulation V.B, the DOS will apply criteria of adverse effect consistent with 36 C.F.R. § 800.5(a) in consultation with the ACHP, SHPO, designated representatives of consulting Indian tribes, and other consulting parties. If the DOS finds that historic properties might be adversely affected by actions covered under this PA and within the APE, the DOS will consult with the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties to determine prudent and feasible ways to avoid adverse effects.

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- a. Once the DOS approves avoidance measures, Keystone will implement those measures.
3. If the DOS determines that the adverse effect cannot be avoided, the DOS will consult with the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties to determine those measures to be implemented by Keystone to minimize and mitigate adverse effects on affected historic properties identified in the APE.
 4. If, after consultation, the DOS determines that the adverse effect cannot be avoided, Keystone will draft a comprehensive Treatment Plan for each adversely affected historic property. The Treatment Plan will describe the measures identified by the DOS under Stipulation V.C.3 to minimize and mitigate the adverse effect of pipeline construction activities on historic properties, the manner in which these measures will be carried out, and a schedule for their implementation.
 - a. When mitigation consists of or includes Data Recovery, the Treatment Plan also will identify the specific research questions to be addressed by Data Recovery with an explanation of their relevance, the archaeological methods to be used, and provisions for public interpretation and education, subject to Stipulation II restrictions, if any. Management summaries of all archaeological investigations must be submitted to the DOS, relevant Federal agencies, and the SHPO for review and approval prior to the commencement of construction activities and construction may be authorized on the basis of information contained in those summaries. Designated representatives of consulting Indian tribes will be notified for their information and awareness and may provide any relevant information to DOS and SHPO within nine (9) calendar days to inform their review of the summaries. Final reports must be submitted to the DOS and the SHPO for review within six months of the completion of the fieldwork.
 - b. A Treatment Plan may also include mitigation for adverse effects to historic districts, buildings and structures, and to TCPs and other properties of religious and cultural significance to Indian tribes. This mitigation may include the recordation of historic properties according to Historic American Building Survey/Historic American Engineering Record Standards and Guidelines for Architectural and Engineering Documentation. Other types of mitigation for adverse effects to historic districts, buildings, and structures, and to TCPs and other properties of religious and cultural significance to Indian tribes may also be described in the Treatment Plan. The mitigation proposed for an adverse effect to a historic district, building, and/or structure, and to TCPs and other properties of religious and cultural significance to Indian tribes will be commensurate with the level of significance and extent of adverse effect and will be determined in a manner consistent with Stipulation V.C.4.c.
 - c. Keystone will submit the draft Treatment Plan to the DOS, BLM (if applicable), ACHP, designated representatives of consulting Indian tribes, the SHPO of the

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applicable state, Montana Department of Environmental Quality (if applicable), Montana Department of Natural Resources and Conservation (if applicable), and other applicable consulting parties for a forty-five (45) calendar day review. Keystone will address timely comments and recommendations submitted by SHPOs, designated representatives of consulting Indian tribes, and other consulting parties in preparation of the Final Treatment Plan.

- d. When it has addressed all of the timely comments and recommendations, Keystone will submit the Final Treatment Plan to the DOS for review and approval. Keystone will also submit the Final Treatment Plan to the BLM for review and approval when involving lands subject to Stipulation III.C. The DOS and BLM will issue their final decision on the Treatment Plan within thirty (30) calendar days. Once the Final Treatment Plan is approved by the DOS (and the BLM if involving BLM-managed lands), copies of the Treatment Plan will be distributed to all SHPOs, designated representatives of consulting Indian tribes, and other consulting parties.
5. Keystone will make a reasonable and good faith effort to complete implementation of the Final Treatment Plan approved by the DOS prior to beginning construction of any spread for which the Treatment Plan is required. If it is not possible to meet this schedule, Keystone will develop a Coordination Plan in accordance with Stipulation V.D that establishes how appropriate treatment will be determined and implemented during construction of the respective spread.

D. Coordination of Construction and Historic Preservation Activities

1. The DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties and potential historic properties, and the mitigation of adverse effects to them in accordance with Stipulations V.B and V.C prior to the initiation of vegetative clearing if vegetative clearing and construction on the Keystone XL spreads, including the Montana, South Dakota, and Nebraska spreads, is to be undertaken.
2. If these DOS activities cannot be completed prior to the start of vegetative clearing and construction of these spreads, Keystone will develop and provide to the DOS a detailed plan describing how the requirements of Stipulations V.B and V.C—identification, evaluation and treatment of historic properties—will be completed in coordination with vegetative clearing and construction activities in such a way that historic properties will not be adversely affected prior to the implementation of any mitigation measures.
 - a. A Coordination Plan will be prepared for each state and will include those measures developed by Keystone pursuant to Stipulations V.B and V.C to complete the identification and evaluation of historic properties, and, as appropriate, mitigation of adverse effects to them during and coordinated with vegetation clearing and construction activities. In addition, the Coordination Plan

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will include a schedule for all proposed activities and recommended measures for the protection of unanticipated discoveries in accordance with Attachment C, as appropriate.

- b. Keystone will submit the draft Coordination Plan for each state for such spreads, including the Kansas, Montana, South Dakota, and Nebraska spreads, to the DOS, BLM (as applicable), ACHP, SHPOs (as applicable), designated representatives of consulting Indian tribes, and consulting parties for forty-five (45) calendar day review. Keystone shall address timely comments and recommendations submitted by the applicable SHPO, designated representatives of consulting Indian tribes, and other consulting parties in preparation of the Final Coordination Plan for each state. When it has addressed all of the comments and recommendations, Keystone will submit the Final Coordination Plan for each state to the DOS for review. The DOS shall issue its final decision on the Coordination Plan for each state within thirty (30) calendar days. Following approval by the DOS, the Final Coordination Plan for each state will be distributed to all of the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties.
3. Keystone will complete implementation of the Final Coordination Plan approved by the DOS during construction of the Kansas, Montana, South Dakota, and Nebraska spreads.
- E. Historic Trail and Archaeological Monitoring Plan (“HTAM Plan”) and Tribal Monitoring Plan
1. In consultation with the SHPOs and designated representatives of consulting Indian tribes, Keystone will monitor construction in selected areas of the APE of each spread as a supplement to identification efforts. Any historic properties identified by Keystone during monitoring will be treated in accordance with Stipulation VI.A and C.
 - a. The HTAM Plan outlines areas that have been previously identified by the DOS during identification and evaluation efforts that warrant monitoring during soil disturbing activities for potential effects to historic properties.
 - b. The Tribal Monitoring Plan outlines areas that have been previously identified by Indian tribes, either through the preparation of Traditional Cultural Property reports or through consultation, that warrant monitoring during clearing and trenching for potential effects to previously unidentified historic properties that may include properties of religious and cultural significance to an Indian tribe and that meet the National Register criteria (See 36 C.F.R. § 800.16(1)(1)).
 2. Historic Trail monitoring will be performed by a professional who either meets the qualification standards for archaeology established in Stipulation I.A or is under the on-site supervision of such a professional.

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3. At the discretion of the DOS, tribal monitors may substitute other types of experience with construction monitoring and/or traditional cultural knowledge for the degrees required by the Professional Qualification Standards. DOS may also consider other accommodations regarding education and experience where allowed by the Standards and implementing guidance.
4. In consultation with the DOS, Keystone will consider information provided by Indian tribes in a timely manner when completing the identification of historic properties before construction begins as set forth in Stipulation V.B and in the HTAM Plan and Tribal Monitoring Plan provided for under Stipulation V.E. Keystone will ensure that tribal monitors have reasonable access to Project construction sites and activities. In those areas previously identified by Indian tribes as needing monitoring, the Tribal Monitoring Plan stipulates that at least one monitor will be used per Construction Spread depending upon the extent and location of construction activities, as well as the relative historic importance of each Spread to each Indian tribe.
5. Keystone has submitted a plan for historic trail and archaeological monitoring and tribal monitoring for each spread to the DOS, BLM, ACHP, SHPO, designated representatives of consulting Indian tribes, and Consulting Parties for review and comment prior to the signing of this PA. The Tribal Monitoring Plan and HTAM Plan are attached to this PA in Attachments E and F.
6. Keystone will implement the HTAM Plan and Tribal Monitoring Plan for each spread that has been approved by the DOS.

F. Construction

1. Lead Environmental Inspector (EI): Prior to initiating vegetative clearing or construction, Keystone will employ the Lead EI whose responsibilities will include ensuring compliance with the terms of this PA. In meeting this responsibility, the Lead EI will rely on the technical expertise of on-site professionals who meet the standards established in Stipulation I.A and tribal monitors with experience outlined in Stipulation V.E.3.
 - a. The Lead EI will monitor construction activities on-site and prepare a daily log, reporting to Keystone and designated representatives of consulting Indian tribes on activities performed to implement the terms of this PA, as appropriate. Keystone will make the daily log available to the DOS and SHPOs, and other consulting parties upon request.
 - b. Keystone will ensure through the construction contract that the Lead EI will possess the authority to stop construction in the event of an inadvertent discovery in accordance with Stipulation VI.A and Attachment C.

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2. **Training:** Keystone will ensure that, if the Lead EI does not meet the professional qualification standards established in Stipulation I.A, the Lead EI will receive appropriate training in historic preservation from a professional who meets the standards established in Stipulation I.A in order to perform the requirements of this PA. Keystone also will provide an appropriate level of training in historic preservation conducted by a professional who meets the standards established in Stipulation I.A to all construction personnel (including new, added, replaced workers) so that PA requirements are understood and unanticipated discoveries quickly identified. Keystone will conduct this training prior to initiating vegetative clearing or construction activities on a spread. Keystone also will conduct periodic refresher training during construction of the spread.
3. **Construction Contract:** Keystone will incorporate the terms of Stipulation VI.A and Attachment C into construction contracts to ensure that its Lead EI and construction contractors meet their responsibility for notification of the unanticipated discoveries.

F. Scheduling

The DOS may authorize the start of vegetative clearing and construction for an individual spread when the plans prepared in accordance with Stipulations V.D and V.E as appropriate for that spread, have been submitted by Keystone and approved by the DOS in accordance with the terms of this PA.

VI. UNANTICIPATED DISCOVERIES OR ADVERSE EFFECTS DURING CONSTRUCTION OF THE KEYSTONE XL PROJECT

A. Pipeline Construction

1. “Applicable Federal agency” is the Federal agency with jurisdiction for the land on which construction is occurring or, in the absence of such an agency, the DOS, as appropriate.
2. If previously unidentified historic properties are discovered by monitors or construction personnel unexpectedly or unanticipated adverse effects on previously identified historic properties occur as pipeline construction activities are carried out within the one-hundred-and-ten (110) foot-wide construction corridor or other ancillary facilities and access roads within the APE, the construction contractor will immediately halt all construction activity within a one-hundred-and-fifty (150) foot radius of the discovery or adversely affected historic property, notify the Lead EI of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the Lead EI shall:
 - a. Inspect the work site to determine the extent of the discovery or adverse effect and ensure that construction activities have halted;
 - b. Clearly mark the area of the discovery or adverse effect;

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- c. Implement additional measures other than those mentioned above, as appropriate, to protect the discovery or adversely affected historic property from looting and vandalism; and
 - d. Notify the applicable Federal agency, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of the discovery or adverse effect.
3. In the case of an unanticipated discovery, the applicable Federal agency will notify all consulting parties that it will be receiving comments concerning the unanticipated discovery and provide contact information. The applicable Federal agency will have seven (7) calendar days following notification provided in accordance with Stipulation VI.A.2 to determine the National Register eligibility of the discovery after considering the timely filed views of the SHPOs, designated representatives of consulting Indian tribes, other consulting parties, and Keystone. The applicable Federal agency may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 consistent with 36 C.F.R. § 800.13(c).
4. For discovered properties determined eligible or assumed to be eligible pursuant to Stipulation VI.A.3, the applicable Federal agency will notify the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.
 - a. SHPOs, designated representatives of consulting Indian tribes, and other consulting parties will have ninety-six (96) hours to provide their views on the proposed actions.
 - b. The applicable Federal agency will ensure that the timely filed recommendations of SHPOs, designated representatives of consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to resolve adverse effects.
 - c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. In the case of unanticipated adverse effects to a previously identified historic property, the applicable Federal agency will notify the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.
 - a. SHPOs, designated representatives of consulting Indian tribes, and other consulting parties will have forty-eight (48) hours to provide their views on the proposed actions.
 - b. The applicable Federal agency will ensure that the timely filed recommendations of SHPOs, designated representatives of consulting Indian tribes, and other

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consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to mitigate adverse effects.

- c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the affected property.
6. Dispute Resolution: The applicable Federal agency will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding resolution of adverse effects that relate to the implementation of Stipulation VI.A. The applicable Federal agency will use the contact information provided in Attachment D to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide the applicable Federal agency recommendations on resolving the dispute. The applicable Federal agency will take into account any timely filed recommendations provided by the ACHP in making a final decision about how to proceed.

B. Construction or Modification of Electrical Facilities

1. If previously unidentified historic properties are discovered unexpectedly during construction or modification of transmission facilities funded by the RUS, the RUS borrower's construction contractor will immediately halt all construction activity within a one-hundred-and-fifty (150) foot radius of the discovery, notify the RUS borrower of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the RUS borrower shall:
 - a. Notify the RUS Contact (and BLM Contact if discovery occurs on BLM land);
 - b. Inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
 - c. Clearly mark the area of the discovery; and
 - d. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism.
2. Upon receipt of such notification the RUS and, if applicable, BLM will coordinate the notification of SHPOs, designated representatives of consulting Indian tribes, and other consulting parties and notify the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of the discovery.
3. The RUS and, if applicable, BLM will have seven (7) calendar days following notification provided in accordance with Stipulation VI.B.1 to determine the National Register eligibility of the discovery in consultation with the SHPOs, designated representatives of consulting Indian tribes, other consulting parties, and the borrower. The RUS and, if applicable, BLM may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 C.F.R. § 800.13(c).

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4. For properties determined eligible, or treated as such, pursuant to Stipulation VI.B.3, the RUS, in coordination with the BLM (if applicable), will notify the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects. SHPOs, designated representatives of consulting Indian tribes, and other consulting parties will provide their views on the proposed actions within ninety-six (96) hours. The RUS will ensure that the timely filed recommendations of the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of those actions that the borrower will implement to resolve adverse effects. Once RUS approval has been granted, its borrower will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. Dispute Resolution: The RUS and, if applicable, BLM will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding the resolution of adverse effects that relate to the implementation of Stipulation VI.B. The applicable Federal agency will use the contact information provided in Attachment D in order to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide the RUS and, if applicable, BLM with its recommendations for resolving the dispute. The RUS and, if applicable, BLM will take into account any recommendations provided by the ACHP in making a final decision about how to proceed.
6. Reporting: No later than six (6) months following the resumption of construction within the location of the discovery, the RUS will submit a final report to the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties describing implementation of the actions taken in accordance with Stipulation VI.B and, as appropriate, the analysis and interpretation of recovered information.

C. Unanticipated Discovery of Human Burials and Remains, and Funerary Objects

1. When Native American human remains or funerary objects or objects of cultural patrimony are unexpectedly discovered during construction of the Keystone XL Project on Federal or tribal lands within the APE, Keystone or an RUS borrower, as appropriate, will notify immediately the Federal agency responsible for compliance with the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq., and its implementing regulations, 43 C.F.R. Part 10.
2. Non-Native American human burials and remains, and funerary objects discovered on Federal lands within the APE will be treated by the Federal agency having jurisdiction of the remains in accordance with applicable Federal law, taking into account the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).
3. The DOS, Western, and RUS will treat human burials and remains discovered on non-Federal land consistent with the provisions of Attachment C and any applicable

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federal, state, and local burial laws. In those instances where the USACE has jurisdiction under Section 10 or 404 permitting authority for non-Federal lands in the APE, the applicable Federal agencies will ensure that Keystone complies with the provisions of Attachment C acting in the place of the DOS. In determining appropriate actions to be carried out, the DOS, RUS, and/or other Federal agencies will be guided by the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).

VII. CURATION

- A. Federal agencies will curate any artifacts, materials or records resulting from archaeological identification and mitigation conducted on Federal lands under their jurisdiction in accordance with 36 C.F.R. Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections.*" Federal agencies with jurisdiction over the Federal lands will consult with Indian tribes consistent with 36 C.F.R. 79.
- B. Keystone and RUS borrowers will return all artifacts recovered from private lands to the respective landowner after analysis is complete, unless applicable state law requires otherwise. Keystone and RUS borrowers will encourage and assist landowners in donating any returned artifacts to a local curation facility identified by the respective SHPO. Keystone shall pay all required curation fees associated with the donation of artifacts to the local curation facility.
- C. On Federally controlled or owned properties, Federal agencies will determine the disposition of human burials, human remains and funerary objects in accordance with applicable Federal law.

VIII. REPORTING

- A. Within three (3) months of completion of pipeline construction of a spread, Keystone will submit a comprehensive draft report to the DOS describing the results and findings of the implementation of the actions and plans specified in Stipulations V.C through G, VI.A, including Attachment C.
- B. Keystone will submit a draft comprehensive report for each spread to the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of the respective states in which the spread is located, for forty-five (45) day review and comment. Keystone shall address timely comments and recommendations submitted by ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties in preparation of the Final Comprehensive Report for that spread. Keystone will submit the final report to the DOS for review and approval. The final comprehensive report will be provided by the DOS to the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties once approved.

IX. MONITORING IMPLEMENTATION OF THE PA

Each quarter following the execution of this PA until it expires or is terminated, the DOS with the assistance of the USACE, BLM, RUS, FSA, NRCS, BIA, and USBR as necessary will provide the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties to this PA a progress report summarizing the work carried out pursuant to its terms. Such report will include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the efforts to carry out the terms of this PA. The DOS will maintain and update a list of the current contact for the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties and will be distributed in each quarterly report.

X. DISPUTE RESOLUTION

- A. “Appropriate Federal agency” refers to the DOS, BLM, RUS, USBR, and USACE, or other Federal land managing and/or permitting agency as applicable.
- B. Should any signatory, invited signatory, or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the appropriate Federal agency will consult with such party to resolve the objection. If the appropriate Federal agency determines that such objection cannot be resolved, the appropriate Federal agency will:
 - 1. Forward all documentation relevant to the dispute, including the applicable Federal agency’s proposed resolution, to the ACHP. The ACHP will provide the appropriate Federal agency with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the appropriate Federal agency will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, invited signatories, and concurring parties, and provide them with a copy of this written response. The appropriate Federal agency will then proceed according to its final decision.
 - 2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, the applicable Federal agency may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the appropriate Federal agency will prepare a written response that takes into account any timely comments regarding the dispute from the signatories, invited signatories, and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. The Federal agencies are responsible for carrying out all other actions subject to the terms of this PA that are not the subject of the dispute.
- D. The process of dispute resolution outlined in Stipulation X does not pertain to disputes that arise from unanticipated discoveries covered in Stipulation VI.

XI. DURATION

This PA will be null and void if all of its stipulations have not been carried out within seven (7) years from the date of its execution. At such time, and prior to work continuing on the Keystone XL Project, the DOS will either: (a) execute a Memorandum of Agreement (MOA) or PA consistent with 36 C.F.R. §§ 800.6 or 800.14(b), respectively; or (b) request, take into account, and respond to the comments of the ACHP consistent with 36 C.F.R. § 800.7. Prior to such time, the DOS may consult with the other signatories and invited signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XII. The DOS will notify the signatories, invited signatories, and concurring parties as to the course of action they will pursue.

XII. AMENDMENT

Any signatory or invited signatory to this PA may propose in writing that it be amended. The signatories and invited signatories will consult in an effort to reach agreement on an amendment. Any amendment will be effective on the date it is signed by all of the signatories and invited signatories and filed with the ACHP.

XIII. TERMINATION

- A. If any signatory or invited signatory to this PA determines that its terms will not or cannot be carried out, that party will immediately consult with the other signatories and invited signatories to attempt to develop an amendment per Stipulation XII. If within thirty (30) calendar days an amendment cannot be reached, any signatory or invited signatory may terminate the PA upon written notification to the other signatories and invited signatories.
- B. Termination by an individual SHPO shall only terminate the application of this PA within the jurisdiction of the SHPO.
 - 1. Once the PA is terminated for an individual state, and prior to work continuing on the undertaking in that state, DOS must either (a) execute a PA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. DOS shall notify the signatories as to the course of action it will pursue.
- C. If the PA is terminated in its entirety, and prior to work continuing on the undertaking, the DOS shall request, take into account, and respond to the comments of the ACHP consistent with 36 C.F.R. § 800.7(a). Following consultation with the ACHP, the DOS will notify the signatories, invited signatories and concurring parties as to the course of action it will pursue.

XIV. COORDINATION WITH OTHER FEDERAL REVIEWS

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In the event that Keystone or a Federal agency applies for additional Federal funding or approvals for the Keystone XL Project and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with the applicable SHPOs, designated representatives of consulting Indian tribes, and the ACHP. Any necessary modifications will be considered in accordance with Stipulation XII.

XV. SCOPE OF THE PA

This PA is limited in scope to actions that will facilitate the construction of the Keystone XL Project and related facilities, and is entered into solely for that purpose.

EXECUTION of this PA by the DOS, ACHP, BLM, RUS, Western, USACE, USBR, NPS, NRCS, FSA, BIA, the Montana SHPO, South Dakota SHPO, Nebraska SHPO, and Kansas SHPO and implementation of its terms evidence that the DOS, Western, BLM, RUS, NRCS, FSA, BIA, USACE, USBR, and NPS have taken into account the effects of the Keystone XL Project on historic properties and afforded the ACHP an opportunity to comment.

Deborah Klepp / PK for _____ *December 23, 2013*

**Deborah Klepp
Director**

Date

**Office of Environmental Quality and Transboundary Issues
Bureau of Oceans and International Environmental and Scientific Affairs
United States Department of State**

**Programmatic Agreement
SECTION 3 – Signatory Parties**

**Keystone XL Pipeline Project
December 2013**

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Corm Cam s ell
Acting Regional Director, Intermountain Region
National Park Service

434 0/3

Date



18 DEC 2013

Joel R. Cross
Colonel, Corps of Engineers
District Commander

Date

Bennet Horter

12/17/2013

Bennet Horter
Federal Preservation Officer
United States Department of Agriculture Farm Service Agency

Date

Salvador Salinas

12-17-13

Salvador Salinas

Date

State Conservationist

United States Department of Agriculture Natural Resources Conservation Services

Mark S. Plank

12/17/13

Mark S. Plank
Director, Engineering and Environmental Staff
United States Department of Agricultural Rural Utilities Service

Date



Weldon Loudermilk
Great Plains Regional Director
United States Bureau of Indian Affairs

12-18-13

Date

Diane M Friez

12/18/2013

Diane Friez
District Manager, Eastern Montana/Dakotas District
Bureau of Land Management

Date



Michael J. Ryan
Regional Director, Great Plains Region
Bureau of Reclamation

DECEMBER 18, 2013

Date

Robert J. Harris

12/19/13

Robert Harris
Regional Manager, Upper Great Plains Region
Western Area Power Administration (WESTERN)

Date

John M. Fowler

**John M. Fowler
Executive Director
Advisory Council on Historic Preservation**

12/19/13
Date

**Programmatic Agreement
SECTION 3 – Signatory Parties**

**Keystone XL Pipeline Project
December 2013**


008108

Patrick Selmer DSHPO for

12-17-13

**Jennie Chinn
State Historic Preservation Officer
Kansas**

Date


Tracy Stone-Manning
Director
Montana Department of Environmental Quality
(Invited Signatory)

12.19.13

Date



12-19-13

John Tubbs
Director

Date

Montana Department of Natural Resources and Conservation
(Invited Signatory)

Mark Baunler

Mark Baunler
State Historic Preservation Officer
Montana

12/18/2013

Date



Michael J. Smith
State Historic Preservation Officer
Nebraska

Dec. 18, 2013

Date



Jay D. Vogt
State Historic Preservation Officer
South Dakota

17 Dec 13

Date



Dec 18 / 13

Corey Goulet
Vice President
TransCanada Pipelines Limited
(Invited Signatory)

Date

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ATTACHMENT A

The following table summarizes the proposed Project areas for which Keystone has yet to conduct identification and evaluation studies as of the finalization of the PA. The majority of these proposed Project areas have been denied access versus new areas that have yet to surveyed.

| Areas Not Surveyed Along the Proposed Project APE | | |
|---|--------------------------|--|
| State | Project Area Type | Cultural Survey Remaining (acres) |
| Montana | ROW | 0.00 |
| Montana | Pump Stations | 0.00 |
| Montana | Ancillary facilities | 0.00 |
| Montana | Access Roads | 0.00 |
| South Dakota | ROW | 23.70 |
| South Dakota | Pump Stations | 0.00 |
| South Dakota | Ancillary facilities | 0.00 |
| South Dakota | Access Roads | 0.00 |
| Nebraska | ROW | 937.65 |
| Nebraska | Pump Stations | 43.45 ¹ |
| Nebraska | Ancillary facilities | N/A ² |
| Nebraska | Access Roads | 33.05 ³ |
| Total | | 1037.85^{1, 2, 3} |
| ¹ Pump stations in Nebraska have been surveyed for multiple locations. ² Additional ancillary facilities may be needed, however, are not known at this time. ³ Additional access roads may be needed, however, are not known at this time. | | |

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ATTACHMENT B

1. Absentee-Shawnee Tribe of Indians of Oklahoma
2. Alabama-Coushatta Tribes of Texas
3. Alabama-Quassarte Tribal Town, Oklahoma
4. Apache Tribe of Oklahoma
5. Arapahoe Tribe of the Wind River Reservation, Wyoming (aka Northern Arapaho Tribe)
6. Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana (aka Fort Peck Tribes)
7. Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
8. Cherokee Nation, Oklahoma
9. Cheyenne and Arapaho Tribes, Oklahoma
10. Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
11. Chickasaw Nation, Oklahoma
12. Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
13. Choctaw Nation of Oklahoma
14. Comanche Nation, Oklahoma
15. Confederated Salish & Kootenai Tribes of the Flathead Indian Nation, Montana
16. Confederated Tribes of the Goshute Reservation, Nevada and Utah
17. Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
18. Crow Tribe of Montana
19. Delaware Tribe of Indians, Oklahoma
20. Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
21. Eastern Band of Cherokee Indians of North Carolina
22. Eastern Shawnee Tribe of Oklahoma
23. Ely Shoshone Tribe of Nevada
24. Flandreau Santee Sioux Tribe of South Dakota
25. Forest County Potawatomi Community, Wisconsin
26. Fort Belknap Indian Community of the Fort Belknap Reservation of Montana (aka Gros Ventre and Assiniboine Tribe of Ft. Belknap)
27. Hannahville Indian Community, Michigan
28. Ho-Chunk Nation of Wisconsin
29. Iowa Tribe of Kansas and Nebraska
30. Iowa Tribe of Oklahoma
31. Jena Band of Choctaw Indians, Louisiana
32. Kaw Nation, Oklahoma
33. Kialegee Tribal Town, Oklahoma
34. Kickapoo Traditional Tribe of Texas
35. Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
36. Kiowa Indian Tribe of Oklahoma
37. Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
38. Lower Sioux Indian Community in the State of Minnesota
39. Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan (aka Gun Lake Potawatomi)

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40. Mille Lacs Band of Minnesota Chippewa Tribes, Minnesota
41. Modoc Tribe of Oklahoma
42. Nez Perce Tribe, Idaho
43. Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
44. Nottawaseppi Huron Band of the Potawatomi, Michigan (aka Huron Potawatomi Nation)
45. Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
46. Omaha Tribe of Nebraska
47. Osage Nation, Oklahoma
48. Otoe-Missouria Tribe of Indians, Oklahoma
49. Pawnee Nation of Oklahoma
50. Poarch Band of Creek Indians of Alabama
51. Pokagon Band of Potawatomi Indians, Michigan and Indiana
52. Ponca Tribe of Indians of Oklahoma
53. Ponca Tribe of Nebraska
54. Prairie Band of Potawatomi Nation, Kansas
55. Prairie Island Indian Community in the State of Minnesota
56. Red Lake Band of Chippewa Indians, Minnesota
57. Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
58. Sac & Fox Nation of Missouri in Kansas and Nebraska
59. Sac & Fox Nation, Oklahoma
60. Sac & Fox Tribe of the Mississippi in Iowa
61. Santee Sioux Nation, Nebraska
62. Seneca-Cayuga Tribe of Oklahoma
63. Shakopee Mdewakanton Sioux Community of Minnesota
64. Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
65. Shoshone Tribe of the Wind River Reservation, Wyoming (aka Eastern Shoshone Tribe)
66. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
67. Skull Valley Band of Goshute Indians of Utah
68. Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
69. Spirit Lake Tribe, North Dakota
70. Standing Rock Sioux Tribe of North & South Dakota
71. Stockbridge Munsee Community, Wisconsin
72. Thlopthlocco Tribal Town, Oklahoma
73. Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
74. Tonkawa Tribe of Indians of Oklahoma
75. Turtle Mountain Band of Chippewa Indians of North Dakota
76. United Keetoowah Band of Cherokee Indians in Oklahoma
77. Upper Sioux Community, Minnesota
78. Ute Indian Tribe of the Uintah & Ouray Reservation, Utah (aka Ute Indian Tribe, also Northern Ute Tribe)
79. Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah
80. White Earth Band of Minnesota Chippewa Tribes, Minnesota
81. Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
82. Winnebago Tribe of Nebraska
83. Yankton Sioux Tribe of South Dakota
84. Ysleta Del Sur Pueblo of Texas

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ATTACHMENT C

Plans for the Unanticipated Discovery of Cultural Resources

If previously unidentified cultural resources are discovered by monitors or construction personnel unexpectedly, Keystone will follow the procedures described in the state-specific plans included in this attachment for (1) Montana, (2) South Dakota, (3) Nebraska, (4) North Dakota, and (5) Kansas. If the following plans conflict in any way with Keystone's obligations under the Programmatic Agreement and Tribal Monitoring Plan, Keystone will follow the procedures described in the Programmatic Agreement and Tribal Monitoring Plan.

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UNANTICIPATED DISCOVERIES PLAN

I. Unanticipated Discoveries Plan for the Keystone XL project corridor (Project) in Montana

If previously unidentified historic properties are discovered by monitors or construction personnel unexpectedly or unanticipated adverse effects on previously identified historic properties occur as pipeline construction activities are carried out within the one-hundred-and-ten (110) foot-wide construction corridor or other ancillary facilities and access roads within the APE, the construction contractor will immediately halt all construction activity within a one-hundred-and-fifty (150) foot radius of the discovery or adversely affected historic property, notify the Lead EI of the discovery and implement interim measures to protect the discovery from looting and vandalism.

Within forty-eight (48) hours of receipt of this notification of the discovery, the Lead EI shall:

- a. Inspect the work site to determine the extent of the discovery or adverse effect and ensure that construction activities have halted;
- b. Clearly mark the area of the discovery or adverse effect;
- c. Implement additional measures other than those mentioned above, as appropriate, to protect the discovery or adversely affected historic property from looting and vandalism; and
- d. Notify the DOS, SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties of the discovery or adverse effect.

In the case of an unanticipated discovery, DOS will notify all consulting parties that it will be receiving comments concerning the unanticipated discovery and provide contact information. The DOS will have seven (7) calendar days following notification provided in accordance with Stipulation VI.A.2 to determine the National Register eligibility of the discovery after considering the timely filed views of the SHPO, MDEQ, designated representatives of consulting Indian tribes, other consulting parties, and Keystone. The applicable Federal agency may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 consistent with 36 C.F.R. § 800.13(c).

For discovered properties determined eligible or assumed to be eligible pursuant to Stipulation VI.A.3, the applicable Federal agency will notify the ACHP, SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.

- a. SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties will have ninety-six (96) hours to provide their views on the proposed actions.
- b. DOS will ensure that the timely filed recommendations of SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to resolve adverse effects.

- c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the discovery.

In the case of unanticipated adverse effects to a previously identified historic property, the applicable Federal agency will notify the ACHP, SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.

- a. SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties will have forty-eight (48) hours to provide their views on the proposed actions.
- b. DOS will ensure that the timely filed recommendations of SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to mitigate adverse effects.
- c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the affected property.

Dispute Resolution: DOS will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding resolution of adverse effects that relate to the implementation of Stipulation VI. DOS will use the contact information provided in Attachment C or D to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide DOS recommendations on resolving the dispute. DOS will take into account any timely filed recommendations provided by the ACHP in making a final decision about how to proceed.

II. Accidental Discovery of Human Remains on state or private lands

All human burials and funerary objects in the state of Montana are protected pursuant to the Human Skeletal Remains and Burial Site Protection Act (Montana Code Ann. §22-3-801 through §22-3-811).

In the event that human remains or burials are encountered during additional archaeological investigations or construction activities, Keystone or its designated representative shall immediately cease work within 150 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism. No digging, collecting or moving human remains or other items shall occur after the initial discovery. Protection measures will include the following.

- a) Flag the buffer zone around the find spot.
- b) Keep workers, press, and curiosity seekers, away from the find spot.
- c) Tarp the find spot.
- d) Prohibit photography of the find unless requested by an agency official.
- e) Have an individual stay at the location to prevent further disturbance until a law enforcement officer arrives.

Keystone will immediately notify local law enforcement, DOS, SHPO, and MDEQ within forty-eight (48) hours of the discovery. DOS shall notify the SHPO, MDEQ, Indian tribes, and other consulting parties within forty-eight (48) hours of the discovery. If local law enforcement determines that the remains are not associated with a crime, DOS shall determine if it is prudent and feasible to avoid disturbing the remains. If DOS in consultation with the Keystone determines that disturbance cannot be avoided, the DOS shall consult with the SHPO, MDEQ, Indian tribes, and other consulting parties to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. The DOS shall ensure that Keystone implements the plan for removal, treatment and disposition of the burial or remains as authorized by the SHPO. The DOS shall notify Keystone that they may resume construction activities in the area of the discovery upon completion of the plan authorize as by the SHPO.

Contact Information:

Stan Wilmoth
State Archaeologist
State Historic Preservation Office
P.O. Box 201203
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III. Unanticipated Discovery of Human Burials, Remains, and Funerary Objects on Federal Lands

For the accidental discovery of human burials, remains, and funerary objects on Federal lands please reference Stipulation VI.(C) of the PA.

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UNANTICIPATED DISCOVERIES PLAN

I. Unanticipated Discoveries Plan for the Keystone XL project corridor (Project) in South Dakota

1. In the event that previously unidentified archaeological resources are discovered during ground disturbing activities within the project area (area of potential effect), Project shall halt immediately all construction work within 100 feet (30.5 m) of the discovery and in the surrounding area where further subsurface remains can reasonably be expected to occur. The area of the discovery will be clearly marked by means of flagging or fencing.
2. The construction contractor will notify a designated representative of Project of the discovery. Following notification of the discovery, the designated representative of Project will immediately inspect the work site and determine the extent of the affected archaeological resource as defined by the State Historic Preservation Office (SHPO) or by the SHPO in consultation with the archaeologist retained by Project.
3. Within 14 calendar days of the original notification of discovery, the archaeologist retained by Project, in consultation with the SHPO, will determine the National Register eligibility of the resource. The SHPO or Project may extend this 14-day calendar period one time by an additional 7 calendar days, with Project providing written notice to the SHPO prior to the expiration date of the said 14-day calendar period.
4. If the resource is determined eligible for the National Register, Project shall submit to the SHPO and the Department of State (DOS) a plan for its avoidance, protection, recovery of information, or destruction without data recovery. Said plan will be submitted to the SHPO and the DOS within 14 calendar days of a determination of eligibility, and shall be approved by the SHPO and the DOS prior to implementation.
5. Work in the affected area may resume per SHPO authorization pending either:
 - i. development and implementation of an appropriate data recovery plan or other recommended mitigation procedures, or
 - ii. determination that the located remains are not eligible for inclusion on the National Register.
6. Any disputes concerning the evaluation or treatment of previously unidentified resources will be resolved through consultation among the SHPO, a designated representative of Project, and the archaeologist retained by Project.

II. Accidental Discovery of Human Remains on state or private lands

All human burials and funerary objects in the state of South Dakota are protected pursuant to South Dakota Codified Law Chapter 34-27-25, 34-27-28, 34-27-31.

In the event that human remains or burials are encountered during additional archaeological investigations or construction activities, Project or its designated representative shall immediately cease work within 150 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism. No digging, collecting or moving human remains or other items shall occur after the initial discovery. Protection measures will include the following.

- a) Flag the buffer zone around the find spot.
- b) Keep workers, press, and curiosity seekers, away from the find spot.
- c) Tarp the find spot.
- d) Prohibit photography of the find unless requested by an agency official.
- e) Have an individual stay at the location to prevent further disturbance until a law enforcement officer arrives.

Project will immediately notify local law enforcement, the DOS, and the South Dakota State Archaeologist (State Archaeologist) within forty-eight (48) hours of the discovery. The DOS shall notify the SHPO, Indian tribes and other consulting parties within forty-eight (48) hours of the discovery. If local law enforcement determines that the remains are not associated with a crime, the DOS shall determine if it is prudent and feasible to avoid disturbing the remains. If the DOS in consultation with the Project determines that disturbance cannot be avoided, the DOS shall consult with the State Archaeologist, SHPO, Indian tribes and other consulting parties to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. The DOS shall ensure that the Project implements the plan for removal, treatment and disposition of the burial or remains as authorized by the State Archaeologist. The DOS shall notify the Project that they may resume construction activities in the area of the discovery upon completion of the plan authorize as by the State Archaeologist.

Contact Information:

James K. Haug, State Archaeologist
South Dakota State Historical Society
Archaeological Research Center
PO Box 1257
Rapid City, SD 57709
(605) 394-1936

Katie Lamie, Repository Manager
South Dakota State Historical Society
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PO Box 1257
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Paige Olson, Review and Compliance Coordinator
South Dakota State Historical Society
State Historic Preservation Office
900 Governors Drive
Pierre, SD 57501
(605) 773-3458

Amy Rubingh, Review and Compliance Archaeologist
South Dakota State Historical Society
State Historic Preservation Office
900 Governors Drive
Pierre, SD 57501
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III. Unanticipated Discovery of Human Burials, Remains, and Funerary Objects on Federal Lands

For the accidental discovery of human burials, remains, and funerary objects on Federal lands please reference Stipulation VI.(C) of the PA.

PREFILED REBUTTAL TESTIMONY
OF
FAITH SPOTTED EAGLE

Docket No. HP14-001

IN THE MATTER OF THE APPLICATION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR
ORDER ACCEPTING CERTIFICATION OF PERMIT ISSUED IN DOCKET HP09-001 TO
CONSTRUCT THE KEYSTONE XL PIPELINE

1. Please state your name and you home address.

A. My name is Faith Spotted Eagle. My home address is Box 667, Lake Andes, SD, 57356.

2. Are you a member of the Yankton Sioux Tribe or any other tribe?

A. I am an enrolled member of the Yankton Sioux Tribe.

3. What is your occupation or what kinds of work do you do?

A. Private consultant in PTSD Counseling for veterans and veteran's organization; Trainer/facilitator in Historical Trauma for all populations; school certified counselor work in schools, Dakota Language teacher, Manager of Brave Heart Lodge in Lake Andes.

4. Please describe your educational background and professional experience.

A. I have an MA in Educational Psychology and Counseling from USD, Vermillion, SD. I have held professional positions as a teacher, counselor, principal, manager of Human Service Programs, Family and Individual therapist, Grantwriter and currently am Chair of the Ihanktonwan Treaty Committee.

5. Did you provide a copy of your resume?

A. I attached a biography as Attachment A to my prefiled direct testimony.

6. On whose behalf was this testimony prepared?

A. This testimony was prepared on behalf of the Yankton Sioux Tribe.

7. Do you currently hold any positions with the Yankton Sioux Tribe?

A. I am an official elected by the General Council to be on the Ihanktonwan Treaty Committee and serve as the Chair for that body.

8. Please state the purpose of your testimony in this proceeding.

A. The purpose of my testimony is to rebut any testimony in support of the Applicant's position because the Applicant cannot prove that it continues to meet all conditions upon which the permit was granted. I can provide testimony on subjects including the interactions between TransCanada and the Yankton Sioux Tribe, the Yankton Sioux Tribe's position on the proposed project, the Programmatic Agreements executed in conjunction with the Final Environmental Impact Statement and the Final Supplemental Environmental Impact Statement (attached to this prefiled testimony as Exhibits A and B, respectively), cultural resources and sacred sites, the governing treaties between the United States and the Yankton Sioux Tribe, and the threats posed by the proposed project to the Yankton Sioux Tribe and its Tribal members as appropriate based on the testimony offered by the Applicant. Based on my knowledge, the Applicant cannot meet the conditions of the original permit.

EXHIBIT A

Appendix S

Programmatic Agreement and Record of Tribal Contact

Programmatic Agreement

Among

The U.S. Department of State,
U.S. Bureau of Land Management,
U.S. Army Corps of Engineers,
U. S. Bureau of Reclamation,
National Park Service,
Western Area Power Administration,
U.S. Department of Agriculture Rural Utilities Service,
U.S. Department of Agriculture Natural Resources Conservation Service,
U.S. Department of Agriculture Farm Service Agency
U.S. Bureau of Indian Affairs
Montana Department of Natural Resources and Conservation,
Montana Department of Environmental Quality,
Advisory Council on Historic Preservation,
Montana State Historic Preservation Officer,
Kansas State Historic Preservation Officer,
Texas State Historic Preservation Officer,
Nebraska State Historic Preservation Officer,
Oklahoma State Historic Preservation Officer,
South Dakota State Historic Preservation Officer, and
TransCanada Keystone Pipeline, LP
Regarding the Keystone XL Pipeline Project

WHEREAS, the U.S. Department of State (DOS) receives and considers applications for permits for cross border oil pipelines pursuant to the authority delegated by the President of the United States under Executive Order (EO) 13337 (69 Federal Register 25299); and

WHEREAS, on September 19, 2008, the DOS received an application for a Presidential Permit from TransCanada Keystone Pipeline, LP (Keystone) for the Keystone XL Pipeline Project (Keystone XL Project or the Project); and

WHEREAS, DOS has determined that issuance of a Presidential Permit for the Keystone XL Project includes review under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f, as amended) and its implementing regulations, "Protection of Historic Properties," (36 CFR Part 800); and

WHEREAS, the Project undertaking consists of construction of approximately 1,375 miles of new crude oil pipeline in the United States and utilizes 298 miles of the previously approved Keystone Cushing Extension, associated aboveground facilities (such as pump stations and transmission facilities and substations), and ancillary facilities (such as lateral pipeline, temporary workplace areas and pipe storage, access roads, and contractor yards); and

WHEREAS, the proposed Keystone XL Project pipeline alignment crosses Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas; and

WHEREAS, the proposed Keystone XL Project pipeline alignment crosses seven National Historic Trails: the Lewis and Clark National Historic Trail (LCNHT); Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails; the Santa Fe National Historic Trail; and the El Camino Real de los Tejas National Historic Trail (ELTE). Each of these trails was designated by the U.S. Congress and have as their purpose “the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment;” (National Trails System Act, P.L. 90-543, as amended); and

WHEREAS, on February 2, 2011, the Advisory Council on Historic Preservation (ACHP) entered consultation finding that criteria 3 and 4 of Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of the regulations (36 CFR Part 800) implementing Section 106 of NHPA, had the potential to be met; and

WHEREAS, the United States Army Corps of Engineers (USACE) has determined that the approval for the Keystone XL Project to cross USACE administered lands (30 U.S.C. § 185) and to place structures in, under, or over navigable waters of the United States, as defined under 33 CFR 329, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and a permit for the placement of dredge or fill material in waters of the United States as part of the Keystone XL Project in accordance with Section 404 of the Clean Water Act (33 U.S.C. § 344; see 33 CFR 323), are federal actions related to the undertaking that require the USACE to comply with Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the U.S. Bureau of Land Management (BLM) has determined the approval of the Keystone XL Project to cross Federal lands administered by the BLM would require authorization under Section 28 of the Mineral Leasing Act of 1920, as amended [(MLA) 30 USC 185]; and

WHEREAS, the BLM has determined that Keystone will require access roads crossing public lands administered by the BLM in support of the Keystone XL Pipeline Project and that the access roads will require authorization under Title V of the Federal Land Policy and Management Act, as amended [(FLMPA) 43 USC 1701]; and

WHEREAS, the BLM has determined that the Keystone XL Project will require electrical power from rural electrical cooperatives and that portions of the transmission lines will cross public lands administered by the BLM and that the transmission lines crossing public lands will require authorization under Title V of the Federal Land Policy and Management Act, as amended [(FLMPA) 43 USC 1701]; and

WHEREAS, the BLM approvals of these Project crossings in areas under its jurisdiction is a federal action associated with the undertaking that requires the BLM to comply with Section 106 of the NHPA and 36 CFR Part 800; and

WHEREAS, the U.S. Bureau of Reclamation (RECLAMATION) manages lands and facilities that will be crossed by the Keystone XL Project and this is a federal action related to the undertaking that requires RECLAMATION to comply with Section 106 of the NHPA and 36

CFR Part 800; and

WHEREAS, the Natural Resources Conservation Service (NRCS) has determined that it retains rights to a 2,693 acre parcel subject to the Wetlands Reserve Program (WRP) (16 U.S.C. 3837 et. seq.) easements in Fannin County, Texas and that the installation and maintenance of the Project pipeline on this WRP easement is a federal action associated with the undertaking that requires compliance with Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the Farm Service Agency (FSA), manages private lands with federal easements along the Project APE as part of its Grasslands Reserve Program (jointly administered with the NRCS) as well as the Conservation Resource Program, and the Farmable Wetlands Program; and

WHEREAS, the FSA approval of the Project crossings in these areas is a federal action associated with the undertaking that requires the FSA to comply with Section 106 of the NHPA and 36 CFR Part 800; and

WHEREAS, the Rural Utilities Service (RUS) has determined that the financial assistance it may provide to rural electric cooperatives and other entities for construction or modification of electrical transmission facilities (including transmission lines and substations) to power some Keystone XL Project pump stations or to ensure transmission system reliability, under USDA Rural Development's Utilities Programs, are Federal actions related to the undertaking that require RUS to comply with Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the Bureau of Indian Affairs (BIA) has responsibility for approving any right-of-ways crossing Indian Trust lands and this is a federal action related to the undertaking that requires the BIA to comply with Section 106 of the NHPA and 36 CFR Part 800; and

WHEREAS, the Western Area Power Administration (WESTERN) has determined that the modification and construction of substations and transmission lines that WESTERN will own and that will provide power to the Keystone XL project, will require review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the National Park Service (NPS) has been invited to consult with the DOS concerning the Project due to the potential for adverse effects to several National Historic Trails including the LCNHT and ELTE; and

WHEREAS, the Montana Department of Natural Resources and Conservation has participated in consultation and has been invited by DOS under 36 CFR § 800.6(c) (2) to sign this Programmatic Agreement (PA) as an invited signatory; and

WHEREAS, the Montana Department of Environmental Quality has participated in consultation and has been invited by DOS under 36 CFR § 800.6(c) (2) to sign this PA as an invited signatory; and

WHEREAS, the USACE, BLM, RUS, BIA, NRCS, WESTERN, RECLAMATION, and FSA have designated the DOS as the lead federal agency for purposes of Section 106 of the NHPA in

accordance with 36 CFR § 800.2(a)(2); and

WHEREAS, the Keystone XL Project area of potential effect (APE) includes: (1) in Montana – a 300 foot wide corridor, 150 feet on each side from the centerline; (2) in South Dakota – a 300 foot wide corridor, 150 feet on each side from the centerline; (3) in Nebraska – a 300 foot wide corridor, 150 feet from each side from the centerline; (4) in Kansas – all areas of disturbance related to the construction of two pump stations; (5) in Oklahoma – a 300 foot wide corridor, from centerline of outermost existing pipeline; and (6) in Texas - a 300 foot wide corridor, with 200 feet from the existing infrastructure feature centerline on the side where the proposed pipeline is to be collocated and 100 feet from the existing feature centerline on the opposite side, or, if the route is not collocated with existing infrastructure, then the survey area will be centered on the proposed pipeline (150 feet on each side). For transmission lines and access roads in each state, a 100 foot wide corridor centered on the Project centerline will be used. For pumping stations and other areas that are to be disturbed by construction related activities and ancillary facilities (including construction camps and pump stations), the APE will include all areas of disturbance and areas to be indirectly affected; and

WHEREAS, the DOS has determined that the construction of the Keystone XL Project may have an adverse effect on properties listed in or eligible for listing in the National Register of Historic Places (NRHP), and has consulted with the Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Indian Tribes, and the ACHP, pursuant to 36 CFR Part 800; and

WHEREAS, the BLM will incorporate this PA into its decisional process on any authorization under the MLA or FLPMA it may issue for the Keystone XL Project, and will include in any authorization it issues on the Keystone XL Project, a condition that Keystone will abide by its commitments in this PA; and

WHEREAS, in accordance with 36 CFR §§ 800.4(b)(2) and 800.5(a)(3), the DOS has elected to phase identification and evaluation of historic properties, and application of the criteria of adverse effect, respectively, because access to those areas identified in Attachment A has been restricted by property owners' refusal to grant Keystone permission to enter their private property; and

WHEREAS, Attachment G includes summary information on the identification, evaluation, and effect assessment updates on the Project that were included in the Final Environmental Impact Statement (FEIS); and

WHEREAS, additional identification, evaluation and effect assessments for the Project will need to be undertaken as all areas of construction have yet to be determined; and

WHEREAS, pursuant to 36 CFR § 800.14(b), the DOS has elected to execute this PA for the Keystone XL Project because effects on historic properties cannot be fully determined prior to the issuance of a permit for the undertaking; and

WHEREAS, Attachment G also summarizes consultation with Indian tribes and Nations,

SHPOs, and other agencies; and

WHEREAS, the DOS will incorporate this PA into its decisional process on any Presidential Permit that it may issue for the Keystone XL Project and will include in any permit it issues on the Keystone XL Project a condition that Keystone will abide by its commitments in this PA; and

WHEREAS, Keystone, which will construct the Keystone XL Project pipeline, has participated in consultation, has been invited by DOS under 36 C.F.R. §§ 800.2(c)(4) and 800.6(c)(2) to sign this agreement as an invited signatory and intends to sign this agreement as an invited signatory; and

WHEREAS, for the purposes of this agreement, “Indian tribes and Nations” shall have the same definition as “Indian tribes” which appears in Section 301(4) of the NHPA; and

WHEREAS, DOS invited the Indian tribes listed in Attachment B to participate in consultation; and

WHEREAS, the Absentee-Shawnee Tribe of Indians of Oklahoma; the Alabama-Coushatta Tribe of Texas, Blackfeet Tribe, Caddo Nation of Oklahoma, Cheyenne River Sioux, Cheyenne-Arapaho Tribe of Oklahoma, Chippewa-Cree Indians, Choctaw Nation of Oklahoma, Crow Tribe of Indians, Delaware Nation, Fort Peck Tribes, Gros Ventre and Assiniboine Tribe of Ft. Belknap, Ho-Chunk Nation of Wisconsin, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Kaw Nation, Kialegee Tribal Town of the Creek Nation in Oklahoma, Kickapoo Tribe of Kansas, Kiowa Indian Tribe of Oklahoma, Lower Sioux Indian Community, Miami Tribe of Oklahoma, Mille Lacs Band of Ojibwe, Muscogee (Creek) Nation, Northern Arapaho Tribe, Northern Cheyenne Tribe, Northern Ute Tribe, Oglala Sioux Tribe, Osage Nation, Pawnee Nation of Oklahoma, Ponca Tribe of Indians of Oklahoma, Ponca Tribe of Nebraska, Rosebud Sioux Tribe, Sac & Fox Nation of Oklahoma, Santee Sioux Tribe of Nebraska, Shoshone-Bannock Tribe, Sisseton-Wahpeton Oyate Sioux, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes, Tonkawa Tribe, Turtle Mountain Band of Chippewa, Wichita and Affiliated Tribes, Winnebago Tribe, and Yankton Sioux have participated in consultation and have been invited to concur in this PA, in accordance with 36 C.F.R. §§ 800.2(c)(2) and 800.6(c)(3);

NOW, THEREFORE, the DOS, USACE, BLM, RUS, BIA, FSA, NRCS, WESTERN, RECLAMATION, NPS, ACHP, and the Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas SHPOs agree that the following stipulations will be implemented in order to take into account the effect of the undertaking on historic properties and to satisfy all responsibilities under Section 106 of the NHPA.

STIPULATIONS

The DOS, BLM, RUS, BIA, FSA, NRCS, WESTERN, USACE, RECLAMATION, and NPS as appropriate, will ensure that the following stipulations are carried out.

I. STANDARDS AND DEFINITIONS

- A. Identification and evaluation studies and treatment measures required under the terms of this PA will be carried out by or under the direct on-site supervision of a professional(s) who meets, at a minimum, the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* (48 FR 44716, September 29, 1983).
- B. In developing scopes of work for identification and evaluation studies, and treatment measures required under the terms of this PA, Keystone and RUS applicants will take into account the following regulations and guidelines:
1. The ACHP's guidance on conducting archaeology under Section 106 (2007);
 2. The ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007);
 3. Applicable SHPO guidance;
 4. The Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983);
 5. The "*Treatment of Archaeological Properties*" (ACHP 1983);
 6. The *Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects*" (Federal Energy Regulatory Commission, Office of Energy Projects, December 2002);
 7. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403);
 8. Section 404 of the Clean Water Act (33 U.S.C. § 344);
 9. BLM 8110 Manual: Identifying and Evaluating Cultural Resources;
 10. Montana/Dakotas Cultural Resources Handbook 8110-1: Guidelines for Identifying Cultural Resources;
 11. The National Trails System Act (P.L. 90-543, as amended);
 12. Section 28 of the Mineral Leasing Act of 1920 (30 USC 185);
 13. Title V of the Federal Land Policy and Management Act of 1976 (43 USC 1701); and
 14. *National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties* (NPS 1990; Revised 1992: 1998)

C. Definitions

Coordination Plan: A plan (more fully explained in Stipulation V.B and V.D.) that describes the coordination of construction with identification and evaluation of cultural resources, treatment of adverse effects, and protection of unanticipated discoveries.

Concurring Parties: An invited consulting party to this PA that agrees with the content of the PA. The refusal of a concurring party to sign the PA does not invalidate this PA as noted in 36 C.F.R. § 800.6(c)(3). Concurring parties may not terminate the PA.

Construction spread: A construction unit or segment of a pipeline alignment or corridor to be determined by Keystone prior to construction.

Consulting Parties: Parties that have consultative roles in the Section 106 process, as defined in 36 C.F.R. § 800.2(c).

Data Recovery: The recovery of archaeological information from a historic property subject to an adverse effect.

Determination of Effect: A determination made by a federal agency in regards to a Project's effect upon a historic property as defined in 36 C.F.R. Part 800.

Determination of Eligibility: A determination made by a federal agency in regards to a cultural resource's eligibility for inclusion in the National Register of Historic Places (NRHP) and more fully described in 36 C.F.R. Part 60 and 36 C.F.R. § 800.16(1)(2).

Effect: An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 C.F.R. § 800.16(i)).

Environmental Impact Statement: An analysis of a major federal action's environmental impacts conducted consistent with NEPA.

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria (see 36 C.F.R. § 800.16(1)(a)).

Invited Signatory: The DOS has invited TransCanada Keystone Pipeline LP, the Montana Department of Natural Resources and Conservation, and the Montana Department of Environmental Quality to be signatories to this PA pursuant to 36 C.F.R. § 800.6(c)(2). The refusal of any invited signatory to sign the PA does not invalidate the PA.

Historic Trail and Archaeological Monitoring Plan: A plan (more fully described in Stipulation V.E and Attachment F.) that identifies appropriate areas for monitoring construction by professionals under the supervision of individuals that meet the professional qualifications in Stipulation I. The plan's principal goal is to reduce the potential for impacts to unidentified historic properties.

Signatory Parties: All signatories to this PA, which includes the DOS, BLM, RECLAMATION, USACE, NPS, WESTERN, RUS, NRCS, FSA, BIA, Montana Department of Natural Resources and Conservation, Montana Department of Environmental Quality, and the SHPOs of Montana, South Dakota, Nebraska, Kansas,

Oklahoma, and Texas. (Signatory parties include the federal agency(ies), SHPOs, THPOs (or designee) if the undertaking is carried out on Tribal land or affects historic properties on Tribal land, and also any invited signatories [not including invited concurring parties]).

Tribal Monitoring Plan: A plan (more fully described in Stipulation V.E. and Attachment E) that identifies appropriate areas for monitoring construction by tribal members appointed by their respective tribes. These tribal members shall meet the qualifications as noted in Stipulation V.E.3. The plan's principal goal is to reduce the potential for impacts to previously unidentified historic properties that may also be properties of religious and cultural significance that meet the National Register criteria (see 36 CFR § 800.16(1)(a)).

Treatment Plan: A plan developed in consultation with the parties to this PA that identifies the minimization, and mitigation measures for historic properties located within the APE that will be adversely affected by the Project.

II. CONFIDENTIALITY

DOS, BLM, NRCS, BIA, RUS, WESTERN, RECLAMATION, NPS and USACE will safeguard information about historic properties of religious and cultural significance to Indian tribes, including location information, or information provided by Indian tribes to assist in the identification of such properties, to the extent allowed by Section 304 of NHPA [16 U.S.C. 470w3] and other applicable laws.

III. THE RESPONSIBILITIES OF FEDERAL AGENCIES WITH LAND MANAGEMENT AND OTHER PERMITTING AUTHORITIES

- A. The USACE will ensure that the requirements of this PA have been met for that part of the APE under its jurisdiction, pursuant to Section 10 and Section 404 permitting authority.
- B. The USACE will comply with Section 106 and its implementing regulations (36 CFR Part 800) for the issuance of permits for those actions under its jurisdiction.
- C. The BLM will comply with Section 106 and its implementing regulations (36 CFR Part 800) for the issuance of permits for those actions under its jurisdiction.
- D. RECLAMATION will review and comment on the evaluation and treatment of any historic properties managed by RECLAMATION.
- E. Attachment H includes maps that illustrate the Project areas cross lands managed by the BLM and RECLAMATION.

- F. Consultation for this Project between Indian tribes and federal land management and permitting agencies will be coordinated through the DOS.

IV. KEYSTONE XL PROJECT – CONSTRUCTION OR MODIFICATION OF ELECTRICAL DISTRIBUTION/TRANSMISSION FACILITIES

- A. Prior to granting approval of financial assistance to construct or modify electrical transmission facilities by rural electric cooperatives or other entities, RUS will complete the requirements of 36 CFR §§ 800.3 through 800.7.
- B. In implementing Stipulation IV.A, RUS may authorize an applicant to initiate Section 106 consultation in accordance with 36 CFR § 800.2(c) (4). In doing so, RUS may not delegate its responsibility to conduct government-to-government consultation with Indian tribes to an applicant, unless RUS and that tribe agree, in writing, to conduct consultation in that manner.
- C. Prior to construction of the 230kV transmission line WESTERN will own, WESTERN will complete the requirements of 36 CFR §§ 800.3 through 800.7. In implementing Stipulation IV.C., WESTERN will serve as a signatory party under the DOS PA. WESTERN shall coordinate implementation of Stipulation IV.C with the DOS.
- D. RUS will ensure that the terms of Stipulation VI.B and Attachment C are incorporated into construction contracts to ensure that its applicants and construction contractors meet their responsibility for notification of any unanticipated discoveries. When RUS funded projects occur on BLM land, the RUS will coordinate with BLM to ensure compliance with Stipulation VI.B. and Attachment C of this Agreement.
- E. Prior to granting approval or financial assistance for construction or modification of electrical distribution/transmission facilities that are necessary components of the pipeline project and therefore considered within the Project APE, any federal agency that is incorporated into this agreement pursuant to Stipulation XIV will complete the requirements of 36 CFR §§ 800.3 through 800.7 for those facilities under its jurisdiction if not already carried out elsewhere in this agreement.
- F. DOS retains responsibility for completing the requirements of 36 CFR §§ 800.3 through 800.7 for those electrical distribution/transmission facilities that are necessary components of the Project if they are not under the jurisdiction of any federal agency and not referenced in Stipulation IV. A through E above.

V. KEYSTONE XL PROJECT – PIPELINE CONSTRUCTION

- A. The DOS provided SHPOs, consulting Indian tribes, and other consulting parties with an opportunity to provide their views on the identification and evaluation of historic properties (as defined in 36 CFR § 800.16(l), including historic properties of religious and cultural significance to Indian tribes, and the treatment of affected historic properties,

in connection with the construction of the Keystone XL Project as described in Stipulation V.C of this PA.

B. Identification and Evaluation of Historic Properties

1. In consultation with the SHPOs, consulting Indian tribes, and other consulting parties, the DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties within the APE for each construction spread prior to the initiation of construction of that spread, in accordance with 36 CFR §§ 800.4(a), (b) and (c). On federal lands, the scope of the identification effort will be determined by the appropriate federal land managing agency in consultation with the DOS, applicable SHPOs, consulting Indian tribes, and other consulting parties.
2. For the APE in Montana, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, in accordance with 36 CFR §§ 800.4(a), (b) and (c), before Keystone initiates construction activities (including vegetative clearing to comply with the Migratory Bird Treaty Act if clearing is undertaken).
 - a. In the identification and evaluation of historic properties to which Indian tribes attach religious and cultural significance, the DOS will take into consideration information submitted by Indian tribes to DOS prior to construction.
 - b. In the event identification of historic properties cannot be completed for any construction spreads prior to construction, Keystone will develop and submit a Coordination Plan to DOS for review and approval pursuant to Stipulation V.D that describes the measures it will implement to complete the identification and evaluation of historic properties before such properties are adversely affected by vegetation clearing and construction activities related to that spread.

C. Treatment of Historic Properties

1. Whenever feasible, avoidance of adverse effects to historic properties will be the preferred treatment. In consultation with the DOS, ACHP, SHPOs, THPOs, and consulting parties, Keystone may elect to consider and implement avoidance measures prior to completing the evaluation of historic properties.

Avoidance and minimization measures may include:

- a. Avoidance through pipeline or access road route variation or Project feature relocation;
- b. Avoidance through abandonment;
- c. Avoidance through bore or horizontal directional drill;
- d. Avoidance by narrowing the construction corridor (“neck down”); and
- e. Avoidance through the use of existing roadways as Project access roads to the extent practicable.

2. When historic properties are identified in the APE pursuant to Stipulation V.B, DOS will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) in consultation with the ACHP, SHPO and other consulting parties. If DOS finds that historic properties might be adversely affected by actions covered under this PA and within the APE, DOS will consult with the ACHP, SHPOs, consulting Indian tribes, and other consulting parties to determine prudent and feasible ways to avoid adverse effects.
 - a. Once DOS approves avoidance measures, Keystone will implement those measures.
3. If DOS determines that the adverse effect cannot be avoided, DOS will consult with the ACHP, SHPOs, consulting Indian tribes, and other consulting parties to determine those measures to be implemented by Keystone to minimize and mitigate adverse effects on affected historic properties identified in the APE.
4. If, after consultation, DOS determines that the adverse effect cannot be avoided, Keystone will draft a comprehensive Treatment Plan for each adversely affected historic property. The Treatment Plan describes the measures identified by DOS under Stipulation V.C.3 to minimize and mitigate the adverse effect of pipeline construction activities on historic properties, the manner in which these measures will be carried out, and a schedule for their implementation.
 - a. When mitigation consists of or includes data recovery, the Treatment Plan also will identify the specific research questions to be addressed by data recovery with an explanation of their relevance, the archaeological methods to be used, and provisions for public interpretation and education, subject to Stipulation II restrictions, if any.
 - b. A Treatment Plan may also include mitigation for adverse effects to historic districts, buildings and structures. This mitigation may include the recordation of historic properties according to Historic American Building Survey/Historic American Engineering Record Standards and Guidelines for Architectural and Engineering Documentation. Other types of mitigation for adverse effects to historic districts, buildings, and structures may also be described in the Treatment Plan. The mitigation proposed for an adverse effect to a historic district, building, and/or structure will be commensurate with the level of significance and extent of adverse effect and will be determined in a manner consistent with Stipulation V.C.4.c.
 - c. Keystone will submit the draft Treatment Plan to the DOS, BLM (if applicable), ACHP, THPOs, the SHPO of the applicable state, MT DEQ (if applicable), MT DNRC (if applicable), and other applicable consulting parties for a thirty (30) calendar day review. Keystone shall address timely comments and recommendations submitted by SHPOs, consulting Indian tribes, and other consulting parties in preparation of the Final Treatment Plan.

- d. When it has addressed all of the timely comments and recommendations, Keystone will submit the Final Treatment Plan to DOS for review and approval. Keystone will also submit the Final Treatment Plan to BLM for review and approval when involving lands subject to Stipulation III.C. DOS and BLM shall issue their final decision on the Treatment Plan within thirty (30) calendar days. Once the Final Treatment Plan is approved by DOS (and the BLM if involving BLM-managed lands), copies of the Treatment Plan will be distributed to all SHPOs, consulting Indian tribes, and other consulting parties.
5. Keystone will make a reasonable and good faith effort to complete implementation of the Final Treatment Plan approved by DOS prior to beginning construction of any spread for which the Treatment Plan is required. If it is not possible to meet this schedule, Keystone will develop a Coordination Plan in accordance with Stipulation V.D that establishes how appropriate treatment will be determined and implemented during construction of the respective spread.

D. Coordination of Construction and Historic Preservation Activities

1. The DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, and the mitigation of adverse effects to them in accordance with Stipulations V.B and V.C prior to the initiation of vegetative clearing if vegetative clearing and construction on the Keystone XL spreads, including the Montana, South Dakota, Nebraska, Kansas, Oklahoma and Texas spreads, is to be undertaken.
2. If these DOS activities cannot be completed prior to the start of vegetative clearing and construction of these spreads, Keystone shall develop and provide to DOS a detailed plan describing how the requirements of Stipulations V.B and V.C – identification, evaluation and treatment of historic properties – will be completed in coordination with vegetative clearing and construction activities in such a way that historic properties will not be adversely affected prior to the implementation of any mitigation measures.
 - a. A Coordination Plan will be prepared for each state and will include those measures developed by Keystone pursuant to Stipulations V.B and V.C to complete the identification and evaluation of historic properties, and, as appropriate, mitigation of adverse effects to them during and coordinated with vegetation clearing and construction activities. In addition, the Coordination Plan will include a schedule for all proposed activities and recommended measures for the protection of unanticipated discoveries in accordance with Attachment C, as appropriate.
 - b. Keystone will submit the draft Coordination Plan for each state for such spreads, including the Montana, South Dakota, Nebraska, Kansas, Oklahoma and Texas spreads, to the DOS, BLM (as applicable) ACHP, SHPOs, THPOs, and consulting

parties for thirty (30) calendar day review. Keystone shall address timely comments and recommendations submitted by the applicable SHPO, consulting Indian tribes, and other consulting parties in preparation of the Final Coordination Plan for each state. When it has addressed all of the comments and recommendations, Keystone will submit the Final Coordination Plan for each state to DOS for review. DOS shall issue its final decision on the Coordination Plan for each state within thirty (30) calendar days. Following approval by DOS, the Final Coordination Plan for each state will be distributed to all of the SHPOs, consulting Indian tribes, and other consulting parties.

3. Keystone will complete implementation of the Final Coordination Plan approved by DOS during construction of the Montana, South Dakota, Nebraska, Kansas, Oklahoma and Texas spreads.

E. Historic Trail and Archaeological Monitoring Plan (“HTAM Plan”) and Tribal Monitoring Plan

1. In consultation with the SHPOs and Indian tribes, Keystone will monitor construction in selected areas of the APE of each spread as a supplement to identification efforts. Any historic properties identified by Keystone during monitoring will be treated in accordance with Stipulation VI.A and C.
 - a. The HTAM Plan outlines areas that have been previously identified by DOS during identification and evaluation efforts that warrant monitoring during soil disturbing activities for potential effects to historic properties.
 - b. The Tribal Monitoring Plan outlines areas that have been previously identified by Indian Tribes, either through the preparation of Traditional Cultural Property reports or through consultation, that warrant monitoring during clearing and trenching for potential effects to previously unidentified historic properties that may include properties of religious and cultural importance to an Indian tribe and that meet the National Register criteria (See 36 C.F.R. § 800.16(1)(a)).
2. Historic Trail monitoring will be performed by a professional who either meets the qualification standards for archaeology established in Stipulation I.A or is under the on-site supervision of such a professional. When the monitoring occurs on BLM managed lands, all monitors must have a valid Archaeological Resources Protection Act (ARPA) permit or be included on a BLM Cultural Resource Use Permit.
3. For tribal monitoring, other types of experience with construction monitoring and/or traditional cultural knowledge may be substituted for degrees required by the Standards at the discretion of the DOS. When the monitoring occurs on BLM managed lands, all monitors must have a valid Archaeological Resources Protection Act (ARPA) permit or be included on a BLM Cultural Resource Use Permit.

4. Keystone shall consider information provided by Indian tribes in a timely manner when completing the identification of historic properties before construction begins under Stipulation V.B and in implementing a HTAM Plan and Tribal Monitoring Plan provided for under Stipulation V.E. Keystone shall provide Indian tribes a reasonable opportunity to participate as monitors during Project construction. In those areas previously identified by Indian tribes as needing monitoring, the Tribal Monitoring Plan stipulates that at least one and at most two monitors will be used per construction spread depending upon the extent and location of construction activities.
5. Keystone has submitted a plan for historic trail and archaeological monitoring and tribal monitoring for each spread to the DOS, BLM, ACHP, SHPO, THPOs, and Consulting Parties for review and comment prior to the signing of this Agreement. The Tribal Monitoring Plan and HTAM Plan are attached to this agreement in Attachments E and F.
6. Keystone will implement the HTAM Plan and Tribal Monitoring Plan for each spread that has been approved by DOS.

F. Construction

1. Lead Environmental Inspector (EI): Prior to initiating vegetative clearing or construction, Keystone will employ the Lead EI whose responsibilities will include ensuring compliance with the terms of this PA. In meeting this responsibility, the Lead EI will rely on the technical expertise of on-site professionals who meet the standards established in Stipulation I.A and tribal monitors with experience outlined in Stipulation V.E.3.
 - a. The Lead EI will monitor construction activities on-site and prepare a daily log reporting to Keystone on activities performed to implement the terms of this PA, as appropriate. Keystone will make the daily log available to the DOS and SHPOs, consulting Indian tribes, and other consulting parties upon request.
 - b. Keystone will ensure through the construction contract that the Lead EI will possess the authority to stop construction in the event of an inadvertent discovery in accordance with Stipulation VI.A and Attachment C.
2. Training: Keystone will ensure that if the Lead EI does not meet the professional qualification standards established in Stipulation I.A, the Lead EI receives appropriate training in historic preservation from a professional who meets the standards established in Stipulation I.A in order to perform the requirements of this PA. Keystone also will provide an appropriate level of training in historic preservation conducted by a professional who meets the standards established in Stipulation I.A to all construction personnel (including new, added, replaced workers) so that PA requirements are understood and unanticipated discoveries quickly identified. Keystone will conduct this training prior to initiating vegetative clearing or

construction activities on a spread, and conduct periodic refresher training during construction of the spread.

3. This Programmatic Agreement and Attachment E, the Tribal Monitoring Plan, have given tribes the opportunity to provide information about historic properties of concern to the tribe(s).
4. Construction Contract: Keystone will incorporate the terms of Stipulation VI.A and Attachment C into construction contracts to ensure that its Lead EI and construction contractors meet their responsibility for notification of the unanticipated discoveries.

G. Scheduling

The DOS may authorize the start of vegetative clearing and construction for an individual spread when the plans prepared in accordance with Stipulations V.D and V.E as appropriate for that spread, have been submitted by Keystone and approved by DOS in accordance with the terms of this PA.

VI. UNANTICIPATED DISCOVERIES DURING CONSTRUCTION OF THE KEYSTONE XL PROJECT

A. Pipeline Construction

1. “Applicable federal agency” is the federal agency with jurisdiction for the land on which construction is occurring or, in the absence of such an agency, DOS, as appropriate.
2. If previously unidentified historic properties are discovered by monitors or construction personnel unexpectedly as pipeline construction activities are carried out within the one-hundred and ten (110) foot-wide construction corridor or other ancillary facilities and access roads within the APE, the construction contractor will immediately halt all construction activity within a one-hundred and fifty (150) foot radius of the discovery, notify Keystone’s Lead EI of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the Lead EI shall:
 - a. Inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
 - b. Clearly mark the area of the discovery;
 - c. Implement additional measures other than those mentioned above, as appropriate, to protect the discovery from looting and vandalism; and
 - d. Notify the applicable federal agency SHPOs, consulting Indian tribes, and other consulting parties of the discovery.

3. The applicable federal agency shall notify all consulting parties that it will be receiving comments concerning the unanticipated discovery and provide contact information. The applicable federal agency will have seven (7) calendar days following notification provided in accordance with Stipulation VI.A.2 to determine the National Register eligibility of the discovery after considering the timely filed views of the SHPOs, consulting Indian tribes, and other consulting parties and Keystone . The applicable federal agency may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).
4. For properties determined eligible or assumed to be eligible pursuant to Stipulation VI.A.3, the applicable federal agency will notify the ACHP, SHPOs, consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.
 - a. SHPOs, consulting Indian tribes, and other consulting parties will have forty-eight (48) hours to provide their views on the proposed actions.
 - b. The applicable federal agency will ensure that the timely filed recommendations of SHPOs, consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to resolve adverse effects.
 - c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. Dispute Resolution: The applicable federal agency will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding resolution of adverse effects that relate to the implementation of Stipulation VI. The applicable federal agency will use the contact information provided in Attachment C or D in order to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide the applicable federal agency with recommendations on resolving the dispute. The applicable federal agency will take into account any timely filed recommendations provided by the ACHP in making a final decision about how to proceed.

B. Construction or Modification of Electrical Transmission Facilities

1. If previously unidentified historic properties are discovered unexpectedly during construction or modification of transmission facilities funded by RUS, the RUS applicant's construction contractor will immediately halt all construction activity within a one-hundred and fifty (150) foot radius of the discovery, notify the RUS applicant of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the RUS applicant shall:
 - a. Notify the RUS Contact (and BLM Contact if discovery occurs on BLM land);

- b. Inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
 - c. Clearly mark the area of the discovery; and
 - d. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism.
2. Upon receipt of such notification RUS and BLM (if applicable) will coordinate the notification of SHPOs, consulting Indian tribes, and other consulting parties and notify the SHPOs, consulting Indian tribes, and other consulting parties of the discovery.
3. RUS and BLM (if applicable) will have seven (7) calendar days following notification provided in accordance with Stipulation VI.B.1 to determine the National Register eligibility of the discovery in consultation with the SHPOs, consulting Indian tribes, other consulting parties, and Keystone. RUS may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).
4. For properties determined eligible pursuant to Stipulation VI.B.3, RUS, in coordination with the BLM (if applicable), will notify the SHPOs, consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects. SHPOs, consulting Indian tribes, and other consulting parties will provide their views on the proposed actions within forty-eight (48) hours. RUS will ensure that the timely filed recommendations of the SHPOs, consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of those actions that the applicant will implement to resolve adverse effects. Once RUS approval has been granted, its applicant will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. Dispute Resolution: RUS and BLM (if applicable) will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding the resolution of adverse effects that relate to the implementation of Stipulation VI. The applicable federal agency will use the contact information provided in Attachment D in order to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide RUS and BLM (if applicable) with its recommendations for resolving the dispute. RUS and BLM (if applicable) will take into account any recommendations provided by the ACHP in making a final decision about how to proceed.
6. Reporting: No later than six (6) months following the resumption of construction within the location of the discovery, RUS will submit a final report to the SHPOs, consulting Indian tribes, and other consulting parties describing implementation of the actions taken in accordance with Stipulation VI.B and, as appropriate, the analysis and interpretation of recovered information.

C. Unanticipated Discovery of Human Burials and Remains, and Funerary Objects

1. When Native American human remains or funerary objects or objects of cultural patrimony are unexpectedly discovered during construction of the Keystone XL Project on federal or tribal lands within the APE, Keystone or a RUS applicant, as appropriate, will notify immediately the federal agency responsible for compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001 et. seq.] and its implementing regulations, 43 C.F.R. Part 10.
2. Non-Native American human burials and remains, and funerary objects discovered on federal lands within the APE will be treated by the federal agency having jurisdiction of the remains in accordance with applicable federal law, taking into account the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).
3. DOS, WESTERN, and RUS will treat human burials and remains discovered on non-federal land in accordance with the provisions of Attachment C and any applicable laws. In those instances where the USACE has jurisdiction under Section 10 or 404 permitting authority for non-federal lands in the APE, the applicable federal agencies will ensure that Keystone complies with the provisions of Attachment C acting in the place of the DOS. In determining appropriate actions to be carried out, DOS, RUS, and/or other federal agencies will be guided by the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).

VII. CURATION

- A. Federal agencies will curate any artifacts, materials or records resulting from archaeological identification and mitigation conducted on federal lands under their jurisdiction in accordance with 36 CFR Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections.*" Federal agencies with jurisdiction over the federal lands will consult with Indian tribes as required in 36 CFR 79.
- B. Keystone and RUS applicants will return all artifacts recovered from private lands to the respective landowner after analysis is complete, unless applicable state law requires otherwise. Keystone and RUS applicants will encourage and assist landowners in donating any returned artifacts to a local curation facility identified by the respective SHPO. Keystone and RUS applicants shall pay all required curation fees associated with the donation of artifacts to the local curation facility.
- C. On federally controlled or owned properties, federal agencies will determine the disposition of human burials, human remains and funerary objects in accordance with applicable federal law.

VIII. REPORTING

- A. Within three months of completion of pipeline construction of a spread, Keystone will submit a comprehensive draft report to DOS describing the results and findings of the implementation of the actions and plans specified in Stipulations V.C through G, VI.A, including Attachment C.
- B. Keystone will submit a draft comprehensive report for each spread to the SHPOs, consulting Indian tribes, and other consulting parties of the respective states in which the spread is located, for thirty (30) day review and comment. Keystone shall address timely comments and recommendations submitted by SHPOs, consulting Indian tribes, and other consulting parties in preparation of the Final Comprehensive Report for that spread. Keystone will submit the final report to DOS for review and approval. The final comprehensive report will be provided by DOS to the SHPOs, consulting Indian tribes, and other consulting parties once approved.

IX. MONITORING IMPLEMENTATION OF THE PA

Each quarter following the execution of this PA until it expires or is terminated, the DOS with the assistance of the USACE, BLM, RUS, FSA, NRCS, BIA, and RECLAMATION as necessary will provide the SHPOs, consulting Indian tribes, and other consulting parties to this PA a progress report summarizing the work carried out pursuant to its terms. Such report will include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the efforts to carry out the terms of this PA. DOS will maintain and update a list of the current contact for the SHPOs, consulting Indian tribes, and other consulting parties and will be distributed in each quarterly report.

X. DISPUTE RESOLUTION

- A. “Appropriate federal agency” refers to the DOS, BLM, RUS, RECLAMATION, and USACE, or other federal land managing and/or permitting agency as applicable.
- B. Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the appropriate federal agency will consult with such party to resolve the objection. If the appropriate federal agency determines that such objection cannot be resolved, the appropriate federal agency will:
 - 1. Forward all documentation relevant to the dispute, including the applicable federal agency’s proposed resolution, to the ACHP. The ACHP will provide the appropriate federal agency with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the appropriate federal agency will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The appropriate federal agency will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, the applicable federal agency may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the appropriate federal agency will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. The federal agencies are responsible for carrying out all other actions subject to the terms of this PA that are not the subject of the dispute.
 - D. The process of dispute resolution outlined in Stipulation X does not pertain to disputes that arise from unanticipated discoveries covered in Stipulation VI.

XI. DURATION

This PA will be null and void if all of its stipulations have not been carried out within five (5) years from the date of its execution. At such time, and prior to work continuing on the Keystone XL Project, the DOS, USACE, BLM, RUS, WESTERN, RECLAMATION and NPS will either (a) execute a Memorandum of Agreement (MOA) or PA pursuant to 36 CFR §§ 800.6 or 800.14(b), respectively, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR. § 800.7. Prior to such time, the DOS may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XII. The DOS, USACE, BLM, RUS, WESTERN, RECLAMATION and NPS will notify the signatories and concurring parties as to the course of action they will pursue.

XII. AMENDMENT

Any signatory party to this PA may propose in writing to the other signatory parties that it be amended. The signatory parties will consult in an effort to reach agreement on an amendment. Any amendment will be effective on the date it is signed by all of the signatories and filed with the ACHP.

XIII. TERMINATION

- A. If any signatory to this PA determines that its terms will not or cannot be carried out, that party will immediately consult with the other parties to attempt to develop an amendment per Stipulation XII. If within thirty (30) calendar days an amendment cannot be reached, any signatory may terminate its participation in the PA upon written notification to the other signatories.
- B. Termination by an individual SHPO shall only terminate the application of this Agreement within the jurisdiction of the SHPO.

- C. If the PA is terminated in its entirety, and prior to work continuing on the undertaking, the DOS shall request, take into account, and respond to the comments of the ACHP in accordance with 36 CFR § 800.7(a). Following consultation with the ACHP, the DOS will notify the signatories and concurring parties as to the course of action it will pursue.

XIV. COORDINATION WITH OTHER FEDERAL REVIEWS

In the event that Keystone or a federal agency applies for additional federal funding or approvals for the Keystone XL Project and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with the applicable SHPO and the ACHP. Any necessary modifications will be considered in accordance with Stipulation XII.

XV. SCOPE OF THE PA

This Agreement is limited in scope to actions that will facilitate the construction of the Keystone XL Project and related facilities, and is entered into solely for that purpose.


EXECUTION of this PA by the DOS, ACHP, BLM, RUS, WESTERN, USACE, RECLAMATION, NPS, NRCS, FSA, BIA, the Montana SHPO, South Dakota SHPO, Nebraska SHPO, Kansas SHPO, Oklahoma SHPO, and Texas SHPO and implementation of its terms evidence that the DOS, WESTERN, BLM, RUS, NRCS, FSA, BIA, USACE, RECLAMATION, and NPS have taken into account the effects of the Keystone XL Project on historic properties and afforded the ACHP an opportunity to comment.

A handwritten signature in black ink, appearing to be 'JR', is written over the 'United States Department of State' text.

United States Department of State

4 Aug 2011

Date



Robert J. Ruch
Colonel, Corps of Engineers
District Commander

2 Aug 11
Date


Deborah K. Johnson Morford

Aug. 10, 2011

Deborah Johnson Morford
Field Manager, Miles City Field Office
Bureau of Land Management

Date

008158

 July 14, 2011
Date

Michael J. Ryan
Regional Director, Great Plains Region
Bureau of Reclamation

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Alice A. Herwood

7/15/11

Weldon Loudermilk
Great Plains Regional Director
United States Bureau of Indian Affairs

Date

Mark S. Plank

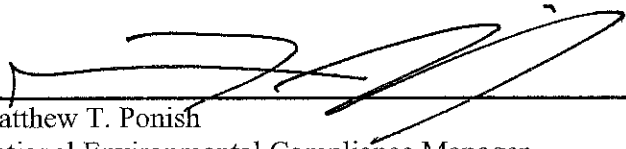
7/12/11

Mark S. Plank

Date

Director, Engineering and Environmental Staff

United States Department of Agriculture Rural Utilities Service



Matthew T. Ponish
National Environmental Compliance Manager
United States Department of Agriculture Farm Service Agency

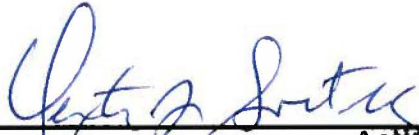
July 21, 2011

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Seattle



AUG 03 2011

~~Don Gohmert~~ Salvador Salinas **Acting**

Date

State Conservationist

United States Department of Agriculture Natural Resources Conservation Services

Programmatic Agreement

Keystone XL Project
June 2011

008163

Robert J. Harris

7/14/11

Robert Harris

Date

Regional Manager, Upper Great Plains Region
Western Area Power Administration (WESTERN)

for Charles Devin Vaughan
John M. Fowler
Executive Director
Advisory Council on Historic Preservation

8/12/11
Date

Mark Wolfe

7/21/11

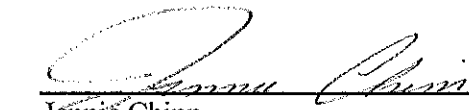
Mark Wolfe
State Historic Preservation Officer
Texas

Date

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Jennie Chinn
State Historic Preservation Officer
Kansas

7-7-11
Date

Mark Baumber

7/8/2011

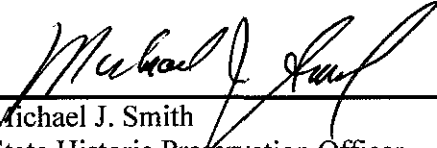
Mark Baumber, Ph.D.
State Historic Preservation Officer
Montana

Date

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**Cardno ENTRIX
Seattle**


Michael J. Smith
State Historic Preservation Officer
Nebraska

08-03-2011

Date



July 13, 2011

Dr. Bob L. Blackburn
State Historic Preservation Officer
Oklahoma

Date

Jay D. Voigt
Mr. Jay D. Voigt
State Historic Preservation Officer
South Dakota

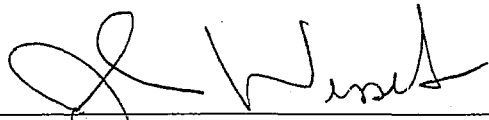
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Date

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**Cardno ENTRIX
Seattle**



4 August 2011

John Wessels
Regional Director, Intermountain Region
National Park Service
(invited signatory)

Date



7-25-2011

Mary Sexton

Date

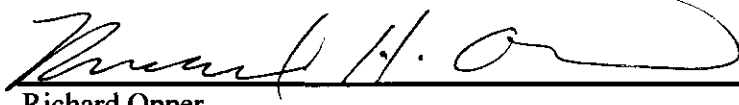
Director

Montana Department of Natural Resources and Conservation
(invited signatory)

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7/18/11

Richard Opper

Date

Director

Montana Department of Environmental Quality
(invited signatory)



David Montemurro
TransCanada Keystone XL Pipeline, L.P.
(invited signatory)

July 21/2011
Date



Robert Jones
Vice President

21-July-2011

Carlos Bullock

8-8-11

Carlos Bullock, Tribal Council Chairman
Alabama-Coushatta Tribe of Texas
(concurring party)

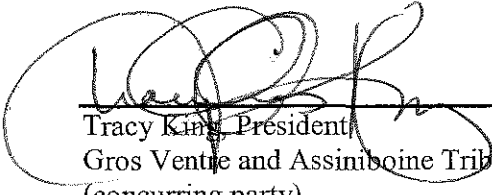
Date

Willie Sharp

Willie Sharp, Chairman
Blackfeet Nation
(concurring party)

8/4/11

Date



Tracy King, President
Gros Ventre and Assiniboine Tribe of Ft. Belknap
(concurring party)

7/28/2011
Date



Tim Rhodd, Chairman
Iowa Tribe of Kansas and Nebraska
(concurring party)

7-8-11

Date

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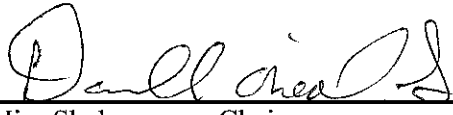
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Seattle



7-25-11

Thomas Gamble, ~~Chairman~~ Chief
Miami Tribe of Oklahoma
(concurring party)

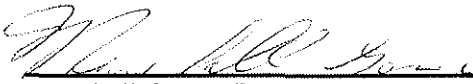
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8/5/11

Jim Shakespeare, Chairman
Northern Arapaho Tribe
(concurring party)

Date



8-2-11

Marshall Gover, President
Pawnee Nation of Oklahoma
(concurring party)

Date

ATTACHMENT A

The following Tables show properties for which Keystone has been denied access to conduct identification and evaluation studies as of the finalization of the PA.

| Table 1: Areas Not Surveyed along Mainline Route in Montana | | | | | |
|--|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Montana | Fallon | 249.1 | 250.2 | Needs survey | 1.1 |
| Montana | Fallon | 227.2 | 227.4 | Needs survey | 0.2 |
| Montana | Fallon | 228.1 | 228.1 | Surveyed on November 2010 CL; Addendum 6 in progress | 0.01 |
| Montana | Dawson | 0.2 | 1.4 | Needs survey | 1.2 |
| Montana | Dawson | 4.8 | 6.3 | Needs survey | 1.5 |
| Montana | Dawson | 7.6 | 9.1 | Needs survey | 1.5 |
| Montana | Dawson | 17.2 | 17.6 | Needs survey | 0.5 |
| Montana | Dawson | 17.9 | 18.4 | Needs survey | 0.5 |
| Montana | Dawson | 18.4 | 19.1 | Needs survey | 0.7 |
| Montana | Dawson | 20.4 | 20.7 | Surveyed on November 2010 CL; Addendum 6 in progress | 0.3 |
| Montana | Dawson | 21.7 | 22.2 | Surveyed on November 2010 CL; Addendum 6 in progress | 0.4 |
| Montana | McCone | 148.4 | 149.7 | Needs survey; Incorporated into November 2010 CL | 1.3 |
| Montana | McCone | 144.4 | 144.5 | Needs survey; Incorporated into November 2010 CL | 0.1 |
| Montana | Valley | 1.1 | 1.2 | Needs survey; Incorporated into November 2010 CL-MT-LO-01 | 0.1 |
| Montana | Dawson | 1.9 | 2 | Needs survey; Incorporated into November 2010 CL | 0.1 |
| Montana | Fallon | 0 | 0.01 | Needs survey | 0.01 |
| Montana | McCone | 0 | 0.5 | Needs survey | 0.5 |

| Table 1: Areas Not Surveyed along Mainline Route in Montana | | | | | |
|--|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Montana | McCone | 0 | 2.2 | Surveyed on November 2010 CL; Addendum 6 in progress | 2.2 |
| Montana | Dawson | 0 | 1.9 | Surveyed on November 2010 CL; Addendum 6 in progress | 1.9 |
| Montana | Dawson | 1 | 2 | Surveyed on November 2010 CL; Addendum 6 in progress | 2 |
| Montana | Sheridan | | | Surveyed on November 2010 CL; Addendum 6 in progress | |
| Montana | Roosevelt | | | Surveyed on November 2010 CL; Addendum 6 in progress | |
| Montana | Prairie | | | Needs survey | |

| Table 2: Areas Not Surveyed along Mainline Route in South Dakota | | | | | |
|---|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| South Dakota | Harding | 352.8 | 353.7 | Needs survey | 0.9 |
| South Dakota | Meade | 417.9 | 418.2 | Needs survey | 0.3 |
| South Dakota | Haakon | 481.4 | 481.5 | Surveyed on November 2010 CL; Addendum 7 in progress | 0.1 |
| South Dakota | Jones | 492 | 492.6 | Needs survey | 0.6 |
| South Dakota | Dawson | 194 | 194.5 | Surveyed on November 2010 CL; Addendum 7 in progress | 0.5 |
| South Dakota | Harding | 2.9 | 3.2 | Needs survey | 0.3 |
| South Dakota | Harding | 3.8 | 4.4 | Needs survey | 0.3 |
| South Dakota | Meade | 1.1 | 1.3 | Surveyed on November 2010 CL; Addendum 7 in progress | 0.1 |

| Table 2: Areas Not Surveyed along Mainline Route in South Dakota | | | | | |
|---|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| South Dakota | Hughes | | | Surveyed on November 2010 CL; Addendum 7 in progress | |

| Table 3: Areas Not Surveyed along Mainline Route in Nebraska | | | | | |
|---|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Nebraska | Keya Paha | 599.70 | 600.50 | Surveyed 6-4-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.80 |
| Nebraska | Keya Paha | 600.90 | 601.50 | Needs survey | 0.60 |
| Nebraska | Keya Paha | 614.20 | 614.45 | Needs survey | 0.25 |
| Nebraska | Holt | 630.80 | 631.65 | Surveyed 6-2-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.85 |
| Nebraska | Holt | 632.70 | 633.15 | Surveyed 6-7-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.45 |
| Nebraska | Holt | 634.75 | 635.45 | Surveyed 6-3-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.70 |
| Nebraska | Holt | 653.55 | 655.45 | Surveyed 6-7-11 on Nov 2010 CL; Addendum No. 7 report in progress | 1.90 |
| Nebraska | Holt | 656.80 | 657.90 | Surveyed 6-3-11 on Nov 2010 CL; Addendum No. 7 report in progress | 1.10 |
| Nebraska | Garfield | 672.55 | 679.50 | Not on Nov 2010 CL | 6.95 |
| Nebraska | Wheeler | 687.60 | 687.90 | Surveyed 6-10-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.30 |
| Nebraska | Wheeler | 688.15 | 688.35 | Surveyed 6-10-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.20 |

| Table 3: Areas Not Surveyed along Mainline Route in Nebraska | | | | | |
|---|---------------|----------------------|--------------------|---|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Nebraska | Wheeler | 688.70 | 688.95 | Surveyed 6-10-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.25 |
| Nebraska | Wheeler | 691.40 | 691.65 | Surveyed 6-11-11 on Nov 2010 CL; Addendum No. 7 report in progress by applicant | 0.25 |
| Nebraska | Wheeler | 692.70 | 693.35 | Surveyed 6-11-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.65 |
| Nebraska | Greeley | 698.35 | 698.70 | Surveyed 6-6-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.35 |
| Nebraska | Greeley | 700.10 | 700.35 | Surveyed 6-6-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.25 |
| Nebraska | Greeley | 700.55 | 702.55 | Surveyed 6-6-11 on Nov 2010 CL; Addendum No. 7 report in progress | 2.00 |
| Nebraska | Greeley | 703.25 | 705.35 | Partially surveyed 6-6-11 on Nov 2010 CL with 1.35 miles no access from MP 704.0 to 705.35; Addendum No. 7 report in progress | 1.35 |
| Nebraska | Greeley | 709.80 | 709.80 | Surveyed 5-31-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.00 |
| Nebraska | Greeley | 716.40 | 717.10 | Surveyed 6-1-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.70 |
| Nebraska | Greeley | 799.00 | 799.10 | Surveyed 5-27-11 on Nov 2010 CL; Addendum No. 7 report in progress | 0.10 |
| Nebraska | Fillmore | 799.40 | 799.60 | Not on Nov 2010 CL | 0.20 |
| Nebraska | Fillmore | 800.15 | 800.60 | Needs survey | 0.45 |

| Table 4: Areas Not Surveyed along Mainline Route in Oklahoma | | | | | |
|---|---------------|----------------------|--------------------|---------------|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Oklahoma | Seminole | 42.460 | n/a | Needs survey | 0.39 ac |
| Oklahoma | Grady | Offline | n/a | Needs survey | 74.2 ac |
| Oklahoma | Hughes | 75.650 | n/a | Needs survey | 0.250 |
| Oklahoma | Hughes | 75.70 | 75.80 | Needs survey | 0.100 |
| Oklahoma | Pottawatomie | Offline | n/a | Needs survey | 17 ac |
| Oklahoma | Pittsburg | Offline | n/a** | Needs survey | 9.12 ac |
| Oklahoma | Coal | 88.640 | n/a | Needs survey | 0.122 |
| Oklahoma | Atoka | 127.440 | n/a | Needs survey | 3.1 ac |
| Oklahoma | Atoka | 127.60 | 128.34 | Needs survey | 0.737 |
| Oklahoma | Bryan | 132.800 | n/a** | Needs survey | 2.529 |

**Not applicable

| Table 5: Areas Not Surveyed along Mainline Route in Texas | | | | | |
|--|---------------|----------------------|--------------------|---------------|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Texas | Fannin | 160.650 | n/a | Needs survey | 3 ac |
| Texas | Fannin | 161.85 | n/a | Needs survey | 0.65 ac |
| Texas | Lamar | 162.30 | 162.43 | Needs survey | 0.130 |
| Texas | Lamar | 173.980 | n/a | Needs survey | 2 ac |
| Texas | Lamar | 185.110 | n/a | Needs survey | 2 ac |
| Texas | Hopkins | 206.880 | n/a | Needs survey | 0.48 ac |
| Texas | Franklin | 231.31 | n/a | Needs survey | 0.049 |
| Texas | Wood | 233.42 | n/a | Needs survey | 0.082 |
| Texas | Wood | 251.34 | 251.55 | Needs survey | 0.210 |
| Texas | Upshur | 262.31 | 262.35 | Needs survey | 0.040 |
| Texas | Upshur | 262.42 | n/a | Needs survey | 0.002 |
| Texas | Upshur | 262.580 | n/a | Needs survey | 1.29 ac |
| Texas | Smith | 274.64 | 275.18 | Needs survey | 0.540 |
| Texas | Smith | 275.19 | n/a | Needs survey | 0.880 |
| Texas | Nacogdoches | Offline | n/a | Needs survey | 12.8 ac |
| Texas | Houston | Offline | n/a | Needs survey | 8.3 ac |
| Texas | Polk | 392.290 | n/a | Needs survey | 0.62 ac |
| Texas | Liberty | Offline | n/a | Needs survey | 13.4 ac |
| Texas | Jefferson | Offline | n/a | Needs survey | 72.6 ac |
| Texas | Jefferson | 453.44 | n/a | Needs survey | 0.755 |

| Table 5: Areas Not Surveyed along Mainline Route in Texas | | | | | |
|--|---------------|----------------------|--------------------|---------------|--------------|
| State | County | From Milepost | To Milepost | Status | Miles |
| Texas | Jefferson | 480.77 | 481.43 | Needs survey | 0.665 |
| Texas | Jefferson | 483.49 | 483.80 | Needs survey | 0.300 |
| Texas | Jefferson | 482.970 | n/a | Needs survey | 4.9 ac |

ATTACHMENT B

List of Indian Tribes Invited by the Department of State to Participate in Consultation:

Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama Quassarte Tribal Town, Alabama-Coushatta Tribe of Texas, Apache Tribe, Blackfeet Nation, Caddo Nation of Oklahoma, Cherokee Nation, Cheyenne River Sioux, Cheyenne-Arapaho Tribe of Oklahoma, Chickasaw Nation of Oklahoma, Chippewa-Cree Indians, Choctaw Nation of Oklahoma, Citizen Potawatomi Nation, Comanche Nation, Confederated Salish and Kootenai Tribes of the Flathead Indian Nation, Crow Creek Reservation, Crow Creek Sioux Tribe, Crow Tribe of Indians, Delaware Nation, Delaware Tribe of Indians, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe, Eastern Shoshone Tribe, Flandreau Santee Sioux Tribe, Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Fort Berthold Reservation, Fort Peck Tribes, Fort Sill Apache Tribe, Gros Ventre and Assiniboine Tribe of Ft. Belknap, Gun Lake Potawatomi, Hannahville Indian Community of Michigan, Ho-Chunk Nation of Wisconsin, Huron Potawatomi Nation, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Jena Band of Choctaw Indians, Jicarilla Apache Tribe, Kaw Nation, Kialegee Tribal Town of the Creek Nation of Oklahoma, Kickapoo Traditional Tribe of Texas, Kickapoo Tribe of Kansas, Kickapoo Tribe of Oklahoma, Kiowa Indian Tribe of Oklahoma, Lower Brule Sioux Tribe, Lower Sioux Indian Community, Miami Tribe of Oklahoma, Mille Lacs Band of Ojibwe, Modoc Tribe of Oklahoma, Muscogee Creek Nation, Nez Perce, Northern Arapaho Tribe, Northern Cheyenne Tribe, Northern Ute Tribe, Oglala Sioux, Omaha Tribe of Nebraska, Osage Nation, Otoe-Missouri Tribe, Ottawa Tribe of Oklahoma, Pawnee Nation of Oklahoma, Peoria Indian Tribe of Oklahoma, Poarch Band of Creek Indians, Pokagon Band of Potawatomi Indians of Michigan, Ponca Tribe of Indians of Oklahoma, Ponca Tribe of Nebraska, Prairie Band of Potawatomi Indians, Prairie Island Indian Community, Quapaw Tribal Business Committee, Quapaw Tribe, Red Lake Band of Chippewa Indians of Minnesota, Rosebud Sioux Tribe, Sac & Fox Nation of Oklahoma, Sac & Fox Nation of Missouri in Kansas and Nebraska, Sac & Fox Tribe of the Mississippi in Iowa, Santee Sioux Tribe of Nebraska, Seminole Nation, Seneca-Cayuga Tribe of Oklahoma, Shakopee Mdewakanton Sioux, Shawnee Tribe, Shoshone-Bannock Tribe, Sisseton-Wahpeton Oyate Sioux, Sisseton-Wahpeton Oyate Wahpeketze, Southern Ute Indian Tribe, Spirit Lake Tribe, Standing Rock Sioux Tribe, Stockbridge-Munsee Tribe, Thlopthlocco Tribal Town, Three Affiliated Tribes, Tonkawa Tribe, Trenton Indian Service Area, Turtle Mountain Band of the Chippewa, United Keetoowah Band of Cherokee Indians, Upper Sioux -Pezihutazizi Kapi, Ute Mountain Tribe, White Earth Band of Minnesota Chippewa, Wichita and Affiliated Tribes, Winnebago Tribe, Wyandotte Nation, Yankton Sioux, Ysleta del Sur Pueblo

ATTACHMENT C

STATE-BY-STATE PLANS FOR THE UNANTICIPATED DISCOVERY OF HUMAN REMAINS OR BURIALS ON NON-FEDERAL LANDS DURING CONSTRUCTION OF THE KEYSTONE XL PIPELINE PROJECT

I. For construction of the Keystone XL Project in Montana, Keystone will implement the following measures:

1. When an unmarked human burial or unregistered grave is encountered during construction activities, Keystone will comply with the Human Skeletal Remains and Burial Site Protection Act (Montana Code Ann. §22-3-801 through §22-3-811).
2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead Environmental Inspector (EI). The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Lead EI will ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The Lead EI will notify the county coroner, the DOS, ACHP, SHPO, consulting Indian tribes, and other consulting parties within forty-eight (48) hours of the discovery.
5. Within seventy-two (72) hours after notification, the county coroner will determine jurisdiction. If the coroner refers the matter to the SHPO, the SHPO will determine the treatment, including mitigation and disposition of the unmarked human burial or unregistered grave in accordance with Montana Code Ann. §22-3-801 through §22-3-811. Keystone will implement the treatment and disposition measures deemed appropriate by the SHPO.
6. Keystone will resume construction activities in the area of the discovery upon receipt of written authorization from either the county coroner or the Montana SHPO, whoever has jurisdiction under state law.

II. For construction of the Keystone XL Project in Kansas, Keystone will implement the following measures:

1. When unmarked human burial sites or human skeletal remains are encountered during construction activities, Keystone will comply with Kansas' Unmarked Burial Sites Preservation Act (KSA 75-2741 to 75-2754) and its implementing regulations (KAR 126-1-1 through 126-1-2).
2. Upon encountering unmarked human burials or unregistered graves during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI.

The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

3. Immediately following receipt of such notification, the Lead EI will:
 - a. Ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery;
 - b. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - c. Notify the appropriate county sheriff's office, the chairperson of the Unmarked Burial Sites Preservation Board (Kansas State Archaeologist), the DOS, the ACHP SHPOs, consulting Indian tribes, and other consulting parties of the discovery.
4. If Keystone determines that disturbance to the unmarked burial site or human remains cannot be avoided, Keystone will consult with the DOS, the SHPO, consulting Indian tribes, and other consulting parties to develop a detailed work plan for treatment of the burial site or human remains that includes provisions for the removal, treatment and disposition of human remains. In accordance with state law, Keystone will submit this work plan to the Unmarked Burial Sites Preservation Board as part of its request for a permit under KAR 126-1-2.
5. Keystone will resume construction activities in the area of the discovery once implementation of the measures authorized under the permit has been completed.

III. For construction of the Keystone XL Project in Nebraska, Keystone will implement the following measures:

1. When unmarked human skeletal remains or burial goods are discovered during construction activities, Keystone will comply with Nebraska Rev. Stat. § 12-1201 through § 12-1212, et seq. and § 28-1301.
2. Upon encountering unmarked human skeletal remains or burial goods during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Lead EI will ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. Keystone will notify the local law enforcement officer in the county, the DOS, the ACHP, the SHPO, consulting Indian tribes, and other consulting parties within forty-eight (48) hours of the discovery.
5. If local law enforcement determines that the remains are not associated with a crime, Keystone will determine if it is prudent and feasible to avoid disturbing the remains. If Keystone

determines that disturbance cannot be avoided, the Nebraska State Historical Society will notify the Commission on Indian Affairs in writing and seek associated tribes or kin.

6. Keystone will resume construction activities in the area of the discovery when the human skeletal remains or burial goods have been accepted by the Nebraska State Historical Society for the purposes of disposition.

IV. For construction of the Keystone XL Project in Texas, Keystone will implement the following measures:

1. When unmarked human burials or human remains are discovered during construction activities, Keystone will comply with Antiquities Code (Texas Code Ann. §191); Health and Safety (Texas Code Ann. §711.004).
2. Upon encountering unmarked human burials or human remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Lead EI will:
 - a. Ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery;
 - b. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - c. Notify the local law enforcement agency, the DOS, the ACHP, the State Historic Preservation Office (SHPO)/Texas Historical Commission (THC), consulting Indian tribes, and other consulting parties and the State Department of Health of the discovery.
4. If local law enforcement determines that the remains are not associated with a crime, Keystone will determine if it is prudent and feasible to avoid disturbing the remains. If Keystone determines that disturbance cannot be avoided, Keystone will remove and reinter the human remains in accordance with rules adopted by the SHPO and the State Health Department.
5. Keystone will resume construction activities in the area of the discovery once implementation of the measures required by the SHPO/THC and State Health Department has been completed.

V. For construction of the Keystone Project in Oklahoma, Keystone will implement the following measures:

1. When a burial ground, human remains or burial furniture is discovered during construction activities, Keystone will comply with Okla. Stat. Ann. 21 §1161-1168.7 (Oklahoma Burial Law).
2. Upon encountering a burial ground, human remains or burial furniture during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI. The construction contractor will implement interim measures to protect the discovery from

vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

3. Immediately following receipt of such notification, the Environmental Inspector will
 - a. ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery;
 - b. implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - c. notify the appropriate law enforcement officer in the county in which the remains have been discovered, the Chief Medical Examiner, the DOS, the ACHP, the SHPO, consulting Indian tribes, other consulting parties, and the landowner of the discovery.
4. Upon learning that remains are not associated with a crime, Keystone has fifteen (15) calendar days within which to notify the SHPO and the Oklahoma State Archaeologist. If the remains have a direct historical relationship to a tribe, the State Archaeologist will notify the SHPO and consults with the tribal leader within fifteen (15) calendar days. If Keystone determines that disturbance cannot be avoided, Keystone will treat the burial site or human remains in accordance with procedures established by the SHPO, the Oklahoma State Archaeologist, and consultation with the tribal leader.
5. Keystone will resume construction activities in the area of the discovery upon completion of the measures authorized by the SHPO and Oklahoma State Archaeologist.

VI. For construction of the Keystone XL Project in South Dakota, Keystone will implement the following measures:

1. When unmarked human skeletal remains and/or funerary objects are discovered during construction activities, Keystone will comply with South Dakota State Law Chapter 34-27.
2. Upon encountering an unmarked human skeletal remains and/or funerary objects during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred and fifty (150) foot radius from the point of discovery and notify Keystone's Lead EI. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Lead EI will ensure that construction activities have halted within a one-hundred and fifty (150) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The Lead EI will notify the local law enforcement agency, the DOS, the ACHP, the SHPO, the South Dakota State Archaeologist, consulting Indian tribes, and other consulting parties within forty-eight (48) hours of the discovery.
5. If local law enforcement determines that the remains are not associated with a crime, Keystone will determine if it is prudent and feasible to avoid disturbing the remains. If Keystone determines that disturbance cannot be avoided, Keystone will consult with the South Dakota State Archaeologist, SHPOs, consulting Indian tribes, and other consulting parties to determine

acceptable procedures for the removal, treatment and disposition of the human skeletal remains and funerary objects within five (5) calendar days. Keystone will implement the plan for removal, treatment, and disposition of the human skeletal remains and funerary objects as authorized by the South Dakota State Archaeologist.

6. Keystone may resume construction activities in the area of the discovery upon completion of the plan authorized by the State Archaeologist.

EXHIBIT B

APPENDIX E

Amended Programmatic Agreement and Record of Consultation

E1 Amended Programmatic Agreement

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Programmatic Agreement

Among
The U.S. Department of State,
National Park Service,
U.S. Army Corps of Engineers,
U.S. Department of Agriculture Farm Service Agency,
U.S. Department of Agriculture Natural Resources Conservation Service,
U.S. Department of Agriculture Rural Utilities Service,
U.S. Bureau of Indian Affairs,
U.S. Bureau of Land Management,
U. S. Bureau of Reclamation,
Western Area Power Administration,

Advisory Council on Historic Preservation,
Kansas State Historic Preservation Officer,
Montana Department of Environmental Quality,
Montana Department of Natural Resources and Conservation,
Montana State Historic Preservation Officer,
Nebraska State Historic Preservation Officer,
South Dakota State Historic Preservation Officer,
and
TransCanada Keystone Pipeline, LP

Regarding the Keystone XL Pipeline Project

WHEREAS, the U.S. Department of State (DOS) receives and considers applications for permits for cross-border oil pipelines pursuant to the authority delegated by the President of the United States under Executive Order (EO) 13337 (69 Federal Register 25299); and

WHEREAS, the DOS received an application for a Presidential Permit from TransCanada Keystone Pipeline, LP (Keystone) in September 2008 for the Keystone XL Pipeline Project (Keystone XL Project or the Project) which consisted of approximately 1,375 miles of new crude oil pipeline in Montana, South Dakota, Nebraska, Oklahoma, and Texas with associated effects in Kansas; and

WHEREAS, the DOS determined that issuance of a Presidential Permit for the proposed Keystone XL Project include a consultation and review process consistent with Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f, as amended) and its implementing regulations, "Protection of Historic Properties"; and

WHEREAS, the DOS developed a Programmatic Agreement (PA) in consultation with relevant state and federal agencies, Indian tribes, Keystone, and the public and executed this PA in August 2011; and

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WHEREAS, the Keystone XL Project Presidential Permit application was denied in January 2012; and

WHEREAS, on May 4, 2012, Keystone submitted an application for a revised Keystone XL Pipeline Project using a route in Montana and South Dakota largely unchanged from that proposed in the 2008 Keystone application and a substantially changed route in Nebraska that sought to avoid the Sands Hills Region identified by the Nebraska Department of Environmental Quality and terminates at Steele City, Nebraska; and

WHEREAS, the Oklahoma and Texas sections of the pipeline proposed in the 2008 Keystone application are no longer part of the application received in 2012 and, therefore, the Oklahoma and Texas State Historic Preservation Offices have no further obligations under this PA; and

WHEREAS, the proposed Project undertaking consists of construction of approximately 875 miles of new crude oil pipeline in the United States, as described in section 2.1 of the Final Supplemental Environmental Impact Statement (SEIS) and Attachment H, of which approximately 209 miles (24%) were not part of the 2008 Keystone XL Presidential Permit application; and

WHEREAS, the revised Keystone XL Project Area of Potential Effects (APE) includes: (1) in Montana—a 300-foot-wide corridor, 150 feet on each side of the centerline; (2) in South Dakota—a 300-foot-wide corridor, 150 feet on each side of the centerline; (3) in Nebraska—a 300-foot-wide corridor, 150 feet on each side of the centerline in areas consistent with the route evaluated in the Final EIS for the 2008 Keystone XL application. Within those areas outside the route evaluated in the Final EIS for the 2008 Keystone XL application, the APE consists of a 500-foot-wide corridor, 250 feet on each side of the centerline. For construction or modification of electrical facilities (including distribution lines, transmission lines, and substations), a 100-foot-wide corridor centered on the Project centerline will be used. For pumping stations, including two new pump stations in Kansas on the existing Keystone Cushing Extension pipeline, and other areas that are to be disturbed by construction-related activities and ancillary facilities (including construction camps and pump stations), the APE will include all areas of disturbance and areas to be indirectly affected; and

WHEREAS, the DOS, in consultation with the Advisory Council on Historic Preservation (ACHP), has determined that the Keystone XL PA executed in August 2011 should be amended to reflect the route proposed in the new Presidential Permit application and input from subsequent consultation; and

WHEREAS, the DOS has determined that the construction of the Keystone XL Project may have an adverse effect on historic properties listed in or eligible for listing in the National Register of Historic Places (NRHP), as defined in Stipulation I.C below, and has consulted with the Montana, South Dakota, Nebraska, and Kansas State Historic Preservation Officers (SHPOs), Indian tribes who may ascribe religious and cultural significance to historic properties that may be affected by the undertaking, the ACHP, other federal agencies with actions related to this undertaking, and other consulting parties consistent with 36 C.F.R. Part 800; and

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WHEREAS, consistent with 36 C.F.R. §§ 800.4(b)(2) and 800.5(a)(3), the DOS has elected to phase identification and evaluation of historic properties, and application of the criteria of adverse effect, respectively, because the undertaking and APE have changed necessitating additional efforts to identify historic properties and because access to some areas as identified in Attachment A has been restricted by property owners' refusal to grant Keystone permission to enter their private property; and

WHEREAS, consistent with 36 C.F.R. § 800.14(b), the DOS has elected to execute this PA for the Keystone XL Project because effects on historic properties cannot be fully determined prior to the issuance of a permit for the undertaking; and

WHEREAS, on February 2, 2011 the ACHP entered consultation for the Keystone XL pipeline as originally proposed finding that criteria 3 and 4 of Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of the regulations (36 C.F.R. Part 800) implementing Section 106 of NHPA, had the potential to be met; and

WHEREAS, the United States Army Corps of Engineers (USACE) has determined that the approval for the Keystone XL Project to cross USACE-administered lands (30 U.S.C. § 185) and to place structures in, under, or over navigable waters of the United States, as defined under 33 C.F.R. Part 329, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and a permit for the placement of dredge or fill material in waters of the United States as part of the Keystone XL Project in accordance with Section 404 of the Clean Water Act (33 U.S.C. § 344), are Federal actions related to the undertaking that require the USACE to comply with Section 106 of NHPA; and

WHEREAS, the U.S. Bureau of Land Management (BLM) has determined that approving the Keystone XL Project to cross Federal lands administered by the BLM would require authorization under Section 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185, as amended; and

WHEREAS, the BLM has determined that Keystone will require access roads crossing public lands administered by the BLM in support of the Keystone XL Pipeline Project and that the access roads will require authorization under Title V of the Federal Land Policy and Management Act (FLMPA), 43 U.S.C. § 1701, as amended; and

WHEREAS, the BLM has determined that the Keystone XL Project will require electrical power from rural electrical cooperatives and that portions of the transmission lines will cross public lands administered by the BLM and that the transmission lines crossing public lands will require authorization under Title V of the FLMPA; and

WHEREAS, the BLM approvals of these Project crossings in areas under its jurisdiction is a Federal action associated with the undertaking that requires the BLM to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the U.S. Bureau of Reclamation (USBR) manages lands and facilities that will be crossed by the Keystone XL Project and USBR approval of such crossings is a Federal action

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related to the undertaking that requires the USBR to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Farm Service Agency (FSA), assists landowners on private lands and may have federal responsibilities and requirements on some of these lands, which are part of the Project APE, as part of its loan and conservation programs, including the Conservation Reserve Program and the Farmable Wetlands Program; and

WHEREAS, the FSA approval of the Project crossings in these areas is a Federal action associated with the undertaking that requires the FSA to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Rural Utilities Service (RUS) has determined that the financial assistance it may provide to rural electric cooperatives and other entities for construction or modification of electrical facilities (including distribution lines, transmission lines, and substations) to power some Keystone XL Project pump stations or to ensure transmission system reliability, under the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, are Federal actions related to the undertaking that require the RUS to comply with Section 106 of NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Bureau of Indian Affairs (BIA) has responsibility for approving any right-of-ways crossing Indian Trust lands, such as those being considered as part of the route for a 230-kilovolt (kV) transmission line in south-central South Dakota associated with the Keystone project and described in Appendix J to the SEIS, and this is a Federal action related to the undertaking that requires the BIA to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Western Area Power Administration (Western) has determined that the modification and construction of substations and transmission lines that Western will own and that will provide power to the Keystone XL Pipeline Project, will require review under Section 106 of NHPA and 36 C.F.R. Part 800; and

WHEREAS, the Natural Resources Conservation Service (NRCS) has conservation easement interests in the states through which the Keystone XL pipeline will traverse; and

WHEREAS, the NRCS has determined that approving the Keystone XL Pipeline to cross an NRCS easement constitutes a federal action associated with the undertaking that requires NRCS to comply with Section 106 of the NHPA and 36 C.F.R. Part 800; and

WHEREAS, the proposed revised Keystone XL Project pipeline alignment crosses five National Historic Trails (the Lewis and Clark, Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails), all of which were designated by the U.S. Congress and have as their purpose “the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment” (National Trails System Act, P.L. 90-543, as amended); and

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WHEREAS, the National Park Service (NPS) administers National Historic Trails and is a signatory to this PA due to the potential for adverse effects to five National Historic Trails including the Lewis and Clark National Historic Trail; and

WHEREAS, the USACE, BLM, RUS, BIA, NRCS, NPS, Western, USBR, and FSA have designated the DOS as the lead Federal agency for purposes of Section 106 of the NHPA consistent with 36 C.F.R. § 800.2(a)(2); and

WHEREAS, the DOS will incorporate this PA into its decisional process on any Presidential Permit that it may issue for the Keystone XL Project and will include in any permit it issues on the Keystone XL Project a condition that Keystone will abide by its commitments in this PA; and

WHEREAS, the USACE, BLM, RUS, BIA, NRCS, NPS, Western, USBR, and FSA will each incorporate this PA into its decisional process on any authorization, approval, permit, or assistance it may issue for the Keystone XL Project, and will include in any authorization, approval, permit, or assistance it issues on the Keystone XL Project, a condition that Keystone will abide by its commitments in this PA; and

WHEREAS, cultural resource identification, evaluation, and effect assessment efforts, including those needed to address the changes in the APE, are summarized in Section 3.11 of the SEIS and Attachment G of this PA; and

WHEREAS, additional efforts to identify, evaluate and assess effects to historic properties for the Project will take place after the execution of this PA because access to some areas has been restricted, as summarized in Attachment A, and all areas of construction have yet to be determined; and

WHEREAS, for the purposes of this PA, “Indian tribes and Nations” shall have the same definition as “Indian tribes” which appears in Section 301(4) of the NHPA; and

WHEREAS, the DOS invited the 84 Indian tribes listed in Appendix B to participate in consultation; and

WHEREAS, the DOS provided Indian tribes the opportunity to provide information about historic properties of concern to Indian tribes and conduct Traditional Cultural Property (TCP) studies within the proposed Project APE, as summarized in Attachment I; and

WHEREAS, the DOS invited Indian tribes that participated in consultation in 2011 and 2013 to sign as Concurring Parties to this PA, consistent with 36 C.F.R. §§ 800.2(c)(2) and 800.6(c)(3); and

WHEREAS, other federal agencies that develop actions related to this undertaking subsequent to the execution of this PA may comply with Section 106 by following the requirements set forth in Stipulation XIV of this PA; and

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WHEREAS, the Montana Department of Natural Resources and Conservation has participated in consultation and was invited by the DOS consistent with 36 C.F.R. § 800.6(c)(2) to sign the PA in 2011 and amendments to the PA in 2013 as an invited signatory; and

WHEREAS, the Montana Department of Environmental Quality has participated in consultation and was invited by the DOS consistent with 36 C.F.R. § 800.6(c)(2) to sign the PA in 2011 and amendments to the PA in 2013 as an invited signatory; and

WHEREAS, Keystone, which would construct the Keystone XL Project pipeline if approved, has participated in consultation, and was invited by the DOS consistent with 36 C.F.R. §§ 800.2(c)(4) and 800.6(c)(2) to sign the PA in 2011 and amendments to the PA in 2013 as an invited signatory; and

WHEREAS, the DOS has provided the public with information about the undertaking and its effects on historic properties and sought public comment and input consistent with 36 C.F.R. §§ 800.2(d) from April 2009 through Federal Register notices, direct mailings, extensive scoping and comment meetings, and inviting comments from the public by phone, mail, fax, and email during public comment periods on the Keystone XL Pipeline Presidential Permit applications; and

NOW, THEREFORE, the DOS, USACE, BLM, RUS, BIA, FSA, NRCS, Western, USBR, NPS, ACHP, and the Montana, South Dakota, Nebraska, and Kansas SHPOs agree that the following stipulations will be implemented in order to take into account the effect of the undertaking on historic properties and to ensure actions consistent with Section 106 of the NHPA.

STIPULATIONS

The DOS, BLM, RUS, BIA, FSA, NRCS, Western, USACE, USBR, and NPS as appropriate, will ensure that the following stipulations are carried out.

I. STANDARDS AND DEFINITIONS

- A. Identification and evaluation studies and treatment measures required under the terms of this PA will be carried out by or under the direct on-site supervision of a professional who meets, at a minimum, the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* (48 FR 44716, September 29, 1983). These qualification standards do not apply to individuals recognized by consulting Indian tribes to have expertise in identification, evaluation, assessment of effect, and treatment of effects to historic properties of religious and cultural significance to Indian tribes.
- B. In developing scopes of work for identification and evaluation studies, and treatment measures required under the terms of this PA, Keystone and RUS borrowers, and other contractors working with Federal agencies, will take into account the following regulations and guidelines:

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1. The ACHP's guidance on conducting archaeology under Section 106 (2007);
2. The ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007);
3. Applicable SHPO and Tribal Historic Preservation Office guidance;
4. The Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983);
5. The "*Treatment of Archaeological Properties*" (ACHP 1983);
6. The *Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects*" (Federal Energy Regulatory Commission, Office of Energy Projects, December 2002);
7. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403);
8. Section 404 of the Clean Water Act (33 U.S.C. § 344);
9. BLM 8110 Manual: Identifying and Evaluating Cultural Resources;
10. Montana/Dakotas Cultural Resources Handbook 8110-1: Guidelines for Identifying Cultural Resources;
11. The National Trails System Act (P.L. 90-543, as amended);
12. Section 28 of the Mineral Leasing Act of 1920 (30 USC 185);
13. Title V of the Federal Land Policy and Management Act of 1976 (43 USC 1701); and
14. *National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties* (NPS 1990; Revised 1992: 1998)

C. Definitions

Coordination Plan: A plan that, pursuant to Stipulations V.B and V.D, describes the coordination of construction with identification and evaluation of cultural resources, treatment of adverse effects, and protection of unanticipated discoveries.

Concurring Parties: An invited consulting party to this PA that agrees with the content of the PA. Consistent with 36 C.F.R. § 800.6(c)(3), the refusal of a Concurring Party to sign the PA does not invalidate this PA. Concurring Parties may not terminate the PA.

Construction Spread: A construction unit or segment of a pipeline alignment or corridor to be determined by Keystone prior to construction.

Consulting Indian Tribes: Indian tribes that have consultative roles in the Section 106 process consistent with 36 C.F.R. § 800.2(c).

Consulting Parties: Parties that have consultative roles in the Section 106 process consistent with 36 C.F.R. § 800.2(c).

Data Recovery: The recovery of archaeological information from a historic property subject to an adverse effect.

Determination of Effect: A determination made by a Federal agency in regards to a Project's effect upon a historic property consistent with 36 C.F.R. Part 800.

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Determination of Eligibility: A determination made by a Federal agency, in coordination with the SHPO and/or designated representatives of consulting Indian tribes, as appropriate, respecting a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 C.F.R. Part 60 and 36 C.F.R. § 800.16(1)(2).

Effect: An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 C.F.R. § 800.16(i)).

Environmental Impact Statement: An analysis of a major Federal action's environmental impacts conducted consistent with NEPA.

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (see 36 C.F.R. § 800.16(1)(1)).

Invited Signatory: The DOS has invited Keystone, the Montana Department of Natural Resources and Conservation, and the Montana Department of Environmental Quality to sign this PA consistent with 36 C.F.R. § 800.6(c)(2). The refusal of any invited signatory to sign the PA does not invalidate the PA. An invited signatory, listed above, that has signed the PA, may terminate the PA consistent with 36 C.F.R. § 800.6(c)(8).

Historic Trail and Archaeological Monitoring Plan: A plan that, pursuant to Stipulation V.E and Attachment F, identifies appropriate areas for monitoring construction by professionals under the supervision of individuals who meet the professional qualifications in Stipulation I. The plan's principal goal is to reduce the potential for impacts to unidentified historic properties.

Signatory: The signatories are: the DOS, BLM, USBR, USACE, NPS, Western, RUS, NRCS, FSA, BIA, ACHP, and the SHPOs of Kansas, Montana, South Dakota, and Nebraska. Only signatories and the invited signatories, as defined, may terminate the PA consistent with 36 C.F.R. § 800.6(c)(8).

Tribal Monitoring Plan: A plan that, pursuant to Stipulation V.E and Attachment E, identifies appropriate areas for monitoring construction by tribal members appointed by their respective Indian tribes. These tribal members shall meet the qualifications as noted in Stipulation V.E.3. The plan's principal goal is to reduce the potential for impacts to previously unidentified historic properties that may also be properties of religious and cultural significance to Indian tribes that meet the National Register criteria (see 36 C.F.R. § 800.16(1)(a)).

Treatment Plan: A plan developed in consultation with the parties to this PA that identifies the minimization and mitigation measures for historic properties located within the APE that will be adversely affected by the Project.

II. CONFIDENTIALITY

The DOS, BLM, NRCS, BIA, FSA, RUS, Western, USBR, NPS, USACE, and Keystone will safeguard information about historic properties of religious and cultural significance to Indian tribes, including location information, or information provided by Indian tribes to assist in the identification of such properties, consistent with Section 304 of NHPA, 16 U.S.C. § 470w3, and all other applicable laws.

III. THE RESPONSIBILITIES OF FEDERAL AGENCIES WITH LAND MANAGEMENT AND OTHER PERMITTING AUTHORITIES

- A. The USACE will ensure, for that part of the APE under its jurisdiction, that it has met its compliance obligations pursuant to Section 10 and Section 404 permitting authority.
- B. The BLM will comply with Section 106 and its implementing regulations (36 C.F.R. Part 800) for the issuance of permits for those actions under its jurisdiction.
- C. The USBR will review and comment on the evaluation and treatment of any historic properties managed by the USBR.
- D. Attachment H includes maps that illustrate the Project areas that cross lands managed by the BLM and the USBR.
- E. Consultation for this Project between Indian tribes and Federal land management and permitting agencies will be coordinated through the DOS.

IV. KEYSTONE XL PROJECT—CONSTRUCTION OR MODIFICATION OF ELECTRICAL DISTRIBUTION/TRANSMISSION FACILITIES

- A. Prior to granting approval of financial assistance to construct or modify electrical facilities by rural electric cooperatives or other entities, the RUS will complete the requirements of 36 C.F.R. §§ 800.3 through 800.7 and notify the DOS of the outcome.
- B. In implementing Stipulation IV.A, the RUS may authorize a borrower to initiate Section 106 consultation in accordance with 36 C.F.R. § 800.2(c) (4). The RUS issued a blanket delegation for its borrowers to initiate Section 106 consultation in July 2009 and reissued the blanket delegation with some revision in August 2012. As the RUS recognized in those memos, the RUS may not delegate its responsibility to conduct government-to-government consultation with Indian tribes to a borrower, unless the RUS and that Indian tribe agree, in writing, to conduct consultation in that manner.
- C. Prior to construction of the 230-kV transmission line that Western will own, Western will complete the requirements of 36 C.F.R. §§ 800.3 through 800.7. In implementing

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Stipulation IV.C., Western will serve as a signatory under the PA. Western shall coordinate implementation of Stipulation IV.C with the DOS.

- D. The RUS will ensure that the terms of Stipulations VI.B and VI.C are incorporated into construction contracts to ensure that its borrowers and construction contractors meet their responsibility for notification of any unanticipated discoveries. When RUS-funded projects occur on BLM land, the RUS will coordinate with the BLM to ensure compliance with Stipulations VI.B and VI.C of this PA.
- E. Prior to granting approval or financial assistance for construction or modification of electrical distribution/transmission facilities that are necessary components of the pipeline project and therefore considered within the Project APE, any Federal agency that is incorporated into this PA pursuant to Stipulation XIV will complete the requirements of 36 C.F.R. §§ 800.3 through 800.7 for those facilities under its jurisdiction and notify the DOS of the outcome if not already carried out elsewhere in this PA.
- F. The DOS retains responsibility for completing the requirements of 36 C.F.R. §§ 800.3 through 800.7 for those electrical distribution/transmission facilities that are necessary components of the Project if they are not under the jurisdiction of any Federal agency and not referenced in Stipulation IV, A through E above.

V. KEYSTONE XL PROJECT – PIPELINE CONSTRUCTION

- A. The DOS has provided SHPOs, designated representatives of consulting Indian tribes, and other consulting parties with an opportunity to provide their views on the identification and evaluation of historic properties, consistent with 36 C.F.R. § 800.16(l)(1), including historic properties of religious and cultural significance to Indian tribes, and the treatment of affected historic properties, in connection with the construction of the Keystone XL Project. It will continue to provide all consulting parties with an opportunity to provide their views on the identification and evaluation of historic properties, assessment of effects, and treatment of adverse effects after approval of amendments to this PA.
- B. Identification and Evaluation of Historic Properties
 - 1. In consultation with the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties, the DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties within the APE for each construction spread, including in areas yet to be surveyed outlined in Attachment A, prior to the initiation of construction of that spread, consistent with 36 C.F.R. §§ 800.4(a), (b), and (c). On Federal lands, the scope of the identification effort will be determined by the DOS in consultation with the appropriate Federal land managing agency, applicable SHPOs, designated representatives of consulting Indian tribes, and other consulting parties.

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2. The DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, as appropriate, consistent with 36 C.F.R. §§ 800.4(a), (b), and (c), before Keystone initiates construction activities (including vegetative clearing to comply with the Migratory Bird Treaty Act, if clearing is undertaken).
 - a. In the identification and evaluation of historic properties to which Indian tribes may attach religious and cultural significance, the DOS will take into consideration information submitted by Indian tribes to the DOS prior to construction through consultations and through the protocols for TCP studies, post-review discovery, and the Tribal Monitoring Plan, as set forth in this PA.
 - b. In the event identification of historic properties cannot be completed for any Construction Spreads prior to construction, Keystone will develop and submit a Coordination Plan to the DOS for review and approval pursuant to Stipulation V.D. The Coordination Plan must describe the measures Keystone will use to implement and complete the identification and evaluation of cultural resources and appropriate consultation before any historic properties are adversely affected by vegetation clearing and construction activities related to that spread.

C. Treatment of Historic Properties

1. Whenever feasible, avoidance of adverse effects to historic properties will be the preferred treatment. In consultation with the DOS, ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties, Keystone may elect to consider and implement avoidance measures prior to completing the evaluation of historic properties.

Avoidance measures may include:

- a. Avoidance through pipeline or access road route variation or Project feature relocation;
 - b. Avoidance through abandonment;
 - c. Avoidance through bore or horizontal directional drill;
 - d. Avoidance by narrowing the construction corridor (“neck down”); or
 - e. Avoidance through the use of existing roadways as Project access roads to the extent practicable.
2. When historic properties are identified in the APE pursuant to Stipulation V.B, the DOS will apply criteria of adverse effect consistent with 36 C.F.R. § 800.5(a) in consultation with the ACHP, SHPO, designated representatives of consulting Indian tribes, and other consulting parties. If the DOS finds that historic properties might be adversely affected by actions covered under this PA and within the APE, the DOS will consult with the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties to determine prudent and feasible ways to avoid adverse effects.

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- a. Once the DOS approves avoidance measures, Keystone will implement those measures.
3. If the DOS determines that the adverse effect cannot be avoided, the DOS will consult with the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties to determine those measures to be implemented by Keystone to minimize and mitigate adverse effects on affected historic properties identified in the APE.
 4. If, after consultation, the DOS determines that the adverse effect cannot be avoided, Keystone will draft a comprehensive Treatment Plan for each adversely affected historic property. The Treatment Plan will describe the measures identified by the DOS under Stipulation V.C.3 to minimize and mitigate the adverse effect of pipeline construction activities on historic properties, the manner in which these measures will be carried out, and a schedule for their implementation.
 - a. When mitigation consists of or includes Data Recovery, the Treatment Plan also will identify the specific research questions to be addressed by Data Recovery with an explanation of their relevance, the archaeological methods to be used, and provisions for public interpretation and education, subject to Stipulation II restrictions, if any. Management summaries of all archaeological investigations must be submitted to the DOS, relevant Federal agencies, and the SHPO for review and approval prior to the commencement of construction activities and construction may be authorized on the basis of information contained in those summaries. Designated representatives of consulting Indian tribes will be notified for their information and awareness and may provide any relevant information to DOS and SHPO within nine (9) calendar days to inform their review of the summaries. Final reports must be submitted to the DOS and the SHPO for review within six months of the completion of the fieldwork.
 - b. A Treatment Plan may also include mitigation for adverse effects to historic districts, buildings and structures, and to TCPs and other properties of religious and cultural significance to Indian tribes. This mitigation may include the recordation of historic properties according to Historic American Building Survey/Historic American Engineering Record Standards and Guidelines for Architectural and Engineering Documentation. Other types of mitigation for adverse effects to historic districts, buildings, and structures, and to TCPs and other properties of religious and cultural significance to Indian tribes may also be described in the Treatment Plan. The mitigation proposed for an adverse effect to a historic district, building, and/or structure, and to TCPs and other properties of religious and cultural significance to Indian tribes will be commensurate with the level of significance and extent of adverse effect and will be determined in a manner consistent with Stipulation V.C.4.c.
 - c. Keystone will submit the draft Treatment Plan to the DOS, BLM (if applicable), ACHP, designated representatives of consulting Indian tribes, the SHPO of the

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applicable state, Montana Department of Environmental Quality (if applicable), Montana Department of Natural Resources and Conservation (if applicable), and other applicable consulting parties for a forty-five (45) calendar day review. Keystone will address timely comments and recommendations submitted by SHPOs, designated representatives of consulting Indian tribes, and other consulting parties in preparation of the Final Treatment Plan.

- d. When it has addressed all of the timely comments and recommendations, Keystone will submit the Final Treatment Plan to the DOS for review and approval. Keystone will also submit the Final Treatment Plan to the BLM for review and approval when involving lands subject to Stipulation III.C. The DOS and BLM will issue their final decision on the Treatment Plan within thirty (30) calendar days. Once the Final Treatment Plan is approved by the DOS (and the BLM if involving BLM-managed lands), copies of the Treatment Plan will be distributed to all SHPOs, designated representatives of consulting Indian tribes, and other consulting parties.
5. Keystone will make a reasonable and good faith effort to complete implementation of the Final Treatment Plan approved by the DOS prior to beginning construction of any spread for which the Treatment Plan is required. If it is not possible to meet this schedule, Keystone will develop a Coordination Plan in accordance with Stipulation V.D that establishes how appropriate treatment will be determined and implemented during construction of the respective spread.

D. Coordination of Construction and Historic Preservation Activities

1. The DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties and potential historic properties, and the mitigation of adverse effects to them in accordance with Stipulations V.B and V.C prior to the initiation of vegetative clearing if vegetative clearing and construction on the Keystone XL spreads, including the Montana, South Dakota, and Nebraska spreads, is to be undertaken.
2. If these DOS activities cannot be completed prior to the start of vegetative clearing and construction of these spreads, Keystone will develop and provide to the DOS a detailed plan describing how the requirements of Stipulations V.B and V.C—identification, evaluation and treatment of historic properties—will be completed in coordination with vegetative clearing and construction activities in such a way that historic properties will not be adversely affected prior to the implementation of any mitigation measures.
 - a. A Coordination Plan will be prepared for each state and will include those measures developed by Keystone pursuant to Stipulations V.B and V.C to complete the identification and evaluation of historic properties, and, as appropriate, mitigation of adverse effects to them during and coordinated with vegetation clearing and construction activities. In addition, the Coordination Plan

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will include a schedule for all proposed activities and recommended measures for the protection of unanticipated discoveries in accordance with Attachment C, as appropriate.

- b. Keystone will submit the draft Coordination Plan for each state for such spreads, including the Kansas, Montana, South Dakota, and Nebraska spreads, to the DOS, BLM (as applicable), ACHP, SHPOs (as applicable), designated representatives of consulting Indian tribes, and consulting parties for forty-five (45) calendar day review. Keystone shall address timely comments and recommendations submitted by the applicable SHPO, designated representatives of consulting Indian tribes, and other consulting parties in preparation of the Final Coordination Plan for each state. When it has addressed all of the comments and recommendations, Keystone will submit the Final Coordination Plan for each state to the DOS for review. The DOS shall issue its final decision on the Coordination Plan for each state within thirty (30) calendar days. Following approval by the DOS, the Final Coordination Plan for each state will be distributed to all of the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties.
3. Keystone will complete implementation of the Final Coordination Plan approved by the DOS during construction of the Kansas, Montana, South Dakota, and Nebraska spreads.
- E. Historic Trail and Archaeological Monitoring Plan (“HTAM Plan”) and Tribal Monitoring Plan
1. In consultation with the SHPOs and designated representatives of consulting Indian tribes, Keystone will monitor construction in selected areas of the APE of each spread as a supplement to identification efforts. Any historic properties identified by Keystone during monitoring will be treated in accordance with Stipulation VI.A and C.
 - a. The HTAM Plan outlines areas that have been previously identified by the DOS during identification and evaluation efforts that warrant monitoring during soil disturbing activities for potential effects to historic properties.
 - b. The Tribal Monitoring Plan outlines areas that have been previously identified by Indian tribes, either through the preparation of Traditional Cultural Property reports or through consultation, that warrant monitoring during clearing and trenching for potential effects to previously unidentified historic properties that may include properties of religious and cultural significance to an Indian tribe and that meet the National Register criteria (See 36 C.F.R. § 800.16(1)(1)).
 2. Historic Trail monitoring will be performed by a professional who either meets the qualification standards for archaeology established in Stipulation I.A or is under the on-site supervision of such a professional.

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3. At the discretion of the DOS, tribal monitors may substitute other types of experience with construction monitoring and/or traditional cultural knowledge for the degrees required by the Professional Qualification Standards. DOS may also consider other accommodations regarding education and experience where allowed by the Standards and implementing guidance.
4. In consultation with the DOS, Keystone will consider information provided by Indian tribes in a timely manner when completing the identification of historic properties before construction begins as set forth in Stipulation V.B and in the HTAM Plan and Tribal Monitoring Plan provided for under Stipulation V.E. Keystone will ensure that tribal monitors have reasonable access to Project construction sites and activities. In those areas previously identified by Indian tribes as needing monitoring, the Tribal Monitoring Plan stipulates that at least one monitor will be used per Construction Spread depending upon the extent and location of construction activities, as well as the relative historic importance of each Spread to each Indian tribe.
5. Keystone has submitted a plan for historic trail and archaeological monitoring and tribal monitoring for each spread to the DOS, BLM, ACHP, SHPO, designated representatives of consulting Indian tribes, and Consulting Parties for review and comment prior to the signing of this PA. The Tribal Monitoring Plan and HTAM Plan are attached to this PA in Attachments E and F.
6. Keystone will implement the HTAM Plan and Tribal Monitoring Plan for each spread that has been approved by the DOS.

F. Construction

1. Lead Environmental Inspector (EI): Prior to initiating vegetative clearing or construction, Keystone will employ the Lead EI whose responsibilities will include ensuring compliance with the terms of this PA. In meeting this responsibility, the Lead EI will rely on the technical expertise of on-site professionals who meet the standards established in Stipulation I.A and tribal monitors with experience outlined in Stipulation V.E.3.
 - a. The Lead EI will monitor construction activities on-site and prepare a daily log, reporting to Keystone and designated representatives of consulting Indian tribes on activities performed to implement the terms of this PA, as appropriate. Keystone will make the daily log available to the DOS and SHPOs, and other consulting parties upon request.
 - b. Keystone will ensure through the construction contract that the Lead EI will possess the authority to stop construction in the event of an inadvertent discovery in accordance with Stipulation VI.A and Attachment C.

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2. **Training:** Keystone will ensure that, if the Lead EI does not meet the professional qualification standards established in Stipulation I.A, the Lead EI will receive appropriate training in historic preservation from a professional who meets the standards established in Stipulation I.A in order to perform the requirements of this PA. Keystone also will provide an appropriate level of training in historic preservation conducted by a professional who meets the standards established in Stipulation I.A to all construction personnel (including new, added, replaced workers) so that PA requirements are understood and unanticipated discoveries quickly identified. Keystone will conduct this training prior to initiating vegetative clearing or construction activities on a spread. Keystone also will conduct periodic refresher training during construction of the spread.
3. **Construction Contract:** Keystone will incorporate the terms of Stipulation VI.A and Attachment C into construction contracts to ensure that its Lead EI and construction contractors meet their responsibility for notification of the unanticipated discoveries.

F. Scheduling

The DOS may authorize the start of vegetative clearing and construction for an individual spread when the plans prepared in accordance with Stipulations V.D and V.E as appropriate for that spread, have been submitted by Keystone and approved by the DOS in accordance with the terms of this PA.

VI. UNANTICIPATED DISCOVERIES OR ADVERSE EFFECTS DURING CONSTRUCTION OF THE KEYSTONE XL PROJECT

A. Pipeline Construction

1. “Applicable Federal agency” is the Federal agency with jurisdiction for the land on which construction is occurring or, in the absence of such an agency, the DOS, as appropriate.
2. If previously unidentified historic properties are discovered by monitors or construction personnel unexpectedly or unanticipated adverse effects on previously identified historic properties occur as pipeline construction activities are carried out within the one-hundred-and-ten (110) foot-wide construction corridor or other ancillary facilities and access roads within the APE, the construction contractor will immediately halt all construction activity within a one-hundred-and-fifty (150) foot radius of the discovery or adversely affected historic property, notify the Lead EI of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the Lead EI shall:
 - a. Inspect the work site to determine the extent of the discovery or adverse effect and ensure that construction activities have halted;
 - b. Clearly mark the area of the discovery or adverse effect;

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- c. Implement additional measures other than those mentioned above, as appropriate, to protect the discovery or adversely affected historic property from looting and vandalism; and
 - d. Notify the applicable Federal agency, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of the discovery or adverse effect.
3. In the case of an unanticipated discovery, the applicable Federal agency will notify all consulting parties that it will be receiving comments concerning the unanticipated discovery and provide contact information. The applicable Federal agency will have seven (7) calendar days following notification provided in accordance with Stipulation VI.A.2 to determine the National Register eligibility of the discovery after considering the timely filed views of the SHPOs, designated representatives of consulting Indian tribes, other consulting parties, and Keystone. The applicable Federal agency may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 consistent with 36 C.F.R. § 800.13(c).
4. For discovered properties determined eligible or assumed to be eligible pursuant to Stipulation VI.A.3, the applicable Federal agency will notify the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.
 - a. SHPOs, designated representatives of consulting Indian tribes, and other consulting parties will have ninety-six (96) hours to provide their views on the proposed actions.
 - b. The applicable Federal agency will ensure that the timely filed recommendations of SHPOs, designated representatives of consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to resolve adverse effects.
 - c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. In the case of unanticipated adverse effects to a previously identified historic property, the applicable Federal agency will notify the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.
 - a. SHPOs, designated representatives of consulting Indian tribes, and other consulting parties will have forty-eight (48) hours to provide their views on the proposed actions.
 - b. The applicable Federal agency will ensure that the timely filed recommendations of SHPOs, designated representatives of consulting Indian tribes, and other

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consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to mitigate adverse effects.

- c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the affected property.
6. Dispute Resolution: The applicable Federal agency will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding resolution of adverse effects that relate to the implementation of Stipulation VI.A. The applicable Federal agency will use the contact information provided in Attachment D to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide the applicable Federal agency recommendations on resolving the dispute. The applicable Federal agency will take into account any timely filed recommendations provided by the ACHP in making a final decision about how to proceed.

B. Construction or Modification of Electrical Facilities

1. If previously unidentified historic properties are discovered unexpectedly during construction or modification of transmission facilities funded by the RUS, the RUS borrower's construction contractor will immediately halt all construction activity within a one-hundred-and-fifty (150) foot radius of the discovery, notify the RUS borrower of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the RUS borrower shall:
 - a. Notify the RUS Contact (and BLM Contact if discovery occurs on BLM land);
 - b. Inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
 - c. Clearly mark the area of the discovery; and
 - d. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism.
2. Upon receipt of such notification the RUS and, if applicable, BLM will coordinate the notification of SHPOs, designated representatives of consulting Indian tribes, and other consulting parties and notify the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of the discovery.
3. The RUS and, if applicable, BLM will have seven (7) calendar days following notification provided in accordance with Stipulation VI.B.1 to determine the National Register eligibility of the discovery in consultation with the SHPOs, designated representatives of consulting Indian tribes, other consulting parties, and the borrower. The RUS and, if applicable, BLM may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 C.F.R. § 800.13(c).

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4. For properties determined eligible, or treated as such, pursuant to Stipulation VI.B.3, the RUS, in coordination with the BLM (if applicable), will notify the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects. SHPOs, designated representatives of consulting Indian tribes, and other consulting parties will provide their views on the proposed actions within ninety-six (96) hours. The RUS will ensure that the timely filed recommendations of the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of those actions that the borrower will implement to resolve adverse effects. Once RUS approval has been granted, its borrower will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. Dispute Resolution: The RUS and, if applicable, BLM will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding the resolution of adverse effects that relate to the implementation of Stipulation VI.B. The applicable Federal agency will use the contact information provided in Attachment D in order to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide the RUS and, if applicable, BLM with its recommendations for resolving the dispute. The RUS and, if applicable, BLM will take into account any recommendations provided by the ACHP in making a final decision about how to proceed.
6. Reporting: No later than six (6) months following the resumption of construction within the location of the discovery, the RUS will submit a final report to the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties describing implementation of the actions taken in accordance with Stipulation VI.B and, as appropriate, the analysis and interpretation of recovered information.

C. Unanticipated Discovery of Human Burials and Remains, and Funerary Objects

1. When Native American human remains or funerary objects or objects of cultural patrimony are unexpectedly discovered during construction of the Keystone XL Project on Federal or tribal lands within the APE, Keystone or an RUS borrower, as appropriate, will notify immediately the Federal agency responsible for compliance with the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq., and its implementing regulations, 43 C.F.R. Part 10.
2. Non-Native American human burials and remains, and funerary objects discovered on Federal lands within the APE will be treated by the Federal agency having jurisdiction of the remains in accordance with applicable Federal law, taking into account the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).
3. The DOS, Western, and RUS will treat human burials and remains discovered on non-Federal land consistent with the provisions of Attachment C and any applicable

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federal, state, and local burial laws. In those instances where the USACE has jurisdiction under Section 10 or 404 permitting authority for non-Federal lands in the APE, the applicable Federal agencies will ensure that Keystone complies with the provisions of Attachment C acting in the place of the DOS. In determining appropriate actions to be carried out, the DOS, RUS, and/or other Federal agencies will be guided by the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).

VII. CURATION

- A. Federal agencies will curate any artifacts, materials or records resulting from archaeological identification and mitigation conducted on Federal lands under their jurisdiction in accordance with 36 C.F.R. Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections.*" Federal agencies with jurisdiction over the Federal lands will consult with Indian tribes consistent with 36 C.F.R. 79.
- B. Keystone and RUS borrowers will return all artifacts recovered from private lands to the respective landowner after analysis is complete, unless applicable state law requires otherwise. Keystone and RUS borrowers will encourage and assist landowners in donating any returned artifacts to a local curation facility identified by the respective SHPO. Keystone shall pay all required curation fees associated with the donation of artifacts to the local curation facility.
- C. On Federally controlled or owned properties, Federal agencies will determine the disposition of human burials, human remains and funerary objects in accordance with applicable Federal law.

VIII. REPORTING

- A. Within three (3) months of completion of pipeline construction of a spread, Keystone will submit a comprehensive draft report to the DOS describing the results and findings of the implementation of the actions and plans specified in Stipulations V.C through G, VI.A, including Attachment C.
- B. Keystone will submit a draft comprehensive report for each spread to the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties of the respective states in which the spread is located, for forty-five (45) day review and comment. Keystone shall address timely comments and recommendations submitted by ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties in preparation of the Final Comprehensive Report for that spread. Keystone will submit the final report to the DOS for review and approval. The final comprehensive report will be provided by the DOS to the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties once approved.

IX. MONITORING IMPLEMENTATION OF THE PA

Each quarter following the execution of this PA until it expires or is terminated, the DOS with the assistance of the USACE, BLM, RUS, FSA, NRCS, BIA, and USBR as necessary will provide the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties to this PA a progress report summarizing the work carried out pursuant to its terms. Such report will include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the efforts to carry out the terms of this PA. The DOS will maintain and update a list of the current contact for the ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties and will be distributed in each quarterly report.

X. DISPUTE RESOLUTION

- A. “Appropriate Federal agency” refers to the DOS, BLM, RUS, USBR, and USACE, or other Federal land managing and/or permitting agency as applicable.
- B. Should any signatory, invited signatory, or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the appropriate Federal agency will consult with such party to resolve the objection. If the appropriate Federal agency determines that such objection cannot be resolved, the appropriate Federal agency will:
 - 1. Forward all documentation relevant to the dispute, including the applicable Federal agency’s proposed resolution, to the ACHP. The ACHP will provide the appropriate Federal agency with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the appropriate Federal agency will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, invited signatories, and concurring parties, and provide them with a copy of this written response. The appropriate Federal agency will then proceed according to its final decision.
 - 2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, the applicable Federal agency may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the appropriate Federal agency will prepare a written response that takes into account any timely comments regarding the dispute from the signatories, invited signatories, and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. The Federal agencies are responsible for carrying out all other actions subject to the terms of this PA that are not the subject of the dispute.
- D. The process of dispute resolution outlined in Stipulation X does not pertain to disputes that arise from unanticipated discoveries covered in Stipulation VI.

XI. DURATION

This PA will be null and void if all of its stipulations have not been carried out within seven (7) years from the date of its execution. At such time, and prior to work continuing on the Keystone XL Project, the DOS will either: (a) execute a Memorandum of Agreement (MOA) or PA consistent with 36 C.F.R. §§ 800.6 or 800.14(b), respectively; or (b) request, take into account, and respond to the comments of the ACHP consistent with 36 C.F.R. § 800.7. Prior to such time, the DOS may consult with the other signatories and invited signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XII. The DOS will notify the signatories, invited signatories, and concurring parties as to the course of action they will pursue.

XII. AMENDMENT

Any signatory or invited signatory to this PA may propose in writing that it be amended. The signatories and invited signatories will consult in an effort to reach agreement on an amendment. Any amendment will be effective on the date it is signed by all of the signatories and invited signatories and filed with the ACHP.

XIII. TERMINATION

- A. If any signatory or invited signatory to this PA determines that its terms will not or cannot be carried out, that party will immediately consult with the other signatories and invited signatories to attempt to develop an amendment per Stipulation XII. If within thirty (30) calendar days an amendment cannot be reached, any signatory or invited signatory may terminate the PA upon written notification to the other signatories and invited signatories.
- B. Termination by an individual SHPO shall only terminate the application of this PA within the jurisdiction of the SHPO.
 - 1. Once the PA is terminated for an individual state, and prior to work continuing on the undertaking in that state, DOS must either (a) execute a PA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. DOS shall notify the signatories as to the course of action it will pursue.
- C. If the PA is terminated in its entirety, and prior to work continuing on the undertaking, the DOS shall request, take into account, and respond to the comments of the ACHP consistent with 36 C.F.R. § 800.7(a). Following consultation with the ACHP, the DOS will notify the signatories, invited signatories and concurring parties as to the course of action it will pursue.

XIV. COORDINATION WITH OTHER FEDERAL REVIEWS

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In the event that Keystone or a Federal agency applies for additional Federal funding or approvals for the Keystone XL Project and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with the applicable SHPOs, designated representatives of consulting Indian tribes, and the ACHP. Any necessary modifications will be considered in accordance with Stipulation XII.

XV. SCOPE OF THE PA

This PA is limited in scope to actions that will facilitate the construction of the Keystone XL Project and related facilities, and is entered into solely for that purpose.

EXECUTION of this PA by the DOS, ACHP, BLM, RUS, Western, USACE, USBR, NPS, NRCS, FSA, BIA, the Montana SHPO, South Dakota SHPO, Nebraska SHPO, and Kansas SHPO and implementation of its terms evidence that the DOS, Western, BLM, RUS, NRCS, FSA, BIA, USACE, USBR, and NPS have taken into account the effects of the Keystone XL Project on historic properties and afforded the ACHP an opportunity to comment.

Deborah Klepp / PK for _____ *December 23, 2013*

**Deborah Klepp
Director**

Date

**Office of Environmental Quality and Transboundary Issues
Bureau of Oceans and International Environmental and Scientific Affairs
United States Department of State**

**Programmatic Agreement
SECTION 3 – Signatory Parties**

**Keystone XL Pipeline Project
December 2013**

008221



Corm Cam s ell
Acting Regional Director, Intermountain Region
National Park Service

434 0/3

Date



18 DEC 2013

Joel R. Cross
Colonel, Corps of Engineers
District Commander

Date

Bennet Horter

12/17/2013

Bennet Horter
Federal Preservation Officer
United States Department of Agriculture Farm Service Agency

Date

Salvador Salinas

12-17-13

Salvador Salinas

Date

State Conservationist

United States Department of Agriculture Natural Resources Conservation Services

Mark S. Plank

12/17/13

Mark S. Plank
Director, Engineering and Environmental Staff
United States Department of Agricultural Rural Utilities Service

Date

Programmatic Agreement
SECTION 3 – Signatory Parties

Keystone XL Pipeline Project
December 2013

008226



Weldon Loudermilk
Great Plains Regional Director
United States Bureau of Indian Affairs

12-18-13

Date

Diane M Friez

12/18/2013

Diane Friez
District Manager, Eastern Montana/Dakotas District
Bureau of Land Management

Date



Michael J. Ryan
Regional Director, Great Plains Region
Bureau of Reclamation

DECEMBER 18, 2013

Date

Robert J. Harris

12/19/13

Robert Harris
Regional Manager, Upper Great Plains Region
Western Area Power Administration (WESTERN)

Date

John M. Fowler

**John M. Fowler
Executive Director
Advisory Council on Historic Preservation**

12/19/13
Date

**Programmatic Agreement
SECTION 3 – Signatory Parties**

**Keystone XL Pipeline Project
December 2013**


008231

Patrick Selmer DSHPO for

12-17-13

**Jennie Chinn
State Historic Preservation Officer
Kansas**

Date


Tracy Stone-Manning
Director
Montana Department of Environmental Quality
(Invited Signatory)

12.19.13

Date



12-19-13

John Tubbs
Director

Date

Montana Department of Natural Resources and Conservation
(Invited Signatory)

Mark Baunler

Mark Baunler
State Historic Preservation Officer
Montana

12/18/2013

Date



Michael J. Smith
State Historic Preservation Officer
Nebraska

Dec. 18, 2013

Date



Jay D. Vogt
State Historic Preservation Officer
South Dakota

17 Dec 13

Date



Dec 18 / 13

Corey Goulet
Vice President
TransCanada Pipelines Limited
(Invited Signatory)

Date

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ATTACHMENT A

The following table summarizes the proposed Project areas for which Keystone has yet to conduct identification and evaluation studies as of the finalization of the PA. The majority of these proposed Project areas have been denied access versus new areas that have yet to surveyed.

| Areas Not Surveyed Along the Proposed Project APE | | |
|---|--------------------------|--|
| State | Project Area Type | Cultural Survey Remaining (acres) |
| Montana | ROW | 0.00 |
| Montana | Pump Stations | 0.00 |
| Montana | Ancillary facilities | 0.00 |
| Montana | Access Roads | 0.00 |
| South Dakota | ROW | 23.70 |
| South Dakota | Pump Stations | 0.00 |
| South Dakota | Ancillary facilities | 0.00 |
| South Dakota | Access Roads | 0.00 |
| Nebraska | ROW | 937.65 |
| Nebraska | Pump Stations | 43.45 ¹ |
| Nebraska | Ancillary facilities | N/A ² |
| Nebraska | Access Roads | 33.05 ³ |
| Total | | 1037.85^{1, 2, 3} |
| ¹ Pump stations in Nebraska have been surveyed for multiple locations. ² Additional ancillary facilities may be needed, however, are not known at this time. ³ Additional access roads may be needed, however, are not known at this time. | | |

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ATTACHMENT B

1. Absentee-Shawnee Tribe of Indians of Oklahoma
2. Alabama-Coushatta Tribes of Texas
3. Alabama-Quassarte Tribal Town, Oklahoma
4. Apache Tribe of Oklahoma
5. Arapahoe Tribe of the Wind River Reservation, Wyoming (aka Northern Arapaho Tribe)
6. Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana (aka Fort Peck Tribes)
7. Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
8. Cherokee Nation, Oklahoma
9. Cheyenne and Arapaho Tribes, Oklahoma
10. Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
11. Chickasaw Nation, Oklahoma
12. Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
13. Choctaw Nation of Oklahoma
14. Comanche Nation, Oklahoma
15. Confederated Salish & Kootenai Tribes of the Flathead Indian Nation, Montana
16. Confederated Tribes of the Goshute Reservation, Nevada and Utah
17. Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
18. Crow Tribe of Montana
19. Delaware Tribe of Indians, Oklahoma
20. Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
21. Eastern Band of Cherokee Indians of North Carolina
22. Eastern Shawnee Tribe of Oklahoma
23. Ely Shoshone Tribe of Nevada
24. Flandreau Santee Sioux Tribe of South Dakota
25. Forest County Potawatomi Community, Wisconsin
26. Fort Belknap Indian Community of the Fort Belknap Reservation of Montana (aka Gros Ventre and Assiniboine Tribe of Ft. Belknap)
27. Hannahville Indian Community, Michigan
28. Ho-Chunk Nation of Wisconsin
29. Iowa Tribe of Kansas and Nebraska
30. Iowa Tribe of Oklahoma
31. Jena Band of Choctaw Indians, Louisiana
32. Kaw Nation, Oklahoma
33. Kialegee Tribal Town, Oklahoma
34. Kickapoo Traditional Tribe of Texas
35. Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
36. Kiowa Indian Tribe of Oklahoma
37. Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
38. Lower Sioux Indian Community in the State of Minnesota
39. Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan (aka Gun Lake Potawatomi)

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40. Mille Lacs Band of Minnesota Chippewa Tribes, Minnesota
41. Modoc Tribe of Oklahoma
42. Nez Perce Tribe, Idaho
43. Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
44. Nottawaseppi Huron Band of the Potawatomi, Michigan (aka Huron Potawatomi Nation)
45. Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
46. Omaha Tribe of Nebraska
47. Osage Nation, Oklahoma
48. Otoe-Missouria Tribe of Indians, Oklahoma
49. Pawnee Nation of Oklahoma
50. Poarch Band of Creek Indians of Alabama
51. Pokagon Band of Potawatomi Indians, Michigan and Indiana
52. Ponca Tribe of Indians of Oklahoma
53. Ponca Tribe of Nebraska
54. Prairie Band of Potawatomi Nation, Kansas
55. Prairie Island Indian Community in the State of Minnesota
56. Red Lake Band of Chippewa Indians, Minnesota
57. Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
58. Sac & Fox Nation of Missouri in Kansas and Nebraska
59. Sac & Fox Nation, Oklahoma
60. Sac & Fox Tribe of the Mississippi in Iowa
61. Santee Sioux Nation, Nebraska
62. Seneca-Cayuga Tribe of Oklahoma
63. Shakopee Mdewakanton Sioux Community of Minnesota
64. Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
65. Shoshone Tribe of the Wind River Reservation, Wyoming (aka Eastern Shoshone Tribe)
66. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
67. Skull Valley Band of Goshute Indians of Utah
68. Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
69. Spirit Lake Tribe, North Dakota
70. Standing Rock Sioux Tribe of North & South Dakota
71. Stockbridge Munsee Community, Wisconsin
72. Thlopthlocco Tribal Town, Oklahoma
73. Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
74. Tonkawa Tribe of Indians of Oklahoma
75. Turtle Mountain Band of Chippewa Indians of North Dakota
76. United Keetoowah Band of Cherokee Indians in Oklahoma
77. Upper Sioux Community, Minnesota
78. Ute Indian Tribe of the Uintah & Ouray Reservation, Utah (aka Ute Indian Tribe, also Northern Ute Tribe)
79. Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah
80. White Earth Band of Minnesota Chippewa Tribes, Minnesota
81. Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
82. Winnebago Tribe of Nebraska
83. Yankton Sioux Tribe of South Dakota
84. Ysleta Del Sur Pueblo of Texas

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ATTACHMENT C

Plans for the Unanticipated Discovery of Cultural Resources

If previously unidentified cultural resources are discovered by monitors or construction personnel unexpectedly, Keystone will follow the procedures described in the state-specific plans included in this attachment for (1) Montana, (2) South Dakota, (3) Nebraska, (4) North Dakota, and (5) Kansas. If the following plans conflict in any way with Keystone's obligations under the Programmatic Agreement and Tribal Monitoring Plan, Keystone will follow the procedures described in the Programmatic Agreement and Tribal Monitoring Plan.

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UNANTICIPATED DISCOVERIES PLAN

I. Unanticipated Discoveries Plan for the Keystone XL project corridor (Project) in Montana

If previously unidentified historic properties are discovered by monitors or construction personnel unexpectedly or unanticipated adverse effects on previously identified historic properties occur as pipeline construction activities are carried out within the one-hundred-and-ten (110) foot-wide construction corridor or other ancillary facilities and access roads within the APE, the construction contractor will immediately halt all construction activity within a one-hundred-and-fifty (150) foot radius of the discovery or adversely affected historic property, notify the Lead EI of the discovery and implement interim measures to protect the discovery from looting and vandalism.

Within forty-eight (48) hours of receipt of this notification of the discovery, the Lead EI shall:

- a. Inspect the work site to determine the extent of the discovery or adverse effect and ensure that construction activities have halted;
- b. Clearly mark the area of the discovery or adverse effect;
- c. Implement additional measures other than those mentioned above, as appropriate, to protect the discovery or adversely affected historic property from looting and vandalism; and
- d. Notify the DOS, SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties of the discovery or adverse effect.

In the case of an unanticipated discovery, DOS will notify all consulting parties that it will be receiving comments concerning the unanticipated discovery and provide contact information. The DOS will have seven (7) calendar days following notification provided in accordance with Stipulation VI.A.2 to determine the National Register eligibility of the discovery after considering the timely filed views of the SHPO, MDEQ, designated representatives of consulting Indian tribes, other consulting parties, and Keystone. The applicable Federal agency may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 consistent with 36 C.F.R. § 800.13(c).

For discovered properties determined eligible or assumed to be eligible pursuant to Stipulation VI.A.3, the applicable Federal agency will notify the ACHP, SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.

- a. SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties will have ninety-six (96) hours to provide their views on the proposed actions.
- b. DOS will ensure that the timely filed recommendations of SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to resolve adverse effects.

- c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the discovery.

In the case of unanticipated adverse effects to a previously identified historic property, the applicable Federal agency will notify the ACHP, SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties of those actions that it proposes to resolve adverse effects which may include a Treatment Plan as outlined in Stipulation V.C.

- a. SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties will have forty-eight (48) hours to provide their views on the proposed actions.
- b. DOS will ensure that the timely filed recommendations of SHPO, MDEQ, designated representatives of consulting Indian tribes, and other consulting parties are taken into account prior to granting approval of the measures that Keystone will implement to mitigate adverse effects.
- c. Keystone will carry out the approved measures prior to resuming construction activities in the location of the affected property.

Dispute Resolution: DOS will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding resolution of adverse effects that relate to the implementation of Stipulation VI. DOS will use the contact information provided in Attachment C or D to notify the ACHP. Within seven (7) calendar days of receipt of such a written request, the ACHP will provide DOS recommendations on resolving the dispute. DOS will take into account any timely filed recommendations provided by the ACHP in making a final decision about how to proceed.

II. Accidental Discovery of Human Remains on state or private lands

All human burials and funerary objects in the state of Montana are protected pursuant to the Human Skeletal Remains and Burial Site Protection Act (Montana Code Ann. §22-3-801 through §22-3-811).

In the event that human remains or burials are encountered during additional archaeological investigations or construction activities, Keystone or its designated representative shall immediately cease work within 150 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism. No digging, collecting or moving human remains or other items shall occur after the initial discovery. Protection measures will include the following.

- a) Flag the buffer zone around the find spot.
- b) Keep workers, press, and curiosity seekers, away from the find spot.
- c) Tarp the find spot.
- d) Prohibit photography of the find unless requested by an agency official.
- e) Have an individual stay at the location to prevent further disturbance until a law enforcement officer arrives.

Keystone will immediately notify local law enforcement, DOS, SHPO, and MDEQ within forty-eight (48) hours of the discovery. DOS shall notify the SHPO, MDEQ, Indian tribes, and other consulting parties within forty-eight (48) hours of the discovery. If local law enforcement determines that the remains are not associated with a crime, DOS shall determine if it is prudent and feasible to avoid disturbing the remains. If DOS in consultation with the Keystone determines that disturbance cannot be avoided, the DOS shall consult with the SHPO, MDEQ, Indian tribes, and other consulting parties to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. The DOS shall ensure that Keystone implements the plan for removal, treatment and disposition of the burial or remains as authorized by the SHPO. The DOS shall notify Keystone that they may resume construction activities in the area of the discovery upon completion of the plan authorize as by the SHPO.

Contact Information:

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State Archaeologist
State Historic Preservation Office
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III. Unanticipated Discovery of Human Burials, Remains, and Funerary Objects on Federal Lands

For the accidental discovery of human burials, remains, and funerary objects on Federal lands please reference Stipulation VI.(C) of the PA.

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UNANTICIPATED DISCOVERIES PLAN

I. Unanticipated Discoveries Plan for the Keystone XL project corridor (Project) in South Dakota

1. In the event that previously unidentified archaeological resources are discovered during ground disturbing activities within the project area (area of potential effect), Project shall halt immediately all construction work within 100 feet (30.5 m) of the discovery and in the surrounding area where further subsurface remains can reasonably be expected to occur. The area of the discovery will be clearly marked by means of flagging or fencing.
2. The construction contractor will notify a designated representative of Project of the discovery. Following notification of the discovery, the designated representative of Project will immediately inspect the work site and determine the extent of the affected archaeological resource as defined by the State Historic Preservation Office (SHPO) or by the SHPO in consultation with the archaeologist retained by Project.
3. Within 14 calendar days of the original notification of discovery, the archaeologist retained by Project, in consultation with the SHPO, will determine the National Register eligibility of the resource. The SHPO or Project may extend this 14-day calendar period one time by an additional 7 calendar days, with Project providing written notice to the SHPO prior to the expiration date of the said 14-day calendar period.
4. If the resource is determined eligible for the National Register, Project shall submit to the SHPO and the Department of State (DOS) a plan for its avoidance, protection, recovery of information, or destruction without data recovery. Said plan will be submitted to the SHPO and the DOS within 14 calendar days of a determination of eligibility, and shall be approved by the SHPO and the DOS prior to implementation.
5. Work in the affected area may resume per SHPO authorization pending either:
 - i. development and implementation of an appropriate data recovery plan or other recommended mitigation procedures, or
 - ii. determination that the located remains are not eligible for inclusion on the National Register.
6. Any disputes concerning the evaluation or treatment of previously unidentified resources will be resolved through consultation among the SHPO, a designated representative of Project, and the archaeologist retained by Project.

II. Accidental Discovery of Human Remains on state or private lands

All human burials and funerary objects in the state of South Dakota are protected pursuant to South Dakota Codified Law Chapter 34-27-25, 34-27-28, 34-27-31.

In the event that human remains or burials are encountered during additional archaeological investigations or construction activities, Project or its designated representative shall immediately cease work within 150 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism. No digging, collecting or moving human remains or other items shall occur after the initial discovery. Protection measures will include the following.

- a) Flag the buffer zone around the find spot.
- b) Keep workers, press, and curiosity seekers, away from the find spot.
- c) Tarp the find spot.
- d) Prohibit photography of the find unless requested by an agency official.
- e) Have an individual stay at the location to prevent further disturbance until a law enforcement officer arrives.

Project will immediately notify local law enforcement, the DOS, and the South Dakota State Archaeologist (State Archaeologist) within forty-eight (48) hours of the discovery. The DOS shall notify the SHPO, Indian tribes and other consulting parties within forty-eight (48) hours of the discovery. If local law enforcement determines that the remains are not associated with a crime, the DOS shall determine if it is prudent and feasible to avoid disturbing the remains. If the DOS in consultation with the Project determines that disturbance cannot be avoided, the DOS shall consult with the State Archaeologist, SHPO, Indian tribes and other consulting parties to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. The DOS shall ensure that the Project implements the plan for removal, treatment and disposition of the burial or remains as authorized by the State Archaeologist. The DOS shall notify the Project that they may resume construction activities in the area of the discovery upon completion of the plan authorize as by the State Archaeologist.

Contact Information:

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Katie Lamie, Repository Manager
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Amy Rubingh, Review and Compliance Archaeologist
South Dakota State Historical Society
State Historic Preservation Office
900 Governors Drive
Pierre, SD 57501
(605) 773-3458

III. Unanticipated Discovery of Human Burials, Remains, and Funerary Objects on Federal Lands

For the accidental discovery of human burials, remains, and funerary objects on Federal lands please reference Stipulation VI.(C) of the PA.

PREFILED REBUTTAL TESTIMONY

OF

CHRIS SAUNCOSI

Docket No. HP14-001

**IN THE MATTER OF THE APPLICATION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR
ORDER ACCEPTING CERTIFICATION OF PERMIT ISSUED IN DOCKET HP09-001 TO
CONSTRUCT THE KEYSTONE XL PIPELINE**

1. Are you a member of the Yankton Sioux Tribe or any other tribe?

A. I am an enrolled member of the Yankton Sioux Tribe.

2. What is your occupation or what kinds of work do you do?

A. I am the Chief of Police for the Yankton Sioux Tribe.

3. On whose behalf was this testimony prepared?

A. This testimony was prepared on behalf of the Yankton Sioux Tribe.

4. Please state the purpose of your testimony in this proceeding.

A. The purpose of my testimony is to rebut the testimony of TransCanada and its witnesses and to show that TransCanada cannot continue to meet the conditions upon which its original permit was issued. I can provide testimony about the lack of interaction or communication between TransCanada and Tribal law enforcement and emergency response personnel.