



January 28, 2020

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Via e-mail

Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue  
Pierre, SD 57501  
[patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)

Re: TransCanada Keystone Pipeline Liaison Quarterly Report

Dear Ms. Van Gerpen:

I attach for filing KXL Pipeline Project South Dakota Public Utilities Commission Liaison Quarterly Report for the Fourth Quarter of 2019.

Yours very truly,

WOODS, FULLER, SHULTZ & SMITH P.C.

A handwritten signature in dark ink, appearing to read 'James E. Moore', is written over the typed name.

James E. Moore

Attachment

**KXL Pipeline Project**  
**South Dakota Public Utilities Commission**  
**Liaison Quarterly Report**  
**2019**

**Fourth Quarter 2019**  
**October 01, to December 31, 2019**

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## 1. Project Overview

The proposed Keystone XL Pipeline project is 36-inch diameter pipeline that will extend 882 miles from the Canadian–U.S. border, to Steele City, Nebraska. The route in South Dakota, will include three or four construction spreads and cover approximately 311 miles of right-of-way (ROW) with 314 landowners. The route crosses Harding, Butte, Perkins, Meade, Pennington, Haakon, Jones, Lyman, and Tripp Counties. In addition, facilities in South Dakota include seven pump stations to be located in Harding, Meade, Haakon, Jones, and Tripp Counties.

The South Dakota Public Utilities Commission (SD-PUC) issued the Notice of Entry- Amended Final Decision and Order for the project on June 29, 2010. These construction conditions ordered Keystone to appoint a Liaison Officer for the KXL project. In 2010 the Commission approved Sarah Metcalf to be the Liaison Officer for the Keystone KXL Project. By statute, if the project does not commence within four years, the company must certify that it still meets the permit conditions. SDCL § 49-41B-27. The four-year mark occurred in June of 2014 and the company proceeded to certify that it continues to meet the permit conditions issued in the 2010 permit. The hearings considering the certification of the project took place throughout 2015 and concluded January 21, 2016, with the issuance of the Final Decision and Order accepting the certification of the Notice of Entry, Doc HP14-001. An appeal from that decision was filed by intervenors on February 19, 2016 in the Sixth Judicial Circuit Court of South Dakota. The Circuit Court affirmed the certification and the South Dakota Supreme Court vacated the court's decision and dismissed the appeal by order issued June 13, 2018.

On January 24, 2017, President Trump issued a Presidential Memorandum inviting TransCanada to resubmit its application for a Presidential Permit. TransCanada filed its application for approval of the border crossing segment of the KXL pipeline project with the US Department of State (US-DOS) on January 26, 2017 and on March 23, 2017, the Presidential Permit was granted.

Pre-construction activities in the field began in the third quarter of 2018 and continued into the fourth. These activities included the preparation of off-right-of-way pipe storage and contractor yards; transportation, receipt and off-loading of pipe at off right-of-way storage yards; and preparation of off-right-of-way workforce camps. Environmental mitigation efforts also took place in the fourth quarter such as mowing select areas of the right-of-way to discourage migratory bird nesting. The company completed all mowing for the planned 2019 construction, portions of the pipe yards, and workforce camp and contractor yards to support planned 2019 construction.

The Federal District Court in Montana imposed an injunction on November 8, 2018, prohibiting work in furtherance of the project. President Trump issued a new Presidential Permit to TC Energy on March 29, 2019. On June 6, 2019, the U.S. Court of Appeals for the Ninth Circuit entered an order granting TransCanada and the Government's motions to dismiss the appeals from the 2017 Permit as moot; granting

TransCanada's motion to vacate the district court's judgments; dissolving the district court's permanent injunction orders; and remanding the cases with instructions to dismiss the district court actions as moot.

Keystone has resumed conducting pre-construction activities that do not involve any ground-disturbing work, like pursuing remaining outstanding permits; interfacing with landowners and acquiring necessary land rights; procuring pipe, materials and equipment, and other long lead-time items; and inspecting and refurbishing workforce camp modules, pipe and associated materials and equipment previously purchased. The company is also engaging with communities, including indigenous communities, as well as federal, state, and local governmental entities, agencies, and other stakeholders. They are also hiring additional Project staff, and soliciting, engaging, and working towards contracting with potential construction contractors, specialty service providers, and suppliers. Additionally, Keystone has conducted limited field activities including civil surveys; completing public county road upgrade activities as directed by county road superintendents; and maintaining security at Project pipe yard and workforce camps sites to ensure public safety and maintain environmental protections as required by permits and best management practices.

The Field Office located in Rapid City remains open and KXL officials, as well as the Liaison, are available to address landowner and other stakeholder questions and concerns, to provide updates and general information on the project, and to advise of the Project schedule and activities taking place in the state.

## **2. Issue Tracking and General Liaison Activity**

During the fourth quarter of 2019 there were only a few contacts to the liaison officer, much less than previous quarters of the year, with only 4 calls from interested parties and no landowners. All of the contacts were related to general information about the status of the project. There were as usual several calls and correspondences with the SD-PUC staff related to project status updates. There were no vendor or media calls, nor any meetings with landowners or stakeholders.

The Liaison has been following the state Water Management Board meetings which began in October, 2019 and will resume in the 1<sup>st</sup> Quarter of 2020, in order to finalize water use permits related to the project. The liaison will continue to follow the hearings and to be available to landowners and affected parties with questions or concerns.

There were no new concerns reported to the liaison during this quarter, nor were there any outstanding issues being tracked from the third quarter. No major issues are outstanding going into 2020. The liaison will continue to follow and report on the status of the project and to be available to address any landowner questions or concerns throughout the duration of the project.



### **3. Summary**

The number of calls to the liaison office decreased this quarter and were all related to the general status and schedule of the project. There were no new issues reported this quarter or any existing issues that are outstanding going into 2020.

Keystone has resumed conducting pre-construction activities following the release of 2018 injunctions. The company has resumed some limited pre-construction field work such as survey, maintaining security at Project sites to ensure public safety and maintaining environmental protections as required by permits and best management practices. The company is also continuing to engage with communities, including indigenous communities, federal, state, and local governmental entities, agencies, and other stakeholders.

The Liaison Officer remains available to address the concerns of landowners and other affected parties. The liaison will continue to report to the SD-PUC on the status of the project and regarding consumer concerns and issues encountered. Reports will be filed quarterly during construction and annually for a period of three years post-construction, as ordered by the SD-PUC in the construction conditions. The liaison will assist landowners, tenants, agencies and other interested parties with any questions, concerns or issues that might arise during or after the project.