CONFIDENTIAL

Caddis, Karen

n: Gramke, Robert MVS [Robert.Gramke@mvs02.usace.army.mil]
t: Tuesday, January 24, 2006 7:38 AM
o: Caddis, Karen
Subject: FW: St. Louis District Contact

Attachments: Regional Conditions.doc; NW12-Utility line discharges.doc; NWP 12 -Final.doc


Regional nditions.doc (41 KB


NW12-Utility line discharges.d...


NWP 12 -Final.doc (36 KB)

Rob Gramke

U.S. Army Corps of Engineers
St. Louis District Regulatory Branch
1222 Spruce Street
St. Louis, Missouri 63103
Phone 314-331-8187
Fax 314-331-8741
email robert.gramke@mvs02.usace.army.mil
-----Original Message-----
From: Gramke, Robert MVS
Sent: Tuesday, January 24, 2006 8:37 AM
To: 'kcaddis@ensr.aecom'
bject: St. Louis District Contact

ren,

I will be the point of contact for this project at this time. I should be available for a meeting here in early February, but may be out of the office in late February. Please let me know when you would like to set up a meeting. Attached is our Nationwide Permit 12 and our regional conditions. However I am not sure that the Nationwide Permit 12 will pertain to this large of a project.

Rob Gramke

U.S. Army Corps of Engineers
St. Louis District Regulatory Branch
1222 Spruce Street
St. Louis, Missouri 63103
Phone 314-331-8187
Fax 314-331-8741
email robert.gramke@mvs02.usace.army.mil

CONFIDENTIAL

NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS – MISSOURI

All regional conditions presented herein, are in addition to, not in lieu of, the terms and conditions of the NWPs as published in the January 15, 2002, Federal Register, Issuance of Nationwide Permits; Notice (67 FR 2020-2095), and in the February 13, 2002 Federal Register, Issuance of Nationwide Permits; Notice; Correction (67 FR 6692-6695).

NOTE: These regional conditions do not pertain to paragraph a. of NWP 40.

1. NWP 3 – Maintenance. The permittee must notify the District Engineer when repairing, rehabilitating or replacing low water crossings if: discharges of fill or dredged material would raise or lower the lowest elevation of the crossing by a total of 12-inches or more, or when removing the structure. The permittee must propose and employ measures to mitigate the potential impact of impounding gravel above the low water crossing or of releasing impounded-gravel downstream of the structure. Such mitigation might include: removing impounded gravel in the unstable area upstream of the low water crossing to prevent it from being transported downstream and/or constructing a notched weir to slow the release of impounded gravel from upstream of the low water crossing.

2. NWP 12 - Utility Activities. Except for a minimal corridor that is essential for operation and maintenance of the utility line, the right-of-way must be allowed to re-vegetate naturally to native tree species when forested wetlands or riparian wooded areas are cleared in order to construct the utility line. This does not preclude the planting of native vegetation.

3. NWP 23 - Approved Categorical Exclusions. The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 13) when a Federal agency's categorically excluded activities are in or affect waters of the United States. This notification must include a delineation of special aquatic sites, including wetlands. In addition to information required by NWP general condition 13 (b), the notification must identify the approved categorical exclusion that applies (i.e. list Federal Register citation) and include documentation that the project fits the categorical exclusion.

4. NWP 27 - Stream and Wetland Restoration Activities. NWP 27 will not be used to authorize discharges associated with relocation of forested wetlands.

5. NWP 29 - Notification Requirements. Prior to issuing a verification letter for this NWP, the District Engineer will coordinate all requests for NWP 29 with the U.S. Fish and Wildlife Service (USFWS) for its evaluation of impacts to Federally listed endangered species. Coordination with the USFWS will follow the procedures in general condition 13(e) for agency coordination in January 15, 2002, Federal Register, Issuance of Nationwide Permits; Notice (67 FR 2092).

CONFIDENTIAL

6. NWP 43 - Stormwater Management Facilities. The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 13) when a regulated in-stream basin impacts an intermittent stream. The permittee's mitigation plan must specifically identify measures to prevent the export of contaminants directed into any in-stream basin by the upland collection system. The permittee must also include mitigation for any in-stream projects that would adversely impact normal aquatic life migration. This NWP does not authorize the retention of water, in excess of that required to meet stormwater management requirements, for other purposes such as recreational lakes, reflecting pools and irrigation.

7. Recording Mitigation (Applicable To All NWPs). NWPs with mitigation may require recording of the permit mitigation areas with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property and provide proof of recording to the Corps.

8. Notification Requirement for Activities Proposed in Fens, Seeps and Bogs (Applicable To All NWPs). The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 13) when any regulated activity impacts a fen, seep or bog of any size.

9. Notification for Confined Animal Feeding Operations (Applicable To All NWPs). The permittee must notify the District Engineer in accordance with the "Notification" general condition for agency coordination (general condition 13(e)) about any discharges of dredged or fill material associated with the construction of any portion of a confined animal feeding operation (CAFO).

10. Seasonal Restrictions for Activities Proposed in Spawning Areas (Applicable To All NWPs). In addition to the requirements of NWP general condition 20, for any regulated activity, the following specific seasonal restrictions apply. Between the closed dates listed in the Missouri Combined Stream Spawning List, the permittee must not excavate from or discharge into the listed waters. The list of waters with seasonal restrictions is available on request from the Corps or at http://www.nwk.usace.army.mil/regulatory/gravel.txt (Missouri Combined Stream Spawning Season List).

11. District-Designated Waters.

St. Louis District: For any discharge or excavation activity requiring authorization, proposed under NWPs 39, 41, 42 and 43, in any ephemeral, intermittent, and perennial streams in the following Missouri watersheds, the permittee must notify the District Engineer in accordance with the "Notification" general condition 13 (Federal Register, 67 FR 2090-2092).

St. Louis County: Wildhorse Creek, Bonhomme Creek, Creve Coeur Creek, Fox Creek, and Deer Creek.

CONFIDENTIAL

St. Charles County: Dardenne Creek and Peruque Creek.

Jefferson County: Saline/Sugar/Romaine Creeks, Rock Creek, Dulin/Bourne/Heads/Bear Creeks, La Barque Creek, Glaize Creek, and Joachim/Sandy Creeks.

Ste. Genevieve and Perry Counties: Saline Creek.

Cape Girardeau County: Indian Creek, Williams/Hubble/Randol/ Goose Creeks, Ramsey Branch, Ranney Creek, and Byrd Creek.

Memphis District: For any regulated activity proposed under NWPs 14, 39, 41, 42 and 43, in the following waters; the permittee must notify the District Engineer in accordance with the "Notification" general condition 13 (Federal Register, 67 FR 2090-2092).

St. Francis Floodway from 1 mile below Wappapello Lake to the Arkansas/Missouri state line below U.S. Highway 314, in Dunklin County.

Castor River from the Union Pacific Railroad bridge, in Stoddard County, to the headwater levee, in Bollinger County.

Ramsey Branch from St. Louis District line to Headwater Diversion Channel in Cape Girardeau and Scott Counties.

Ramsey Creek from the Headwater Diversion Channel to State Routes PP & N (East Branch), and Scott County Route 325 (West Branch) in Scott County.

CONFIDENTIAL

Nationwide Permit Summary

U.S Army Corps
Of Engineers
St. Louis District

No. 12, UTILITY LINE DISCHARGES
(NWP Final Notice, 67 FR 2079)

Activities required for the construction, maintenance, and repair of utility lines and associated facilities in waters of the United States as follows:

(i) Utility lines: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in preconstruction contours. A 'utility line' is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other ·es. The District Engineer may extend the period of temporary side ·ing not to exceed a total of 180 days, where appropriate. In ·lands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the United States through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) Utility line substations: The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the United States, excluding non- tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than 1/2 acre of non-tidal waters of the United States.

(iii) Foundations for overhead utility line towers, poles, and anchors: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) Access roads: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United ·es, excluding non-tidal wetlands adjacent to tidal the discharge ·s not cause the loss of greater than 1/2 acre of non-tidal waters of Jnited States. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the United States and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

The term 'utility line' does not include activities which drain a water of the United States, such as drainage tile or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraphs (i) through (iv) may not exceed a total of 1/2 acre loss of waters of the United States. Waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of waters of the United States. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the United States are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized landclearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the United States that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the United States, even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(a) Mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) A Section 10 permit is required.

(c) The utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (i.e. a water of the United States), and it runs parallel to a stream bed that is within

CONFIDENTIAL

that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10 acre of waters of the United States;

(f) Permanent access roads constructed above grade in waters of the United States for a distance of more than 500 feet; or

(g) Permanent access roads constructed in waters of the United States with impervious materials. (Sections 10 and 404)

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the utility line to protect navigation.

NATIONWIDE PERMIT CONDITIONS

General Conditions: The following general conditions must be followed in order for any authorization by a NWP to be valid:

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation.

2. **Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

4. **Aquatic Life Movements.** No activity may substantially disrupt the life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All pipes and culverts placed in streams must be installed to maintain low flow conditions.

5. **Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions, which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.

7. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible mix inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, US Forest Service, Bureau of Land Management, US Fish and Wildlife Service).

8. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. **Water Quality.** (a) In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the State or tribal 401 certification (either generically or individually) does not require or approve a water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of a water quality management plan includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (Refer to General Condition 21 for stormwater management requirements). Another important component of a water quality management plan is the establishment and maintenance of vegetated buffers next to open waters, including streams (Refer to General Condition 19 for vegetated buffer requirements for the NWPs). This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. **Coastal Zone Management.** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).

11. **Endangered Species.** (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a

CONFIDENTIAL

threatened or endangered species, or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a nationwide permit does not authorize the 'take' of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with `incidental take' provisions, etc.) from the US Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal `takes' of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the US Fish and Wildlife Service and National Marine Fisheries Service or their World Wide Web pages at http://www.fws.gov/r9endspp/endspp.html and http://www.nfms.noaa.gov/prot__res/overview/es.html, respectively.

12. **Historic Properties**. No activity, which may affect historic properties, listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. **Notification**. (a) Timing: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address, and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) Used or intended to be Used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision); and

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14, Linear Transportation Projects, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable.

(7) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For NWP 27, Stream and Wetland Restoration Activities, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) For NWP 29, Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

CONFIDENTIAL

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 1/4 acre or less will not require a formal on-site delineation. ever, the applicant shall provide an indication of where the .lands are and the amount of wetlands that exists on the property. For parcels greater than 1/4 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31, Maintenance of Existing Flood Control Facilities, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(11) For NWP 33, Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of .onable measures to avoid and minimize adverse effects to aquatic esources.

(12) For NWP's 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the US were achieved on the project site.

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permitttee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN ...ist include, for the construction of new stormwater management ...ities, a maintenance plan (in accordance with state and local ...quirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent streambed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44, Mining Activities, the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include vicinity map indicating the location of the historic property.

(c) Form of Notification: The standard individual permit application form (Form ENG 4345) may be Used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(19) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit. If the District Engineer determines that the

CONFIDENTIAL

adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than 1/2 acre of waters of the US, the District Engineer will, upon receipt of a notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(9)(iii) for parcels less than 1/4 acre in size The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. **Compliance Certification**. Every permittee who has received a nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation The certification will be forwarded by the Corps with the authorization letter. The certification will include: (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

15. **Use of Multiple Nationwide Permits**. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3 acre.

16. **Water Supply Intakes**. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. **Shellfish Beds**. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. **Suitable Material**. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material Used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. **Mitigation**. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1 /4 -acre of wetlands cannot be created to change a

CONFIDENTIAL

year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, 43, and 44.

(b) *Discharges in Floodway; Above Headwaters.* Discharges of dredged or fill material into waters of the US within the FEMA or locally ›ped floodway, resulting in permanent above-grade fills, are not .norized by NWPs 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. Construction Period. For activities the Corps has not verified that and the project were commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12- months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.

D. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or ›posed Federal project.

Section 10 Special Condition: The permittee understands and agrees that, if future operations by the US require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or is authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structure work or obstructions caused thereby, without expense to the US. No claim shall be made against the US on account of any such removal or alteration.

DEFINITIONS

Best management practices: Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts, which remain, after all appropriate and practicable ›idance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources, which increase one or more aquatic functions.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral streambeds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm tract: A unit of contiguous land under one ownership which is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as ``floodway fringe."

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi- phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US. Impacts to ephemeral waters are only not included in the acreage or linear foot measurements of loss of waters of the US or loss of stream bed, for the purpose of determining compliance with the threshold limits of the NWPs.

Non-tidal wetland: A non-tidal wetland is a wetland (i.e., a water of the US) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b) Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., the spring high tide line).

Open water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term 'open water' includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include

CONFIDENTIAL

ephemeral waters.

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent above-grade fill: A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a streaming flow, a smooth surface, and a finer substrate.

Single and complete project: The term 'single and complete project' is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the 'single and complete project' (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Streambed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the streambed, but outside of the ordinary high water marks, are not considered part of the streambed.

Stream channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow.

Tidal wetland: A tidal wetland is a wetland (i.e., a water of the US) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters, which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated shallow: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

CONFIDENTIAL

WATER POLLUTION CONTROL PROGRAM
Missouri General Water Quality Certification Conditions for NWP 12
(Utility Line Activities)

Pursuant to Section 401 of the Clean Water Act of 1972, the following best management practices are included as conditions in the Section 404 U.S. Army Corps of Engineers' Nationwide Permit (NWP). These conditions ensure that over and through channel utility crossing and restoration activities do not violate the Water Quality Standards of the State of Missouri resulting in permanent damage to habitat, increased turbidity, reduced bank and channel stability, and impacts to the biological and chemical integrity of the waterbody. Jurisdictional definitions for this activity are explained in the NWP.

Any land disturbance activities disturbing one or more acres of total area for the entire project requires a storm water permit from the Water Pollution Control Program for land disturbance activities. Note that this is one acre of area disturbed for the total project, not one acre of waters of the United States. For questions, please contact the Water Pollution Control Program's Permit Section at (573) 751-6825.

Petroleum products spilled into any waterbody or on the banks where the material may enter waters of the state shall be immediately cleaned up and disposed of properly. Any such spills of petroleum shall be reported as soon as possible to the Missouri Department of Natural Resources' 24-hour Environmental Emergency Response number at (573) 634-2436.

Pursuant to Chapter 644.038, RSMo, the department certifies this nationwide permit without conditions for the construction of highways and bridges approved by the Missouri Highway and Transportation Commission, as it applies to impacts in all waters of the state.

1. This certification does not allow the filling of a jurisdictional spring or a spring with connectivity to a jurisdictional stream.

2. Material resulting from trench excavation may not be temporarily sidecast into a water of the state for more than one month.

3. Directional boring under the streambed to avoid impacts to waters of the state is recommended. For utility crossings that must disturb the streambed, work shall be conducted in such a manner as to seal off the work area from flow.

4. Utility line crossings shall be placed as close to perpendicular as possible, and be limited to a maximum crossing length of no more than one and one-half times the width of the stream.

5. Care shall be taken to keep machinery out of the waterway as much as possible. Fuel, oil and other petroleum products, equipment and any solid waste shall not be stored below the ordinary high water mark (OHWM) at any time or in the adjacent floodway beyond normal working hours. All precautions shall be taken to avoid the release of wastes or fuel to streams and other adjacent waterbodies as a result of this operation.

6. Clearing of vegetation/trees shall be the minimum necessary to accomplish the activity.

CONFIDENTIAL

7. The riparian area, banks, etc., shall be restored to a stable condition to protect water quality as soon as possible. Seeding/planting of native vegetation, mulching and needed fertilization shall be within three days of final contouring, or as soon as possible as seasonal timing permits. On-site inspections of these areas shall be conducted by the permittee as necessary to ensure successful revegetation and stabilization, and to ensure that erosion and deposition of soil in waters of the state is not occurring from this project.

8. Only clean, nonpolluting fill shall be used.

9. Work shall be conducted during low flow whenever possible.

10. The following materials are not suitable for bank stabilization and should not be used due to their potential to cause violations of the General Criteria of the Water Quality Standards, 10 CSR 20-7.031 (3) (A) – (H):
    a. Earthen fill, gravel, broken concrete where the majority of material is less than 12 inches in diameter, and fragmented asphalt, since these materials are usually not substantial enough to withstand erosive flows;
    b. Concrete with exposed rebar;
    c. Tires, vehicles or vehicle bodies, construction or demolition debris are solid waste and are excluded from placement in the waters of the state; and
    d. Liquid concrete, including grouted riprap, if not placed as part of an engineered structure.

    Recycled concrete may be used provided that it is clean material broken into appropriately sized pieces (greater than 12 inches) of riprap with no protruding rebar.

11. The streambed gradient shall not be permanently altered during project construction.

12. This Water Quality Certification is not valid for any Section 404 permit issued on a water that:
    a. Is listed as impaired pursuant to Section 303(d) of the Clean Water Act, or
    b. If the activities are located in or occur within two miles upstream of a designated outstanding state or national resource area (10 CSR 20-7.031).

    Waters listed on the 303(d) list or Outstanding National/State Resource Waters (10 CSR 20-7, Tables D, E) can be found at http://www.dnr.state.mo.us/wpscd/wpcp/tmdl/tmdl_list.pdf, and page 28 at http://www.sos.state.mo.us/adrules/csr/current/10csr/10c20-7b.pdf, respectively, or by calling the Water Pollution Control Program at (573) 751-7428. If more detail than what is provided at these web sites is needed to precisely pinpoint your location please call (573) 522-2552.

CONFIDENTIAL

FOR INTERNAL KEYSTONE PROJECT USE ONLY

TransCanada – Keystone Pipeline
Contact Summary Form

Location of Meeting

Date/Time of Meeting 2/3/06 / 1300 hours

Keystone Team Member(s) Scott Duncan

Contact Information:

Name	Mr. Rob Gramke
Title	Program Manager
Organization	U.S. Army Corps of Engineers, St. Louis District
Address	1222 Spruce Street St. Louis, MO 63103
County	
Phone	314-331-8187
E-mail address	robert.gramke@mvs02.usace.army.mil

Meeting Information:

Type of Contact (phone, in-person, etc.):

_phone_____Phone_____

Issue:_Set meeting date_____

Concern Level: High___Moderate___Low_x_.

Description:
Rob returned my phone call requesting a Keystone Pipeline Project meeting with the USACE. The meeting is part of the permitting and consultation process for the Environmental Assessment. He agreed to host the meeting at his office (1222 Spruce St. 4th floor, Rm 4.104) on Friday 2/17/06 from 8 – 10 AM.

Issue:_____ **Concern Level: High__Moderate__Low__.**

Description:

J:\10000\10623-004-KEYSTONE\Agency Coordination\Contact Summaries_Sharepoint\Summaries entered in Sharepoint\2006\COE_Gramke_SD_020306 entered 022206.doc

Caddis, Karen

From: Gramke, Robert MVS [Robert.Gramke@mvs02.usace.army.mil]
Sent: Friday, February 10, 2006 6:45 AM
To: Duncan, Scott
Cc: Caddis, Karen; Dufresne, Doree
Subject: RE: Keystone Pipeline Project Meeting with the U.S. Army Corps of Engineers

Scott,

USFWS is more than welcome to attend the meeting. I will probably have a couple of people from our office at the meeting.

Rob Gramke
U.S. Army Corps of Engineers
St. Louis District Regulatory Branch
1222 Spruce Street
St. Louis, Missouri 63103
Phone 314-331-8187
Fax 314-331-8741
email robert.gramke@mvs02.usace.army.mil

From: Duncan, Scott [mailto:sduncan@ensr.aecom.com]
Sent: Thursday, February 09, 2006 1:19 PM
To: Gramke, Robert MVS
Cc: Caddis, Karen; Dufresne, Doree
Subject: Keystone Pipeline Project Meeting with the U.S. Army Corps of Engineers

Rob:

The following personnel from the Keystone Pipeline Project team will be present at the scheduled meeting at your office on Friday, February 17 in Room 4.104:

Mike Schmaltz (TransCanada - Environment)
Scott Ellis (ENSR - Project Manager)
Scott Duncan (ENSR - Missouri State Coordinator)

At the meeting we will provide an overall description of the Keystone Pipeline Project and an overview of the environmental permitting / NEPA process for this project, including federal permits and approvals. We are interested in discussing Section 404 CWA / Section 10 Rivers and Harbors Act permitting related to the St. Louis District. I met with Cody Wheeler, Kansas City District Special Projects Manager for the Corps at a Keystone Pipeline Project meeting in Topeka, KS on Monday.

If agreeable to you, I believe it would be beneficial to invite a representative of the U.S. Fish & Wildlife Service from the Marion, IL and Columbia, MO Ecological Services offices to this meeting for consultation regarding the Missouri and Illinois portions of the Keystone Pipeline Project. If this is acceptable to you, let me know and I will notify the USFWS.

Best regards,

CONFIDENTIAL

Scott Duncan

ENSR
1601 Prospect Parkway
Fort Collins, Colorado 80525-9765
T 970.493.8878 Ext. 182
F 970.493.0213
E SDuncan@ensr.aecom.com
www.ensr.aecom.com

CONFIDENTIAL

Keystone Project Meeting: Corps of Engineers, St Louis District, St. Louis

Date: February 17, 2006 (8 AM-10 AM)

Keystone Attendees: M. Schmaltz, S. Ellis, G. Black

Agency Attendees:

COE

Sue Horneman, Permitting Illinois
Ward Lenz, Permitting MO
R. Grampke, Permitting MO
G. Frerker, Permitting COE Property (Carlyle Lake)

Introduction

- Schmaltz: Background on TransCanada and the project, TransCanada environmental philosophy and commitments. .

- Ellis: Status of NEPA process (State Dept. is lead agency, Project recently met with the State Dept., EA vs. EIS decision to be made soon, future federal agency coordination at the Washington DC level; Keystone represents a unique project for the State Dept because of large size, and no other major federal land management agency involved; schedule discussion with November 07 as the target date to obtain all permits).

COE

- Permitting Schedule. Reaction to permitting timeline (Frerker). Thinks the proposed Keystone permitting schedule may be ambitious given COE recent experience permitting the Equilon/Shell (now Buckeye) pipeline between Wood River and Patoka. Frerker said that it took 9 months after the EA was published to get the 404 permit approved. Factors that extended the schedule: 1) extensive public involvement in response to the public notice (e.g Webster Grove Nature Study Group, Sierra Club, Missouri Coalition for the Environment, Great Rivers, American Bottoms, Audubon); 2) crossing Lake Carlyle across COE lands triggered an Individual Permit, even though disturbance was temporary, and HDD was used in some locations (major factor appears to have been construction in forested wetlands with the long-term loss of trees). Lake Carlyle crossing location is next to a public access point, frequented by birdwatchers; 3) major mitigation requirement to address wetland effects – Shell had to buy 30 acres of bottomland farmland, and convert it to wetland to compensate for the disturbance/loss of 12 acres of project-related disturbance. A large fraction of the extra time required for the process involved the transfer of purchased land to the

CONFIDENTIAL

COE – Equilon/Shell had to perform cultural and biological surveys and other due diligence, and then proceed through the COE real estate acquisition process. COE said that Equilon/Shell told them that this project was one of their worst recent project permitting experiences, but Equilon/Shell acknowledged they wished they had started on the issues earlier, especially dealing with public input.

- Background info for Keystone Planning. COE recommended that Keystone obtain the Equilon/Shell EA and supporting documents via a Freedom of Information Act Request. Stated that we needed to be very specific about what we wanted in our request. They provided the case number for the project for follow up. From the discussion, it sounded like there was a lot of useful field survey data (wetlands, wildlife) that could be applied to Keystone if the Keystone route is closely parallel to Buckeye. COE provided us the cover sheet for the Equilon 404 permit (Permit # P-2303) (attached here as a pdf).

- Keystone Project Information. COE recommended that Keystone provide the 1:24,000 route set to the St. Louis COE so they can begin to identify issues, and further agency contacts (See Mississippi River Crossing below).

- Permitting process. COE will want the St. Louis COE District applications split between Missouri and Illinois. Horneman and Frerker are the contacts for Illinois; Grampke and Lenz for Missouri. Based on the Equilon/Shell precedent, we can expect that the COE will require an Individual permit for Illinois, and that land compensation mitigation will be required.

- Mississippi River Crossing. COE showed us navigation maps that show the utility crossings between the west bank and Wood River – there are numerous existing pipelines in the same crossing area proposed by Keystone. They also recommended contacting & providing maps to the Wood River Levee District to discuss construction under the levees on the east side of the Mississippi. COE provided a contact sheet for the levee districts (attached here as a pdf).

Action Items:

- ENSR provide FWS & COE with 1:24,000 and 1:100,00 sheets for MO & Ill.
- ENSR prepare FOIA request for relevant Shell pipeline project (EA, 404 application, and technical studies).
- ENSR identify contacts within Shell who may be able to provide further insights into the permitting process, based on ENSR prior pipeline permitting work for Shell.
- Engineering provide maps, discuss future coordination process with MODOT.

Caddis, Karen

From: Caddis, Karen
Sent: Wednesday, March 15, 2006 10:58 PM
To: Charles.F.Frerker@mvs02.usace.army.mil
Cc: Ellis, Scott
Subject: TransCanada Keystone pipeline project

Hello Chuck,

I received your voicemail regarding the pre-application meeting for the TransCanada Keystone Pipeline project. I am currently out in the field, but should be back in the office next week. To answer some of your questions regarding information on the project; we are currently preparing a pre-application package that should be arriving at your office next week. This informational package will include detailed maps of the proposed pipeline route, including NWI mapped wetlands and our proposed survey locations along the corridor. Proposed corridor construction and operation widths will also be included along with a table of all wetlands and other WUS crossed by the ROW (based on USGS and NWI mapping). The table will include approximate temporary and operational disturbance acreages based on proposed ROW widths. Formal wetland delineations have not been completed at this time and this is one of the items we would like to discuss during our meeting with your district. We are hoping to implement delineation surveys by late spring and will be including our proposed survey protocol in the informational package for you to review. We were hoping that you and other appropriate representatives of the St. Louis District, including Rob Gramke, would be available to participate in a pre-application meeting after you have had a chance to review the information package. We will be meeting with representatives of the Omaha and Kansas City COE Districts during the week of March 27 and, if possible, would like to meet with your district sometime during that week or the following week. If you have any additional questions, please feel free to leave me a voice mail at 970-493-8878 or contact me via e-mail at kcaddis@ensr.aecom.com. Thank you for your interest and attention to this project!

Karen

CONFIDENTIAL

Caddis, Karen

From: Frerker, Charles F MVS [Charles.F.Frerker@mvs02.usace.army.mil]
Sent: Thursday, March 16, 2006 8:03 AM
To: Caddis, Karen
Subject: RE: TransCanada Keystone pipeline project

Karen,

Thanks for the updated information. I should be available for a meeting after reviewing your forthcoming project information. The formal pre-application meetings typically involves on-site reviews of proposed impact areas with other Federal and state resource agencies. The pre-application meeting would have to occur in the future after more defined impacts are assessed by on-site delineations. The NWI and topographic maps typically do not show all of the jurisdictional areas, especially those located in agricultural lands and riparian areas. You are probably aware that the memorandum of understanding between the USDA and Corps has been abandoned. As such, delineations on all agricultural lands must be performed under the Corps of Engineers 1987 wetland delineation manual. Previous NRCS delineations can not be accepted. Congress directed the USFWS to avoid mapping wetland features on agricultural lands during their original reviews. This typically increases the acreage of jurisdictional areas.

Rob and I have discussed the project and anticipated impact areas. The most significant and probable impacts will occur at the major waterways and on federal and state properties. These areas of responsibility are within my Section. As such, I will be the only project manager involved with the entire review of the proposed pipeline route within the boundaries of the St. Louis District.

I look forward to working with you in the near future. I have numerous projects under review at this time and have been spending a lot of time in the field. If possible, please contact me via e-mail for the quickest response.

Thank you,

Charles Frerker, PM
Rivers/Corps Team Leader
Regulatory Branch
314-331-8583

-----Original Message-----
From: Caddis, Karen [mailto:kcaddis@ensr.aecom.com]
Sent: Wednesday, March 15, 2006 11:58 PM
To: Frerker, Charles F MVS
Cc: Ellis, Scott
Subject: TransCanada Keystone pipeline project

Hello Chuck,

I received your voicemail regarding the pre-application meeting for the TransCanada Keystone Pipeline project. I am currently out in the field, but should be back in the office next week. To answer some of your questions regarding information on the project; we are currently preparing a pre-application package that should be arriving at your office next week. This informational package will include detailed maps of the proposed pipeline route, including NWI mapped wetlands and our proposed survey locations along the corridor. Proposed corridor construction and operation widths will also be included along with a table of all wetlands and other WUS crossed by the ROW (based on USGS and NWI mapping). The table will include approximate temporary and operational disturbance acreages based on proposed ROW widths. Formal wetland delineations have not been completed at this time and this is one of the items we would like to discuss during our meeting with your district. We are hoping to implement delineation surveys by late spring and will be including our proposed survey protocol in the informational package for you to review.

We were hoping that you and other appropriate representatives of the St. Louis District, including Rob Gramke, would be available to participate in a pre-application meeting after you have had a chance to review the information package. We will be meeting with representatives of the Omaha and Kansas City COE Districts during the week of March 27 and, if possible, would like to meet with your district sometime during that week or the following week. If you have any additional questions, please feel free to leave me a voice mail at 970-493-8878 or contact me via e-mail at kcaddis@ensr.aecom.com. Thank you for your interest and attention to this project!

Karen

CONFIDENTIAL

Caddis, Karen

From: Frerker, Charles F MVS [Charles.F.Frerker@mvs02.usace.army.mil]
Sent: Thursday, March 16, 2006 8:03 AM
To: Caddis, Karen
Subject: RE: TransCanada Keystone pipeline project

Karen,

Thanks for the updated information. I should be available for a meeting after reviewing your forthcoming project information. The formal pre-application meetings typically involves on-site reviews of proposed impact areas with other Federal and state resource agencies. The pre-application meeting would have to occur in the future after more defined impacts are assessed by on-site delineations. The NWI and topographic maps typically do not show all of the jurisdictional areas, especially those located in agricultural lands and riparian areas. You are probably aware that the memorandum of understanding between the USDA and Corps has been abandoned. As such, delineations on all agricultural lands must be performed under the Corps of Engineers 1987 wetland delineation manual. Previous NRCS delineations can not be accepted. Congress directed the USFWS to avoid mapping wetland features on agricultural lands during their original reviews. This typically increases the acreage of jurisdictional areas.

Rob and I have discussed the project and anticipated impact areas. The most significant and probable impacts will occur at the major waterways and on federal and state properties. These areas of responsibility are within my Section. As such, I will be the only project manager involved with the entire review of the proposed pipeline route within the boundaries of the St. Louis District.

I look forward to working with you in the near future. I have numerous projects under review at this time and have been spending a lot of time in the field. If possible, please contact me via e-mail for the quickest response.

Thank you,

Charles Frerker, PM
Rivers/Corps Team Leader
Regulatory Branch
314-331-8583

-----Original Message-----
From: Caddis, Karen [mailto:kcaddis@ensr.aecom.com]
Sent: Wednesday, March 15, 2006 11:58 PM
To: Frerker, Charles F MVS
Cc: Ellis, Scott
Subject: TransCanada Keystone pipeline project

Hello Chuck,

I received your voicemail regarding the pre-application meeting for the TransCanada Keystone Pipeline project. I am currently out in the field, but should be back in the office next week. To answer some of your questions regarding information on the project; we are currently preparing a pre-application package that should be arriving at your office next week. This informational package will include detailed maps of the proposed pipeline route, including NWI mapped wetlands and our proposed survey locations along the corridor. Proposed corridor construction and operation widths will also be included along with a table of all wetlands and other WUS crossed by the ROW (based on USGS and NWI mapping). The table will include approximate temporary and operational disturbance acreages based on proposed ROW widths. Formal wetland delineations have not been completed at this time and this is one of the items we would like to discuss during our meeting with your district. We are hoping to implement delineation surveys by late spring and will be including our proposed survey protocol in the informational package for you to review.

CONFIDENTIAL

ENSR
1601 Prospect Parkway, Fort Collins, Colorado 80525-9759
T 970.493.8878 F 970.493.0213 www.ensraecom.com

March 22, 2006

Mr. Chuck Frerker
Project Manager
USACE- St. Louis Regulatory Office
1222 Spruce Street
St. Louis, MO 63103

Subject: Keystone Pipeline Project

Dear Mr. Frerker,

To assist with your review of the proposed Keystone Pipeline Project, ENSR is providing you with the attached project information package as described below. After you have had a chance to review this package, we would like to meet with you in your office at your earliest convenience to provide you with a project status update on the Keystone Pipeline Project. We would also like to discuss our proposed field programs for 2006 and survey and application requirements, and the information that Keystone will provide to the U.S. Army Corps of Engineers (COE) so that project-related wetland and water body jurisdictional determinations can be made.

To assist with preparation for the upcoming meeting and review of the project, please find the following attachments:

1. Pipeline Route maps. These strip maps illustrate the proposed pipeline alignment on an aerial photo and topographic base at a scale of 1:24,000. The National Wetland Inventory polygons have been included as an overlay on both bases. Also included are preliminary wetland survey areas that were determined by ENSR from aerial photo review.

2. Drainage crossings. A table listing drainage crossings is derived from the USGS watershed drainage GIS layers. Crossing locations are correlated with project mileposts. This table is the starting point for the Waters of the U.S. review.

3. Wetland/waterbody crossing methods. This is a section from the filing that Keystone will submit to the Department of State at the end of March.

4. Draft Survey Protocol. The survey protocol will be provided to you later this week via e-mail.

Preliminary Meeting Agenda

The following is a list of items that we would like to cover at the meeting at your office. We would appreciate your input on these, and other topics that should be discussed.

1. Introductions
2. Keystone Waterbody and Wetland Crossing Methods
3. Pipeline route review (routing considerations and concerns)
4. Overview of 2006 Field Program
5. Field Survey Technical Issues (definitions and level of survey)
    - Waters of the U.S.
    - Farmed wetlands

CONFIDENTIAL

6. Technical reports (content and format).
7. COE expectations, and future communications

If you have questions regarding the attached information and to set up a meeting date, please call Karen Caddis or Scott Ellis at 970-493-8878, or contact us by e-mail (kcaddis@ensr.aecom.com or sellis@ensr.aecom.com). We appreciate the opportunity to meet with COE staff in the St. Louis District with responsibilities for this project.

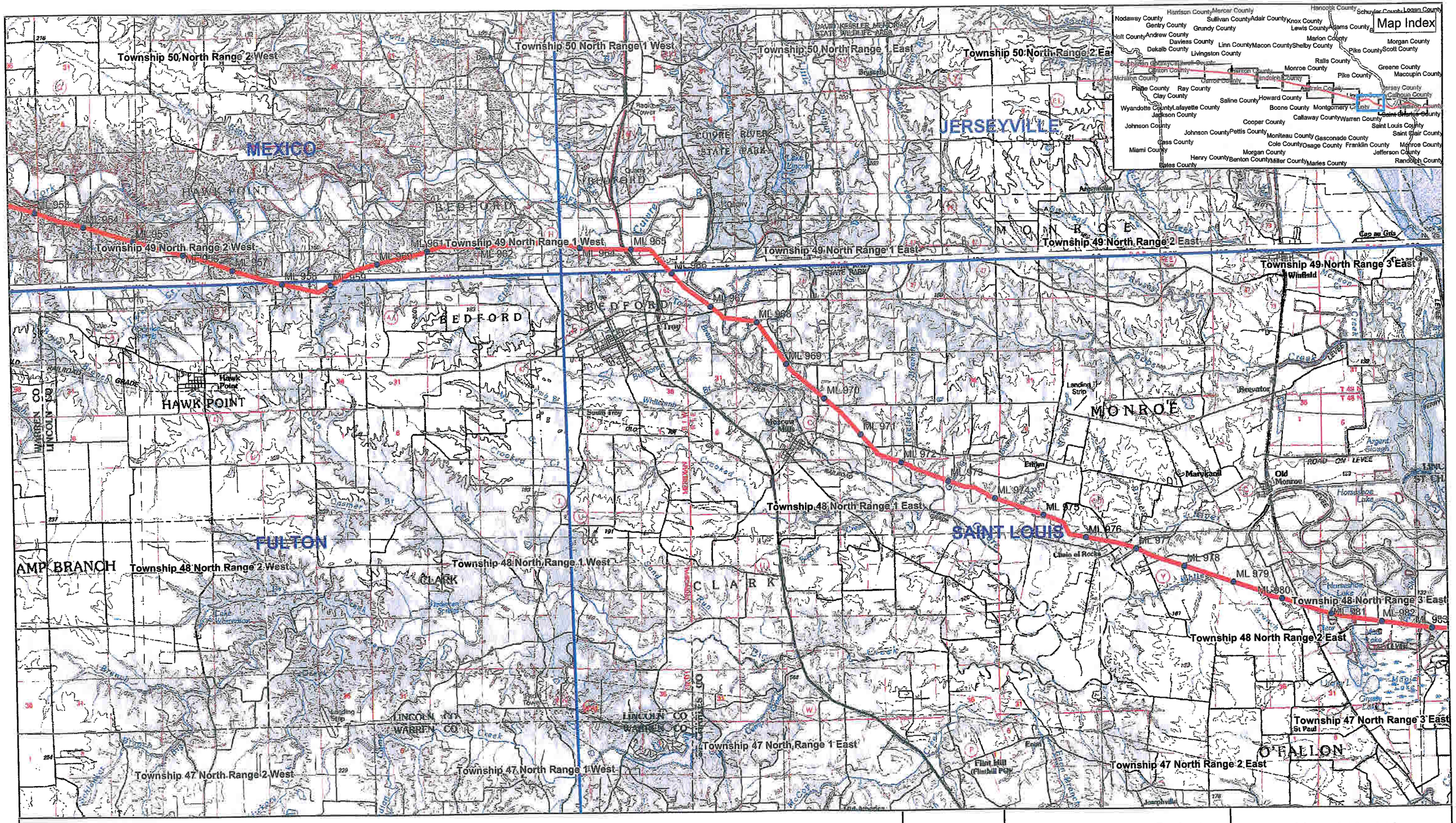
Sincerely yours,

Karen Caddis

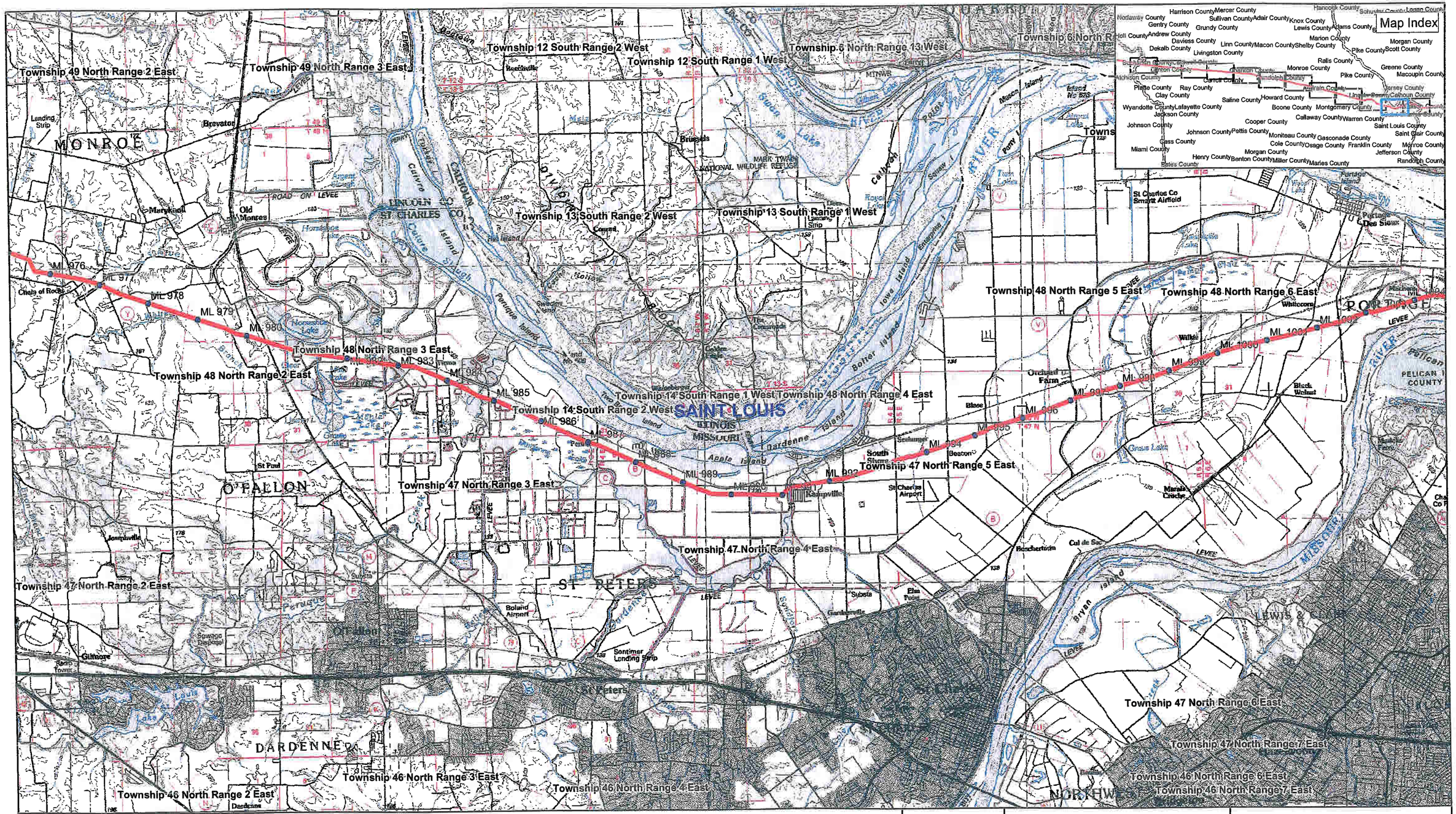
Karen Caddis
Senior Technical Specialist/Wetlands Program Coordinator

Scott Ellis
Environmental Permitting Project Manager

CONFIDENTIAL



CONFIDENTIAL



Pipeline

Co-Located Keystone and Rockies Express Pipelines

N

0 0.5 1 Miles

Keystone Pipeline Project

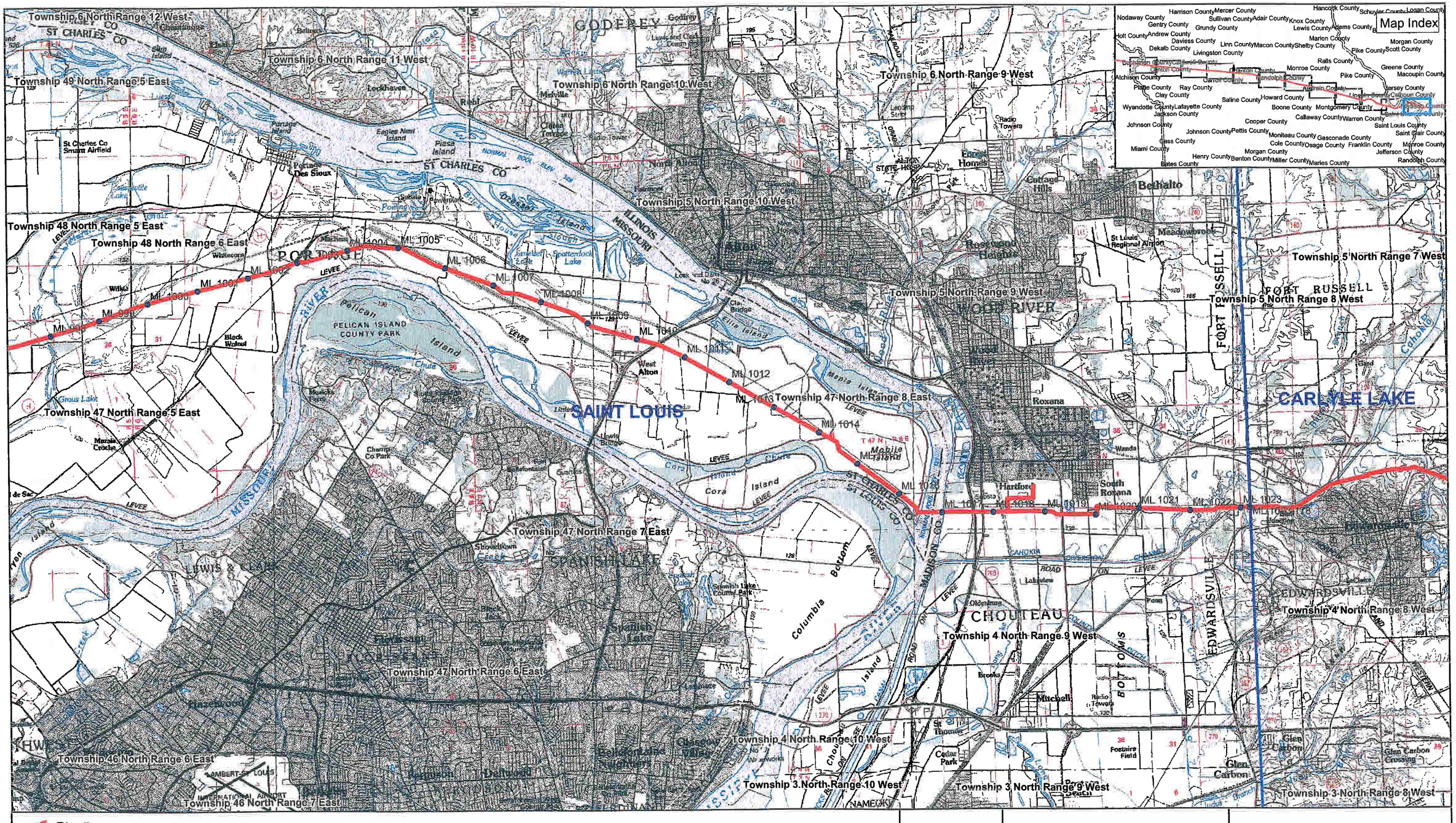
TransCanada

In business to deliver

Map of 11 of 12

Land Access Areas (Missouri)

CONFIDENTIAL



Pipeline

Co-Located Keystone and Rockies Express Pipelines

N

0 0.5 1 Miles

Keystone Pipeline Project

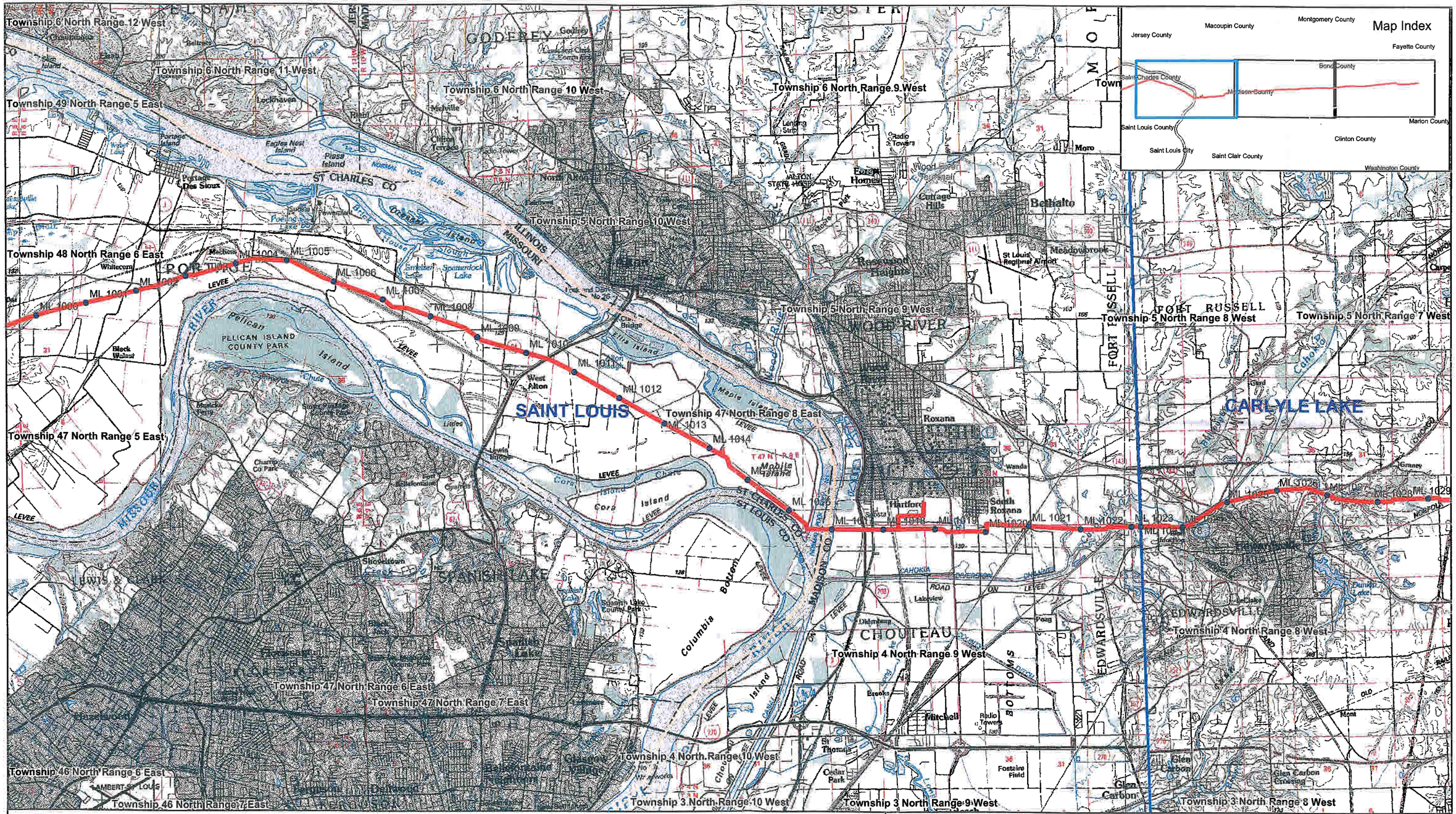
TransCanada

In business to deliver

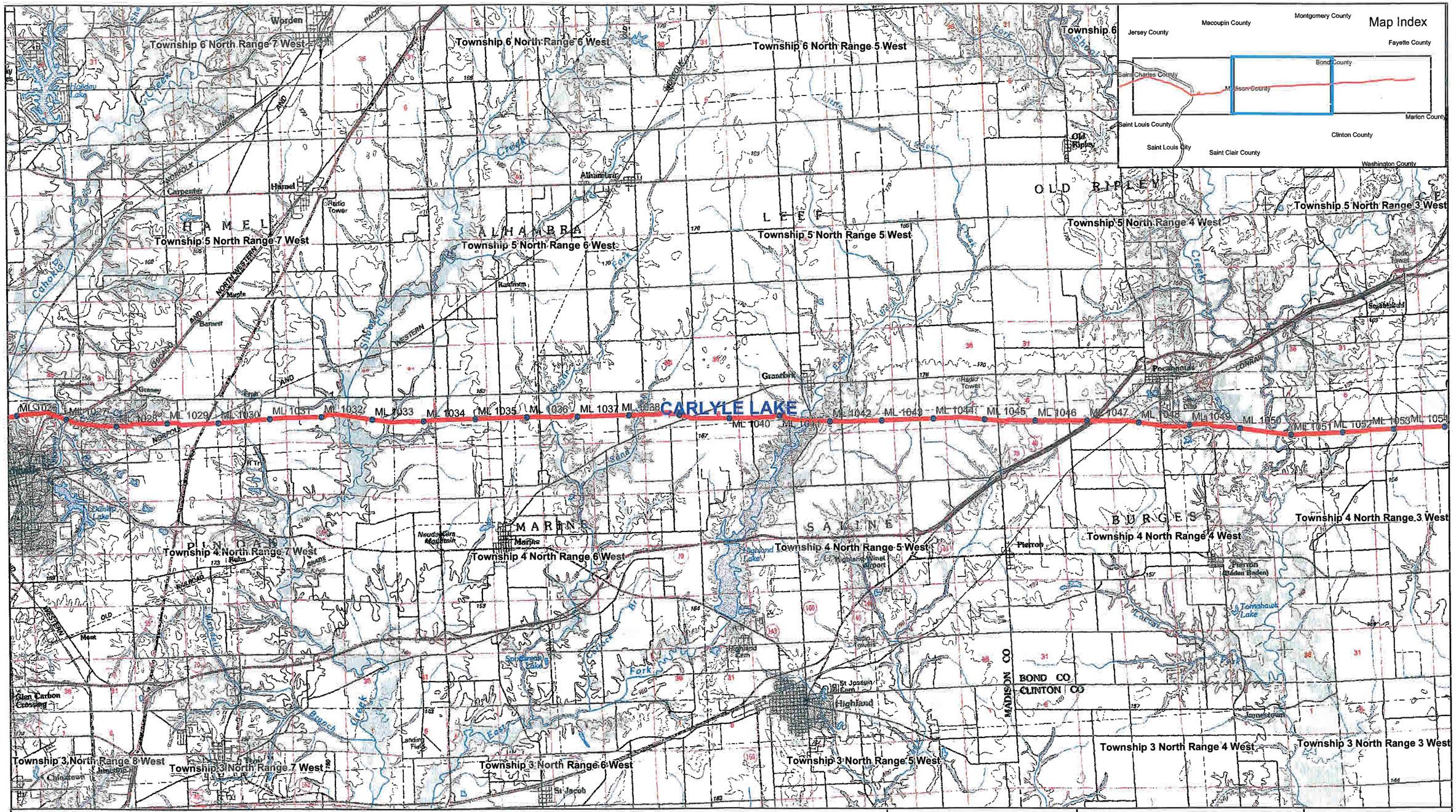
Map of 12 of 12

Land Access Areas (Missouri)

CONFIDENTIAL



CONFIDENTIAL



Pipeline

N

0 0.5 1 2 Miles

Keystone Pipeline Project

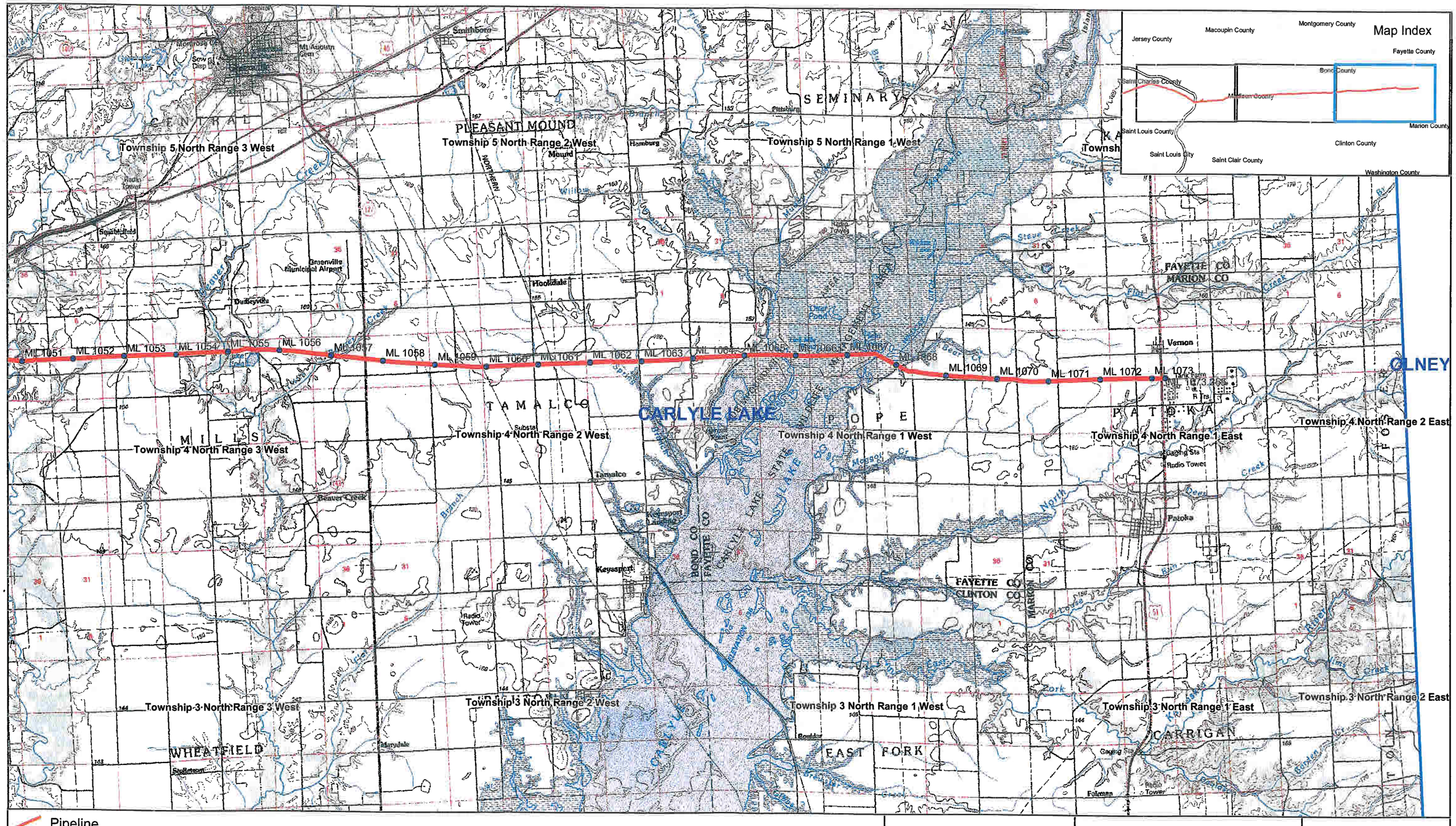
TransCanada

In business to deliver

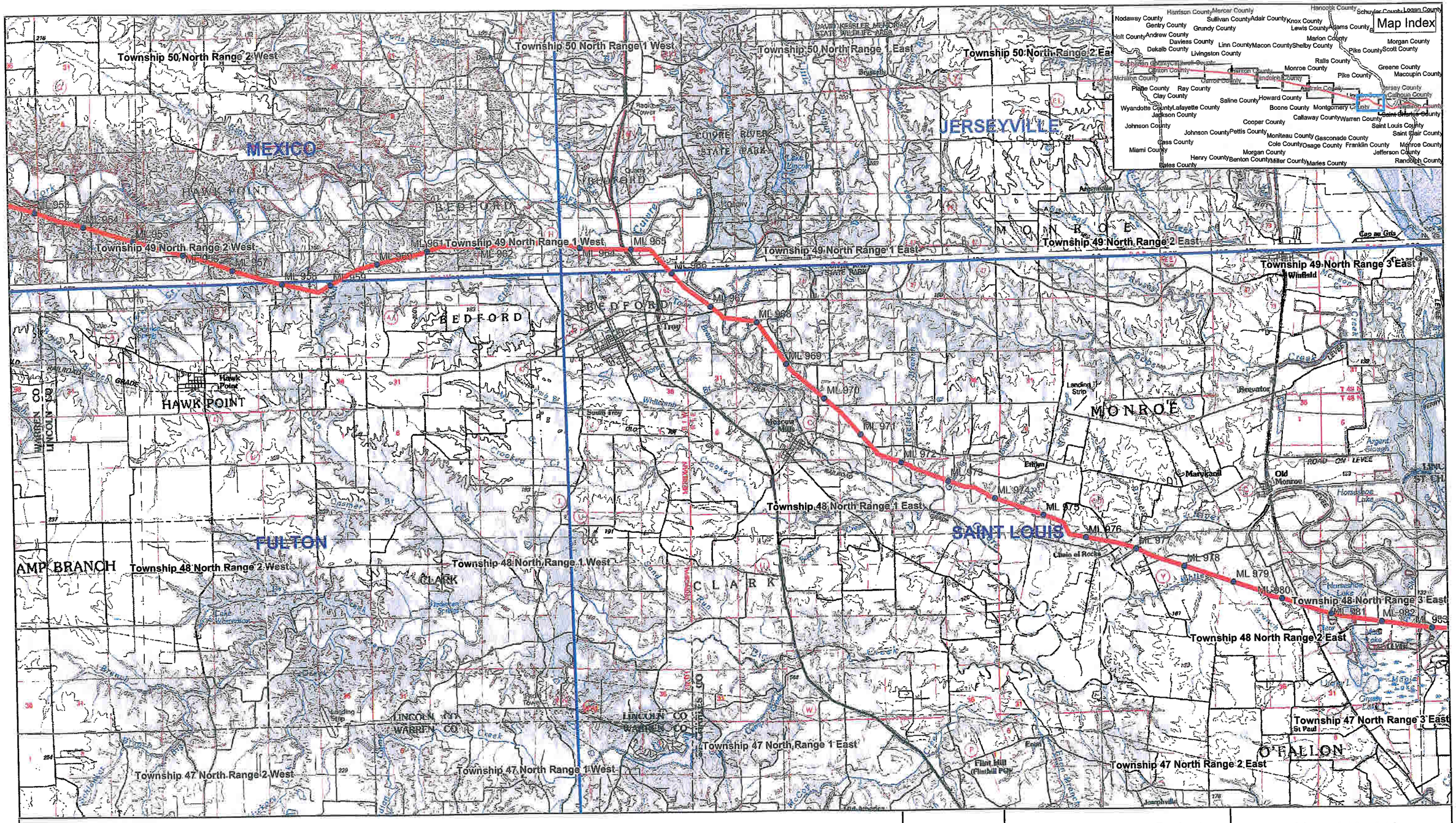
Map of 2 of 3

Land Access Areas (Illinois)

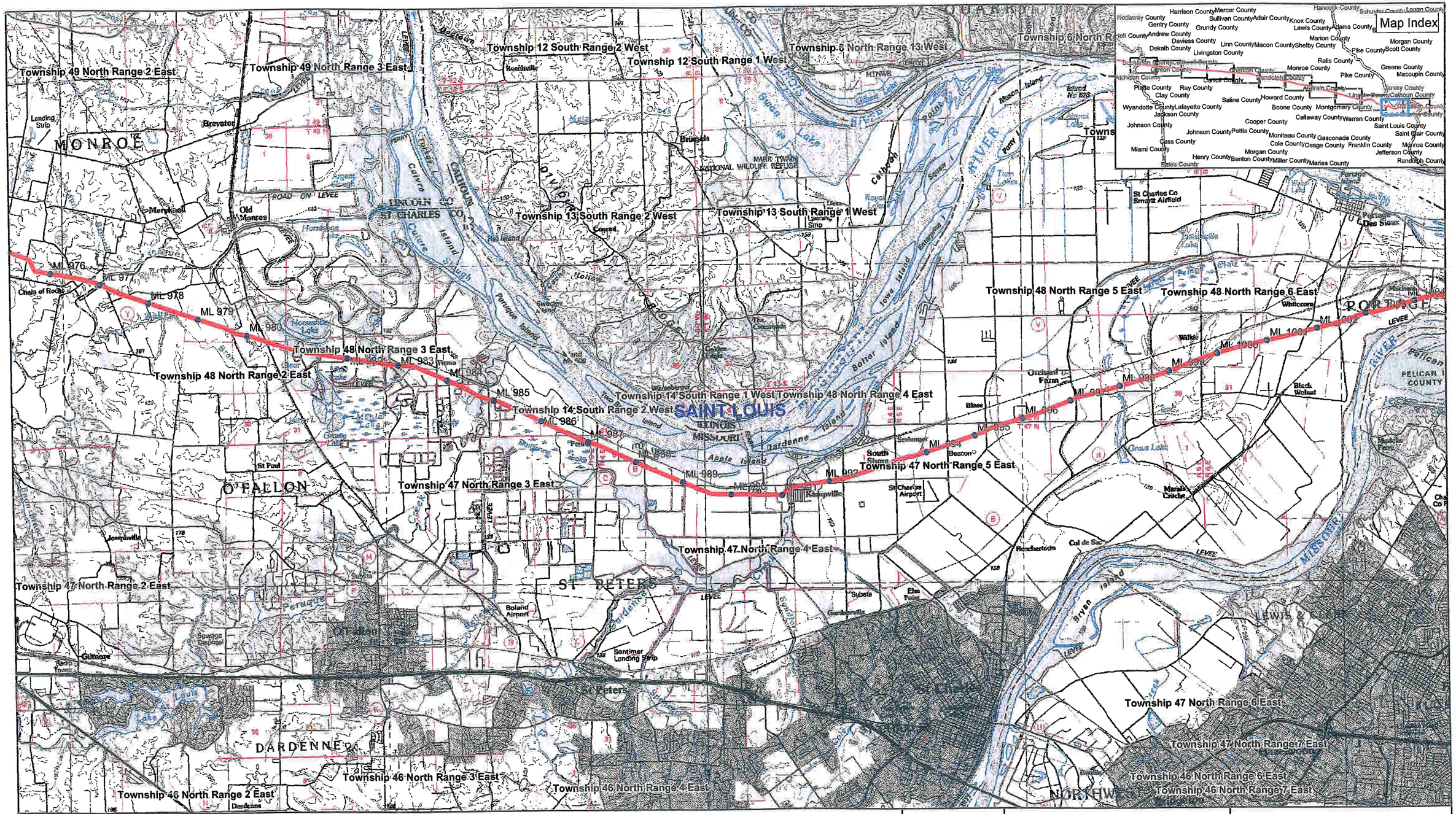
CONFIDENTIAL



CONFIDENTIAL



CONFIDENTIAL



Pipeline

Co-Located Keystone and Rockies Express Pipelines

N

0 0.5 1 Miles

Keystone Pipeline Project

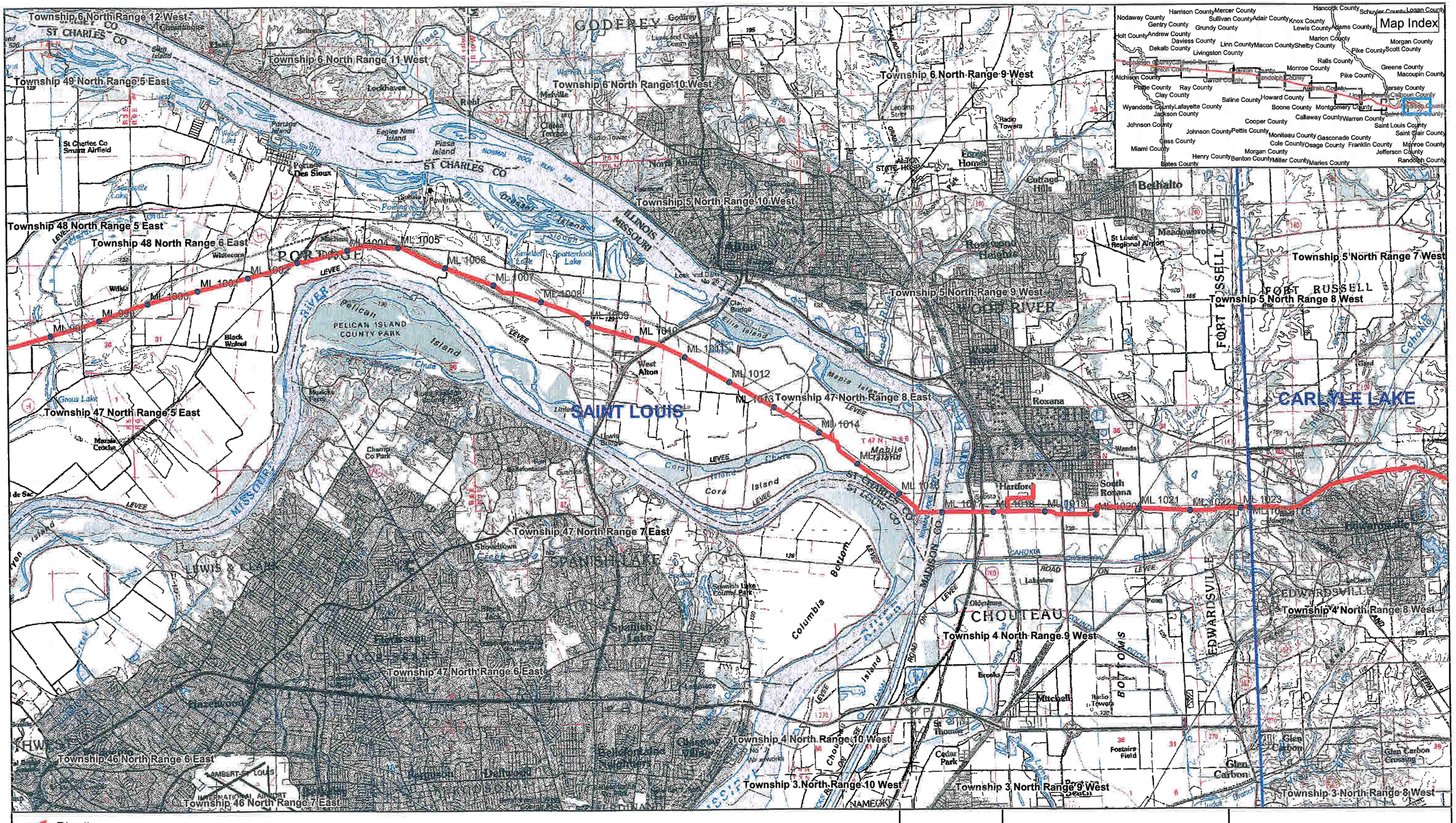
TransCanada

In business to deliver

Map of 11 of 12

Land Access Areas (Missouri)

CONFIDENTIAL



Pipeline

Co-Located Keystone and Rockies Express Pipelines

N

0 0.5 1 Miles

Keystone Pipeline Project

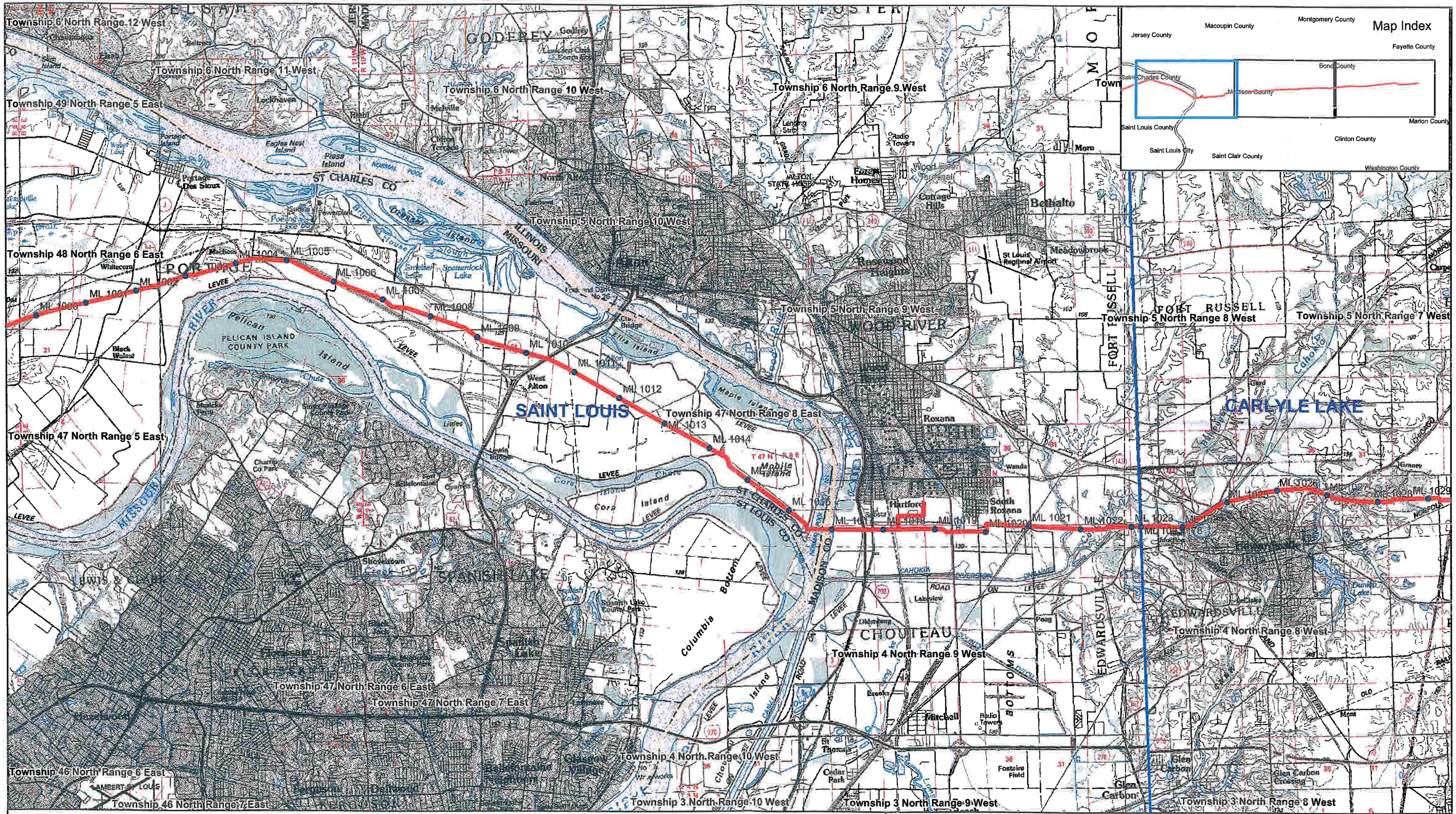
TransCanada

In business to deliver

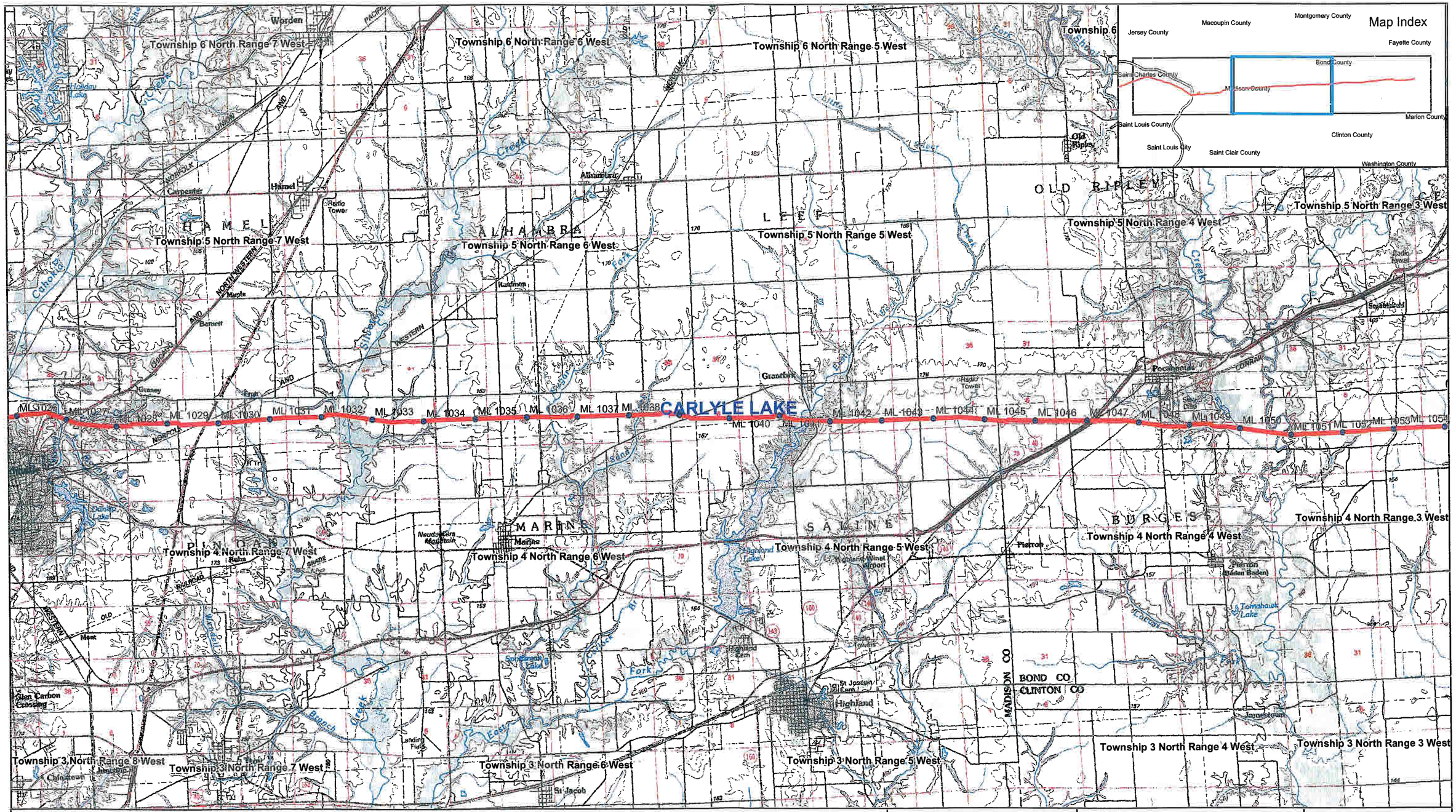
Map of 12 of 12

Land Access Areas (Missouri)

CONFIDENTIAL



CONFIDENTIAL



Pipeline

N

0 0.5 1 2 Miles

Keystone Pipeline Project

TransCanada

In business to deliver

Map of 2 of 3

Land Access Areas (Illinois)