

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION BY)	
TRANSCANADA KEYSTONE PIPELINE, LP)	AMENDED FINAL DECISION
FOR A PERMIT UNDER THE SOUTH DAKOTA)	AND ORDER; NOTICE OF
ENERGY CONVERSION AND TRANSMISSION)	ENTRY
FACILITIES ACT TO CONSTRUCT THE)	
KEYSTONE XL PROJECT)	HP09-001

PROCEDURAL HISTORY

On March 12, 2009, TransCanada Keystone Pipeline, LP (“Applicant” or “Keystone”) filed an application with the South Dakota Public Utilities Commission (“Commission”) for a permit as required by SDCL Chapter 49-41B to construct the South Dakota portion of the Keystone XL Pipeline (“Project”)¹. The originally filed application described the Project as proposed to be an approximately 1,702 mile pipeline for transporting crude oil from Alberta, Canada, to the greater Houston area in Texas, with approximately 1,375 miles to be located in the United States and 313 miles located in South Dakota.

On April 6, 2009, the Commission issued its Notice of Application; Order for and Notice of Public Input Hearings; and Notice of Opportunity to Apply for Party Status. The notice provided that pursuant to SDCL 49-41 B-17 and ARSD 20:10:22:40, each municipality, county, and governmental agency in the area where the facility is proposed to be sited; any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the area in which the facility is to be sited; or any interested person, may be granted party status in this proceeding by making written application to the Commission on or before May 11, 2009.

Pursuant to SDCL 49-41B-15 and 49-41B-16, and its Notice of Application; Order for and Notice of Public Hearings and Notice of Opportunity to Apply for Party Status, the Commission held public hearings on Keystone’s application as follows: Monday, April 27, 2009, 12:00 noon CDT at Winner Community Playhouse, 7th and Leahy Boulevard, Winner, SD, at which 26 persons presented comments or questions; Monday, April 27, 2009, 7:00 p.m. MDT at Fine Arts School, 330 Scottie Avenue, Philip, SD, at which 17 persons presented comments or questions; and Tuesday, April 28, 2009, 6:00 p.m. MDT at Harding County Recreation Center, 204 Hodge Street, Buffalo, SD, at which 16 persons presented comments or questions. The purpose of the public input hearings was to hear public comment regarding Keystone’s application. At the public input hearings, Keystone presented a brief description of the project, following which interested persons appeared and presented their views, comments and questions regarding the application.

On April 29, 2009, Mary Jasper (Jasper) filed an Application for Party Status. On May 4, 2009, Paul F. Seamans (Seamans) filed an Application for Party Status. On May 5, 2009, Darrell Iversen (D. Iversen) filed an Application for Party Status. On May 8, 2009, the City of Colome (Colome) and Glen Iversen (G. Iversen) filed Applications for Party Status. On May 11, 2009, Jacqueline Limpert (Limpert), John H. Harter (Harter), Zona Vig (Vig), Tripp County Water User District (TCWUD), Dakota Rural Action (DRA) and David Niemi (David Niemi) filed Applications for

¹The Commission’s Orders in the case and all other filings and documents in the record are available on the Commission’s web page for Docket HP09-001 at:
<http://puc.sd.gov/dockets/hydrocarbonpipeline/2009/hp09-001.aspx>

Party Status. On May 11, 2009, the Commission received a Motion for Extension of Time to File Application for Party Status from DRA requesting that the intervention deadline be extended to June 10, 2009. On May 12, 2009, Debra Niemi (Debra Niemi) and Lon Lyman (Lyman) filed Applications for Party Status. On May 15, 2009, the Commission received a Response to Motion to Extend Time from DRA and a Motion to Establish a Procedural Schedule from the Commission's Staff ("Staff").

At its regularly scheduled meeting of May 19, 2009, the Commission voted unanimously to grant party status to Jasper, Seamans, D. Iversen, Colome, G. Iversen, Limpert, Harter, Vig, TCWUD, DRA, David Niemi, Debra Niemi and Lyman. The Commission also voted to deny the Motion for Extension of Time to File Application for Party Status, and in the alternative, the Commission extended the intervention deadline to May 31, 2009. On May 29, 2009, Ruth M. Iversen (R. Iversen) and Martin R. Lueck (Lueck) filed Applications for Party Status. At its regularly scheduled meeting of June 9, 2009, the Commission voted unanimously to grant the Motion to Establish a Procedural Schedule and granted intervention to R. Iversen and Lueck.

On August 26, 2009, the Commission received a revised application from Keystone. On September 3, 2009, the Commission received a Motion for Extension of Time to Submit Testimony from DRA. At its regularly scheduled meeting of September 8, 2009, the Commission voted unanimously to grant the Motion for Extension of Time to Submit Testimony to extend DRA's time for filing and serving testimony until September 22, 2009.

On September 18, 2009, Keystone filed Applicant's Response to Dakota Rural Action's Request for Further Discovery. On September 21, 2009, DRA filed a Motion to Compel Responses and Production of Documents Addressed to TransCanada Keystone Pipeline, LP Propounded by Dakota Rural Action. At an ad hoc meeting on September 23, 2009, the Commission considered DRA's Motion to Compel and on October 2, 2009, issued its Order Granting in Part and Denying in Part Motion to Compel Discovery. By letter filed on September 29, 2009, Chairman Johnson requested reconsideration of the Commission's action with respect to DRA's Request 6 regarding Keystone documents pertaining to development of its Emergency Response Plan for the Project. At its regularly scheduled meeting on October 6, 2009, the Commission voted two to one, with Commissioner Hanson dissenting, to require Keystone to produce to DRA via email the References for the Preparation of Emergency Response Manuals before the close of business on October 6, 2009, that DRA communicate which documents on the list it wished Keystone to produce on or before the close of business on October 8, 2009, and that Keystone produce such documents to DRA on or before October 15, 2009.

On October 2, 2009, Staff filed a letter requesting the Commission to render a decision as to whether the hearing would proceed as scheduled commencing on November 2, 2009. Staff's letter stated that rescheduling the hearing would result in significant scheduling complications for Staff's expert witnesses whose scheduling and travel arrangements had been made months earlier based on the Commission's Order Setting Procedural Schedule issued on June 30, 2009. At its regular meeting on October 6, 2009, the Commission considered Staff's request. At the meeting, all parties agreed that the hearing could proceed on the scheduled dates. DRA requested that its date for submission of pre-filed testimony be extended from October 14, 2009, until October 22, if possible, or at least until October 20, 2009. After discussion, the parties agreed on an extension for DRA's pre-filed testimony until October 20, 2009, with Applicant's rebuttal to be filed by October 27, 2009. The Commission voted unanimously to approve such dates and issued its Order Setting Amended Procedural Schedule on October 8, 2009.

On October 15, 2009, the Commission issued its Order for and Notice of Hearing setting the matter for hearing on November 2-6, 2009, and its Order for and Notice of Public Hearing for an

additional informal public input hearing to be held in Pierre on November 3, 2009, commencing at 7:00 p.m. CST. On October 19, 2009, DRA requested that the time for commencement of the public hearing be changed from 7:00 p.m. CST to 6:00 p.m. CST to better accommodate the schedules of interested persons. On October 21, 2009, the Commission issued an Amended Order for and Notice of Public Hearing amending the start time for the public hearing to 6:00 p.m. CST.

On October 19, 2009, Keystone filed a second revised application ("Application") containing minor additions and amendments reflecting refinements to the route and facility locations and the most recent environmental and other planning evaluations.

In accordance with the scheduling and procedural orders in this case, Applicant, Staff and Intervenor David and Debra Niemi filed pre-filed testimony. The hearing was held as scheduled on November 2-4, 2009, at which Applicant, DRA and Staff appeared and participated. The informal hearing was held as scheduled on the evening of November 3, 2009, at which 23 persons presented comments and/or questions. A combined total of 326 persons attended the public input hearings in Winner, Phillip, Buffalo and Pierre. As of February 26, 2009, the Commission had received 252 written comments regarding this matter from the public.

On December 31, 2009, the Commission issued its Amended Order Establishing Briefing Schedule setting the following briefing schedule: (i) initial briefs and proposed findings of fact and conclusions of law from all parties wishing to submit them due by January 20, 2010; and (ii) reply briefs and objections and revisions to proposed findings of fact and conclusions of law due from all parties wishing to submit them on or before February 2, 2010.

On January 13, 2009, Intervenor David Niemi filed a letter with the Commission requesting and recommending a series of conditions to be included in the order approving the permit, if granted. On January 20, 2010, initial briefs were filed by the Applicant and Staff. On January 20, 2010, Applicant also filed and served proposed findings of fact and conclusions of law. On January 21, 2010, DRA filed an initial brief and Motion to Accept Late-Filed Brief. On January 21 and 26, 2010, respectively, Keystone and Staff filed letters of no objection to acceptance of DRA's late-filed initial brief. On February 2, 2010, reply briefs were filed and served by Applicant, DRA and Staff, and Keystone filed Applicant's Response to David Niemi's Letter filed on January 13, 2010.

At an ad hoc meeting on February, 18, 2010, after separately considering each of a set of draft conditions prepared by Commission Counsel from inputs from the individual Commissioners and a number of Commissioner motions to amend the draft conditions, the Commission voted unanimously to approve conditions to which a permit to construct the Project would be subject, if granted, and to grant a permit to Keystone to construct the Project, subject to the approved conditions.

On April 14, 2010, Keystone filed Applicant's Motion for Limited Reconsideration of Certain Permit Conditions ("Motion"). On April 19, 2010, intervenors David Niemi and Seamans filed responses to the Motion. On April 19, 2010, Peter Larson ("Larson") filed two comments responsive to the Motion. On April 27, 2010, Keystone filed Applicant's Reply Brief In Support of Motion for Limited Reconsideration responding to the responses and comments filed by Niemi, Seamans and Larson. On April 28, 2010, Staff filed a response to the Motion. On April 29, 2010, DRA filed the Answer of Dakota Rural Action in Opposition to Applicant's Motion for Limited Reconsideration of Certain Permit Conditions.

At its regularly scheduled meeting on May 4, 2010, the Commission considered the Motion and the responses and comments filed by the parties and Larson. Applicant, Staff, intervenor John

H. Harter, DRA and Larson appeared and participated in the hearing on the Motion. After an extensive discussion among the Commission and participants, the Commission made rulings on the specific requests in the Motion and voted to grant the Motion in part and deny in part and amend certain of the Conditions as set forth in the Commission's Order Granting in Part Motion to Reconsider and Amending Certain Conditions In Final Decision And Order, which was issued by the Commission on June 29, 2010.

Having considered the evidence of record, applicable law and the arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

Parties

1. The permit applicant is TransCanada Keystone Pipeline, LP, a limited partnership, organized under the laws of the State of Delaware, and owned by affiliates of TransCanada Corporation ("TransCanada"), a Canadian public company organized under the laws of Canada. Ex TC-1, 1.5, p. 4.

2. On May 19, 2009, the Commission unanimously voted to grant party status to all persons that had requested party status prior to the commencement of the meeting. On June 9, 2009, the Commission unanimously voted to grant party status to all persons that had requested party status after the commencement of the meeting on May 19, 2009, through the intervention deadline of May 31, 2009. Fifteen persons intervened, including: Mary Jasper, Paul F. Seamans, Darrell Iversen, the City of Colome, Glen Iversen, Jacqueline Limpert, John H. Harter, Zona Vig, Tripp County Water User District ("TCWUD"), Dakota Rural Action, David Niemi, Debra Niemi, Ruth M. Iversen, Martin R. Lueck, and Lon Lyman. Minutes of May 19, 2009, and June 9, 2009, Commission Meetings; Applications for Party Status.

3. The Staff also participated in the case as a full party.

Procedural Findings

4. The application was signed on behalf of the Applicant on February 26, 2009, in Calgary, Alberta, Canada, and was filed with the Commission on March 12, 2009. Ex TC -1, 9.0, p. 116.

5. The Commission issued the following notices and orders in the case as described in greater detail in the Procedural History above, which is hereby incorporated by reference in these Findings of Fact and Conclusions of Law:

- Order of Assessment of Filing Fee
- Notice of Application; Order for and Notice of Public Input Hearings; and Notice of Opportunity to Apply for Party Status
- Order Granting Party Status; Order Denying Motion for Extension of Time to File Application for Party Status; Order Extending Intervention Deadline
- Order Granting Motion to Establish Procedural Schedule and Order Granting Party Status
- Order Setting Procedural Schedule
- Order Granting Motion for Extension of Time to Submit Testimony

- Order Granting in Part and Denying in Part Motion to Compel Discovery
- Order Amending Order Granting in Part and Denying in Part Motion to Compel Discovery
- Order Setting Amended Procedural Schedule
- Order for and Notice of Hearing
- Order for and Notice of Public Hearing
- Amended Order for and Notice of Public Hearing
- Order Establishing Briefing Schedule
- Amended Order Establishing Briefing Schedule
- Order Granting in Part Motion to Reconsider and Amending Certain Conditions In Final Decision And Order

6. Pursuant to SDCL 49-41B-15 and 49-41B-16 and its Notice of Application; Order for and Notice of Public Hearings; and Notice of Opportunity to Apply for Party Status, the Commission held public hearings on Keystone's application at the following times and places (see Public Hearing Transcripts):

- Monday, April 27, 2009, 12:00 noon CDT at Winner Community Playhouse, 7th and Leahy Boulevard, Winner, SD
- Monday, April 27, 2009, 7:00 p.m. MDT at Fine Arts School, 330 Scottie Avenue, Philip, SD
- Tuesday, April 28, 2009, 6:00 p.m. MDT at Harding County Recreation Center, 204 Hodge Street, Buffalo, SD.

7. The purpose of the public hearings was to afford an opportunity for interested persons to present their views and comments to the Commission concerning the Application. At the hearings, Keystone presented a brief description of the project after which interested persons presented their views, comments and questions regarding the application. Public Hearing Transcripts.

8. The following testimony was prefiled in advance of the formal evidentiary hearing held November 2, 3 and 4, 2009, in Room 414, State Capitol, Pierre, South Dakota:

- A. Applicant's March 12, 2009, Direct Testimony.
 - Robert Jones
 - John Phillips
 - Richard Gale
 - Jon Schmidt
 - Meera Kothari
 - John Hayes
 - Donald Scott
 - Heidi Tillquist
 - Tom Oster
- B. Supplemental Direct Testimony of August 31, 2009.
 - John Phillips
- C. Intervenors' Direct Testimony of September 11, 2009.
 - David Niemi
 - Debra Niemi

- D. Staff's September 25, 2009, Direct Testimony.
- Kim McIntosh
 - Brian Walsh
 - Derric Iles
 - Tom Kirschenmann
 - Paige Hoskinson Olson
 - Michael Kenyon
 - Ross Hargove
 - Patrick Robblee
 - James Arndt
 - William Walsh
 - Jenny Hudson
 - David Schramm
 - William Mampre
 - Michael K. Madden
 - Tim Binder
- E. Applicant's Updated Direct and Rebuttal Testimony.
- Robert Jones Updated Direct (10/23/09)
 - Jon Schmidt Updated Direct and Rebuttal (10/19/09)
 - Meera Kothari Updated Direct and Rebuttal (10/19/09)
 - Donald M. Scott Updated Direct (10/19/09)
 - John W. Hayes Updated Direct (10/19/09)
 - Heidi Tillquist Updated Direct (10/20/09)
 - Steve Hicks Direct and Rebuttal (10/19/09)
- F. Staff's Supplemental Testimony of October 29, 2009.
- William Walsh
 - William Mampre
 - Ross Hargrove

9. As provided for in the Commission's October 21, 2009, Amended Order for and Notice of Public Hearing, the Commission held a public input hearing in Room 414 of the State Capitol beginning at 6:00 p.m. on November 3, 2009, at which 23 members of the public presented comments and/or questions. Transcript of November 3, 2009 Public Input Hearing.

Applicable Statutes and Regulations

10. The following South Dakota statutes are applicable: SDCL 49-41B-1 through 49-41B-2.1, 49-41B-4, 49-41B-11 through 49-41B-19, 49-41B-21, 49-41B-22, 49-41B-24, 49-41B-26 through 49-41B-38 and applicable provisions of SDCL Chs. 1-26 and 15-6.

11. The following South Dakota administrative rules are applicable: ARSD Chapter 20:10:01, ARSD 20:10:22:01 through ARSD 20:10:22:25 and ARSD 20:10:22:36 through ARSD 20:10:22:40.

12. Pursuant to SDCL 49-41B-22, the Applicant for a facility construction permit has the burden of proof to establish that:

- (1) The proposed facility will comply with all applicable laws and rules;

- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;
- (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
- (4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

The Project

13. The Project will be owned, managed and operated by the Applicant, TransCanada Keystone Pipeline, LP. Ex TC-1, 1.5 and 1.7, p. 4.

14. The purpose of the Project is to transport incremental crude oil production from the Western Canadian Sedimentary Basin ("WCSB") to meet growing demand by refineries and markets in the United States ("U.S."). This supply will serve to replace U.S. reliance on less stable and less reliable sources of offshore crude oil. Ex TC-1, 1.1, p. 1; Ex TC-1, 3.0 p. 23; Ex TC-1, 3.4 p. 24.

15. The Project will consist of three segments: the Steele City Segment, the Gulf Coast Segment, and the Houston Lateral. From north to south, the Steele City Segment extends from Hardisty, Alberta, Canada, southeast to Steele City, Nebraska. The Gulf Coast Segment extends from Cushing, Oklahoma south to Nederland, in Jefferson County, Texas. The Houston Lateral extends from the Gulf Coast Segment in Liberty County, Texas southwest to Moore Junction, Harris County, Texas. It will interconnect with the northern and southern termini of the previously approved 298-mile-long, 36-inch-diameter Keystone Cushing Extension segment of the Keystone Pipeline Project. Ex TC-1, 1.2, p. 1. Initially, the pipeline would have a nominal capacity to transport 700,000 barrels per day ("bpd"). Keystone could add additional pumping capacity to expand the nominal capacity to 900,000 bpd. Ex TC-1, 2.1.2, p. 8.

16. The Project is an approximately 1,707 mile pipeline with about 1,380, miles in the United States. The South Dakota portion of the pipeline will be approximately 314 miles in length and will extend from the Montana border in Harding County to the Nebraska border in Tripp County. The Project is proposed to cross the South Dakota counties of Harding, Butte, Perkins, Meade, Pennington, Haakon, Jones, Lyman and Tripp. Ex TC-1, 1.2 and 2.1.1, pp. 1 and 8. Detailed route maps are presented in Ex TC-1, Exhibits A and C, as updated in Ex TC-14.

17. Construction of the Project is proposed to commence in May of 2011 and be completed in 2012. Construction in South Dakota will be conducted in five spreads, generally proceeding in a north to south direction. The Applicant expects to place the Project in service in 2012. This in-service date is consistent with the requirements of the Applicant's shippers who have made the contractual commitments that underpin the viability and need for the project. Ex TC-1, 1.4, pp. 1 and 4; TR 26.

18. The pipeline in South Dakota will extend from milepost 282.5 to milepost 597, approximately 314 miles. The pipeline will have a 36-inch nominal diameter and be constructed using API 5L X70 or X80 high-strength steel. An external fusion bonded epoxy ("FBE") coating will be applied to the pipeline and all buried facilities to protect against corrosion. Cathodic protection will be provided by impressed current. The pipeline will have batching capabilities and will be able to transport products ranging from light crude oil to heavy crude oil. Ex TC-1, 2.2, 2.2.1, 6.5.2, pp. 8-9, 97-98; Ex TC-8, ¶ 26.

19. The pipeline will operate at a maximum operating pressure of 1,440 psig. For location specific low elevation segments close to the discharge of pump stations, the maximum operating pressure will be 1,600 psig. Pipe associated with these segments of 1,600 psig MOP are excluded from the Special Permit application and will have a design factor of 0.72 and pipe wall thickness of 0.572 inch (X-70) or 0.500 inch (X-80). All other segments in South Dakota will have a MOP of 1,440 psig. Ex TC-1, 2.2.1, p. 9.

20. The Project will have seven pump stations in South Dakota, located in Harding (2), Meade, Haakon, Jones and Tripp (2) Counties. TC-1, 2.2.2, p. 10. The pump stations will be electrically driven. Power lines required for providing power to pump stations will be permitted and constructed by local power providers, not by Keystone. Initially, three pumps will be installed at each station to meet the nominal design flow rate of 700,000 bpd. If future demand warrants, pumps may be added to the proposed pump stations for a total of up to five pumps per station, increasing nominal throughput to 900,000 bpd. No additional pump stations will be required to be constructed for this additional throughput. No tank facilities will be constructed in South Dakota. Ex TC-1, 2.1.2, p.8. Sixteen mainline valves will be located in South Dakota. Seven of these valves will be remotely controlled, in order to have the capability to isolate sections of line rapidly in the event of an emergency to minimize impacts or for operational or maintenance reasons. Ex TC-1, 2.2.3, pp. 10-11.

21. The pipeline will be constructed within a 110-foot wide corridor, consisting of a temporary 60-foot wide construction right-of-way and a 50-foot permanent right-of-way. Additional workspace will be required for stream, road, and railroad crossings, as well as hilly terrain and other features. The Applicant committed to reducing the construction right-of-way to 85 feet in certain wetlands to minimize impacts. Ex TC-1, 2.2.4, pp. 11-12; Ex TC-7, ¶ 20. FERC guidelines provide that the wetland construction right-of-way should be limited to 75 feet except where conditions do not permit, and Staff witness Hargrove's Construction, Mitigation and Reclamation Plan Review states that industry practice is to reduce the typical construction right-of-way width to 75 feet in non-cultivated wetlands, although exceptions are sometimes made for larger-diameter pipelines or where warranted due to site-specific conditions. Ex S-5, p. 2 and Attachment 2, 6.2; TR 335, 353. The Commission finds that the construction right-of-way should be limited to 75 feet, except where site-specific conditions require use of Keystone's proposed 85-foot right-of-way or where special circumstances are present, and the Commission accordingly adopts Condition 22(a), subject to the special circumstance provisions of Condition 30.

22. The Project will be designed, constructed, tested, and operated in accordance with all applicable requirements, including the U.S. Department of Transportation, Pipeline Hazardous Materials and Safety Administration (PHMSA) regulations set forth at 49 CFR Part 195, as modified by the Special Permit requested for the Project from PHMSA (see Finding 71). These federal regulations are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures. Ex TC-1, 2.2, p. 8.

23. The current estimated cost of the Keystone Project in South Dakota is \$921.4 million. Ex TC-1, 1.3, p. 1.

Demand for the Facility

24. The transport of additional crude oil production from the WCSB is necessary to meet growing demand by refineries and markets in the U.S. The need for the project is dictated by a number of factors, including increasing WCSB crude oil supply combined with insufficient export pipeline capacity; increasing crude oil demand in the U.S. and decreasing domestic crude supply;

the opportunity to reduce U.S. dependence on foreign off-shore oil through increased access to stable, secure Canadian crude oil supplies; and binding shipper commitments to utilize the Keystone Pipeline Project. Ex TC-1, 3.0, p. 23.

25. According to the U.S. Energy Information Administration ("EIA"), U.S. demand for petroleum products has increased by over 11 percent or 2,000,000 bpd over the past 10 years and is expected to increase further. The EIA estimates that total U.S. petroleum consumption will increase by approximately 10 million bpd over the next 10 years, representing average demand growth of about 100,000 bpd per year (EIA Annual Energy Outlook 2008). Ex TC-1, 3.2, pp. 23-24.

26. At the same time, domestic U.S. crude oil supplies continue to decline. For example, over the past 10 years, domestic crude production in the United States has declined at an average rate of about 135,000 bpd per year, or 2% per year. Ex TC-1, 3.3, p. 24. Crude and refined petroleum product imports into the U.S. have increased by over 3.3 million bpd over the past 10 years. In 2007, the U.S. imported over 13.4 million bpd of crude oil and petroleum products or over 60 percent of total U.S. petroleum product consumption. Canada is currently the largest supplier of imported crude oil and refined products to the U.S., supplying over 2.4 million bpd in 2007, representing over 11 percent of total U.S. petroleum product consumption (EIA 2007). Ex TC-1, 3.4, p. 24.

27. The Project will provide an opportunity for U.S. refiners in Petroleum Administration for Defense District III, the Gulf Coast region, to further diversify supply away from traditional offshore foreign crude supply and to obtain direct access to secure and growing Canadian crude supplies. Access to additional Canadian crude supply will also provide an opportunity for the U.S. to offset annual declines in domestic crude production and, specifically, to decrease its dependence on other foreign crude oil suppliers, such as Mexico and Venezuela, the top two heavy crude oil exporters into the U.S. Gulf Coast. Ex TC-1, 3.4, p. 24.

28. Reliable and safe transportation of crude oil will help ensure that U.S. energy needs are not subject to unstable political events. Established crude oil reserves in the WCSB are estimated at 179 billion barrels (CAPP 2008). Over 97 percent of WCSB crude oil supply is sourced from Canada's vast oil sands reserves located in northern Alberta. The Alberta Energy and Utilities Board estimates there are 175 billion barrels of established reserves recoverable from Canada's oil sands. Alberta has the second largest crude oil reserves in the world, second only to Saudi Arabia. Ex TC-1, 3.1, p. 23.

29. Shippers have already committed to long-term binding contracts, enabling Keystone to proceed with regulatory applications and construction of the pipeline once all regulatory, environmental, and other approvals are received. These long-term binding shipper commitments demonstrate a material endorsement of support for the Project, its economics, proposed route, and target market, as well as the need for additional pipeline capacity and access to Canadian crude supplies. Ex TC-1, 3.5, p. 24.

Environmental

30. In order to construct the Project, Keystone is required to obtain a Presidential Permit from the U.S. Department of State ("DOS") authorizing the construction of facilities across the international border. Ex TC-1, 1.8, pp. 4-5; 5.1, p. 30.

31. Because Keystone is required to obtain a Presidential Permit from the DOS, the National Environmental Policy Act requires the DOS to prepare an Environmental Impact Statement

("EIS"). Ex TC-1, 1.8, pp. 4-5; Ex TC-4; Ex S-3. In support of its Presidential Permit application, Keystone has submitted studies and other environmental information to the DOS. Ex TC-1, 1.8, pp. 4-5; 5.1, p. 30.

32. Table 6 to the Application summarizes the environmental impacts that Keystone's analysis indicates could be expected to remain after its Construction Mitigation and Reclamation Plan is implemented. Ex TC-1, pp. 31-37.

33. The pipeline will cross the Unglaciated Missouri Plateau. This physiographic province is characterized by a dissected plateau where river channels have incised into the landscape. Elevations range from just over 3,000 feet above mean sea level in the northwestern part of the state to around 1,800 feet above mean sea level in the White River valley. The major river valleys traversed include the Little Missouri River, Cheyenne River, and White River. Ex TC-1, 5.3.1, p. 30; Ex TC-4, ¶15. Exhibit A to the Application includes soil type maps and aerial photograph maps of the Keystone pipeline route in South Dakota that indicate topography, land uses, project mileposts and Section, Township, Range location descriptors. Ex TC-1, Exhibit A. Updated versions of these maps were received in evidence as Exhibit TC-14.

34. The surficial geologic deposits along the proposed route are primarily composed of Quaternary alluvium, colluvium, alluvial terraces, and eolian deposits (sand dunes). The alluvium primarily occurs in modern stream channels and floodplains, but also is present in older river terraces. The bedrock geology consists of Upper Cretaceous and Tertiary rocks. The Upper Cretaceous units include the Pierre Shale, Fox Hills Formation, and the Hell Creek Formation. The Ogallala Group, present in the far southern portion of the Project in South Dakota, was deposited as a result of uplift and erosion of the Rocky Mountains. Material that was eroded from the mountains was transported to the east by streams and wind. Ex TC-1, 5.3.2, p. 37.

35. Sand, gravel, crushed stone, oil, natural gas, coal and metallic ore resources are mineral resources existing along the proposed route. The route passes through the Buffalo Field in Harding County. Construction will have very minor and short-term impact on current mineral extraction activities due to the temporary and localized nature of pipeline construction activities. Several oil and gas wells were identified within or close to the Project construction ROW. Prior to construction, Keystone will identify the exact locations of active, shut-in, and abandoned wells and any associated underground pipelines in the construction ROW and take appropriate precautions to protect the integrity of such facilities. Ex TC-1, 5.3.3, pp. 38-39.

36. Soil maps for the route are provided in Exhibit A to Ex TC-1. In the northwestern portions of South Dakota, the soils are shallow to very deep, generally well drained, and loamy or clayey. Soils such as the Assiniboine series formed in fluvial deposits that occur on fans, terraces, and till plains. Soils such as the Cabbart, Delridge, and Blackhall series formed in residuum on hills and plains. Fertile soils and smooth topography dominate Meade County. The soils generally are shallow to very deep, somewhat excessively drained to moderately well drained, and loamy or clayey. Cretaceous Pierre Shale underlies almost all of Haakon, Jones, and portions of Tripp counties. This shale weathers to smectitic clays. These clays shrink as they dry and swell as they get wet, causing significant problems for road and structural foundations. From central Tripp County to the Nebraska state line, soils typically are derived from shale and clays on the flatter to moderately sloping, eroded tablelands. In southern Tripp County, the route also crosses deep, sandy deposits on which the Doger, Dunday, and Valentine soils formed. These are dry, rapidly permeable soils. Topsoil layers are thin and droughty, and wind erosion and blowouts are a common hazard. Ex TC-1, 5.3.4, p. 40.

37. Grading and excavating for the proposed pipeline and ancillary facilities will disturb a variety of agricultural, rangeland, wetland and forestland soils. Prime farmland soils may be altered temporarily following construction due to short-term impact such as soil compaction from equipment traffic, excavation and handling. However, potential impacts to soils will be minimized or mitigated by the soil protection measures identified in the Construction Mitigation and Reclamation Plan (CMR Plan) to the extent such measures are fully implemented. The measures include procedures for segregating and replacing top soil, trench backfilling, relieving areas compacted by heavy equipment, removing surface rock fragments and implementing water and wind erosion control practices. Ex TC-1, 5.3.4, p. 41; TC-1 Ex. B.

38. To accommodate potential discoveries of contaminated soils, Keystone made a commitment in the Application to develop, in consultation with relevant agencies, procedures for the handling and disposal of unanticipated contaminated soil discovered during construction. These procedures will be added to the CMR Plan. If hydrocarbon contaminated soils are encountered during trench excavation, the appropriate federal and state agencies will be contacted immediately. A remediation plan of action will be developed in consultation with that agency. Depending on the level of contamination found, affected soil may be replaced in the trench or removed to an approved landfill for disposal. Ex TC-1, 5.3.4, p. 42.

39. The USGS ground motion hazard mapping indicates that potential ground motion hazard in the Project area is low. South Dakota historically has had little earthquake activity. No ground subsidence or karst hazards are present in the vicinity of the route. Ex TC-1, 5.3.6, p. 43.

40. Cretaceous and Tertiary rocks in the Missouri River Plateau have high clay content and upon weathering can be susceptible to instability in the form of slumps and earth flows. Landslide potential is enhanced on steeper slopes. Formations that are especially susceptible are the Cretaceous Hell Creek and Pierre Shale as well as shales in the Tertiary Fort Union Formation mainly on river banks and steep slopes. These units can contain appreciable amounts of bentonite, a rock made up of montmorillonite clay that has deleterious properties when exposed to moisture. The bentonite layers in the Pierre Shale may present hazards associated with swelling clays. These formations are considered to have "high swelling potential." Bentonite has the property whereby when wet, it expands significantly in volume. When bentonite layers are exposed to successive cycles of wetting and drying, they swell and shrink, and the soil fluctuates in volume and strength. Ex TC-1, 5.3.4, pp. 43.

41. Fifteen perennial streams and rivers, 129 intermittent streams, 206 ephemeral streams and seven man-made ponds will be crossed during construction of the Project in South Dakota. Keystone will utilize horizontal directional drilling ("HDD") to cross the Little Missouri, Cheyenne and White River crossings. Keystone intends to use open-cut trenching at the other perennial streams and intermittent water bodies. The open cut wet method can cause the following impacts: loss of in-stream habitat through direct disturbance, loss of bank cover, disruption of fish movement, direct disturbance to spawning, water quality effects and sedimentation effects. Alternative techniques include open cut dry flume, open cut dam-and-pump and horizontal directional drilling. Exhibit C to the Application contains a listing of all water body crossings and preliminary site-specific crossing plans for the HDD sites. Ex TC-14. Permitting of water body crossings, which is currently underway, will ultimately determine the construction method to be utilized. Keystone committed to mitigate water crossing impacts through implementation of procedures outlined in the CMR Plan. Ex TC-1, 5.4.1, pp. 45-46.

42. The pipeline will be buried at an adequate depth under channels, adjacent flood plains and flood protection levees to avoid pipe exposure caused by channel degradation and lateral scour. Determination of the pipeline burial depth will be based on site-specific channel and hydrologic investigations where deemed necessary. Ex TC-1, 5.4.1, p. 46.

43. Although improvements in pipeline safety have been made, the risk of a leak cannot be eliminated. Keystone's environmental consulting firm for the Project, AECOM, estimated the chances of and the environmental consequences of a leak or spill through a risk assessment. Ex TC-1, 6.5.2, pp. 96-102; Table 6; TC-12, 10, 24.

44. Keystone's expert estimated the chance of a leak from the Project to be not more than one spill in 7,400 years for any given mile of pipe. TR 128-132, 136-137; Ex TC-12, ¶10; TC-1, 5.5.1, p. 54; 6.1.2.1, p. 87. The frequency calculation found the chance to be no more than one release in 24 years in South Dakota. TR 137.

45. Keystone's spill frequency and volume estimates are conservative by design, overestimating the risk since the intent is to use the assessment for planning purposes. The risk assessment overestimates the probable size of a spill to ensure conservatism in emergency response and other planning objectives. If a spill were to occur on the Keystone pipeline, PHMSA data indicate that the spill is likely to be three barrels or less. Ex TC-12, ¶10; TR 128-132, 137; TC-1, 6.1.2.1, p. 87.

46. Except for a few miles in the far southern reach of the Project in southern Tripp County which will be located over the permeable Sand Hills and shallow High Plains Aquifer, the Project route in South Dakota does not cross geologic units that are traditionally considered as aquifers. TR 440. Where aquifers are present, at most locations they are more than 50 feet deep, which significantly reduces the chance of contamination reaching the aquifer. Additionally, the majority of the pipeline is underlain by low permeability confining materials (e.g., clays, shales) that inhibit the infiltration of released crude oil into aquifers. TR 158; Ex TC-12, ¶13, EX TC-1, 5.4.2, pp. 47-48. Keystone consulted with the DENR during the routing process to identify and subsequently avoid sensitive aquifers and recharge areas, e.g., Source Water Protection Areas (SWPAs) in order to minimize risk to important public groundwater resources, and no groundwater SWPAs are crossed by the Project in South Dakota. EX TC-1, 5.4.2, pp. 47-48. Except for the Sand Hills area, no evidence was offered of the existence of a shallow aquifer (i.e. less than 50 feet in depth) crossed by the Project.

47. Because of their high solubility and their very low Maximum Contaminant Levels ("MCLs"), the constituents of primary concern in petroleum, including crude oil, are benzene, toluene, ethyl benzene and xylene. These constituents are commonly referred to as BTEX. TR 142, 146. The crude oil to be shipped through the Project will be similar in composition to other crude oils produced throughout the world and currently shipped in the United States. TR 155-56. The BTEX concentration in the crude oil to be shipped through the Project is close to 1 % to 1.5%. TR 151.

48. The Project will pass through areas in Tripp County where shallow and surficial aquifers exist. Since the pipeline will be buried at a shallow depth, it is unlikely that the construction or operation of the pipeline will alter the yield from any aquifers that are used for drinking water purposes. Keystone will investigate shallow groundwater when it is encountered during construction to determine if there are any nearby livestock or domestic wells that might be affected by construction activities. Appropriate measures will be implemented to prevent groundwater contamination and steps will be taken to manage the flow of any ground water encountered. Ex TC-

1, 5.4.2, pp. 47-48. The Tripp County Water User District is up-gradient of the pipeline and therefore would not be affected by a spill. TR 441, 449-50.

49. The risk of a spill affecting public or private water wells is low because the components of crude oil are unlikely to travel more than 300 feet from the spill site. TR 142-43. There are no private or public wells within 200 or 400 feet, respectively, of the right of way. TC-16, Data Response 3-46.

50. The total length of Project pipe with the potential to affect a High Consequence Area ("HCA") is 34.3 miles. A spill that could affect an HCA would occur no more than once in 250 years. TC-12, ¶ 24.

51. In the event that soils and groundwater are contaminated by a petroleum release, Keystone will work with state agency personnel to determine what type of remediation process would be appropriate. TR 148. Effective emergency response can reduce the likelihood and severity of contamination. TC-12, ¶ 10, 14, 24. Soils and groundwater contaminated by a petroleum release can be remediated. TR 499-500. The experience of DENR is that pipeline facilities have responded immediately to the incident in every case. TR 502.

52. The Commission finds that the risk of a significant release occurring is low and finds that the risk that a release would irretrievably impair a water supply is very low and that it is probable that Keystone, in conjunction with state and federal response agencies, will be able to and will be required to mitigate and successfully remediate the effects of a release.

53. The Commission nevertheless finds that the Sand Hills area and High Plains Aquifer in southeastern Tripp County is an area of vulnerability that warrants additional vigilance and attention in Keystone's integrity management and emergency response planning and implementation process. The evidence demonstrates that the shallow Sand Hills groundwater or High Plains Aquifer is used by landowners in the Project area, that many wells are developed into the aquifer, including TCWUD 's, that the very high permeability of both the sandy surficial soils and deeper soils render the formation particularly vulnerable to contamination and that rapid discovery and response can significantly lessen the impact of a release on this vulnerable groundwater resource. The Commission further finds that if additional surficial aquifers are discovered in the course of pipeline construction, such aquifers should have similar treatment. The Commission accordingly finds that Condition 35 shall be adopted.

54. Of the approximately 314-mile route in South Dakota, all but 21.5 miles is privately owned. 21.5 miles is state-owned and managed. The list is found in Table 14. No tribal or federal lands are crossed by the proposed route. Ex TC-1, 5.7.1, p. 75.

55. Table 15 of the Application identifies the land uses affected by the pipeline corridor. Among other things, it shows that the project will not cross or be co-located with any major industrial sites, the pipeline will not cross active farmsteads, but may cross near them and the pipeline will not cross suburban and urban residential areas. The project will not cross municipal water supplies or water sources for organized rural water districts. Ex TC-1, 5.7.1, pp. 76-78.

56. The pipeline will be compatible with the predominant land use, which is rural agriculture, because the pipeline will be buried to a depth of four feet in fields and will interfere only minimally with normal agricultural operations. In most locations, the pipeline will be placed below agricultural drain tiles, and drain tiles that are damaged will be repaired. The only above-ground

facilities will be pump stations and block valves located at intervals along the pipeline. Ex TC-1, 5.7.3, pp.78-79.

57. The Project's high strength X70 steel will have a puncture resistance of 51 tons of digging force. Ex TC-8, ¶ 28. Keystone will have a public awareness program in place and an informational number to call where landowners and others can obtain information concerning activities of concern. TC-1, 6.3.4, pp. 93-94. The Commission finds that the risk of damage by ordinary farming operations is very low and that problems can be avoided through exercise of ordinary common sense.

58. If previously undocumented sites are discovered within the construction corridor during construction activities, all work that might adversely affect the discovery will cease until Keystone, in consultation with the appropriate agencies such as the SHPO, can evaluate the site's eligibility and the probable effects. If a previously unidentified site is recommended as eligible to the National Registry of Historic Places, impacts will be mitigated pursuant to the Unanticipated Discovery Plan submitted to the SHPO. Treatment of any discovered human remains, funerary objects, or items of cultural patrimony found on federal land will be handled in accordance with the Native American Grave Protection and Repatriation Act. Construction will not resume in the area of the discovery until the authorized agency has issued a notice to proceed. If human remains and associated funerary objects are discovered on state or private land during construction activities, construction will cease within the vicinity of the discovery and the county coroner or sheriff will be notified of the find. Treatment of any discovered human remains and associated funerary objects found on state or private land will be handled in accordance with the provisions of applicable state laws. TR 40; Ex TC-1, 6.4, pp. 96; Ex TC-16, 3-54. In accordance with these commitments, the Commission finds that Condition 43 should be adopted.

59. Certain formations to be crossed by the Project, such as the Fox Hills, Ludlow and particularly the Hell Creek Formation are known to contain paleontological resources of high scientific and monetary value. TR 438-439, 442-444. In northwest South Dakota, the Hell Creek Formation has yielded valuable dinosaur bones including from a triceratops, the South Dakota State fossil. Ex TC-1, 5.3.2, p. 38. Protection of paleontological resources was among the most frequently expressed concerns at the public input hearings held by the Commission. There is no way for anyone to know with any degree of certainty whether fossils of significance will be encountered during construction activities. TR 439. Because of the potential significance to landowners of the encounter by construction activities with paleontological resources and the inability to thoroughly lessen the probability of such encounter through pre-construction survey and avoidance, the Commission adopts Condition 44 to require certain special procedures in high probability areas, including the Hell Creek formation, such as the presence of a monitor with training in identification of a paleontological strike of significance.

Design and Construction

60. Keystone has applied for a special permit ("Special Permit") from PHMSA authorizing Keystone to design, construct, and operate the Project at up to 80% of the steel pipe specified minimum yield strength at most locations. TC-1, 2.2, p. 8; TR 62. In Condition 2, the Commission requires Keystone to comply with all of the conditions of the Special Permit, if issued.

61. TransCanada operates approximately 11,000 miles of pipelines in Canada with a 0.8 design factor and requested the Special Permit to ensure consistency across its system and to reduce costs. PHMSA has previously granted similar waivers adopting this modified design factor for natural gas pipelines and for the Keystone Pipeline. Ex TC-8, ¶¶ 13, 17.

62. The Special Permit is expected to exclude pipeline segments operating in (i) PHMSA-defined HCAs described as high population areas and commercially navigable waterways in 49 CFR Section 195.450; (ii) pipeline segments operating at highway, railroad, and road crossings; (iii) piping located within pump stations, mainline valve assemblies, pigging facilities, and measurement facilities; and (iv) areas where the MOP is greater than 1,440 psig. Ex TC-8, ¶ 16.

63. Application of the 0.8 design factor and API 5L PSL2 X70 high-strength steel pipe results in use of pipe with a 0.463 inch wall thickness, as compared with the 0.512 inch wall thickness under the otherwise applicable 0.72 design factor, a reduction in thickness of .050 inches. TR 61. PHMSA previously found that the issuance of a waiver is not inconsistent with pipeline safety and that the waiver will provide a level of safety equal to or greater than that which would be provided if the pipeline were operated under the otherwise applicable regulations. Ex TC-8, ¶ 15.

64. In preparation for the Project, Keystone conducted a pipeline threat analysis, using the pipeline industry published list of threats under ASME B31.8S and PHMSA to determine threats to the pipeline. Identified threats were manufacturing defects, construction damage, corrosion, mechanical damage and hydraulic event. Safeguards were then developed to address these threats. Ex TC-8, ¶ 22.

65. Steel suppliers, mills and coating plants were pre-qualified using a formal qualification process consistent with ISO standards. The pipe is engineered with stringent chemistry to ensure weldability during construction. Each batch of pipe is mechanically tested to prove strength, fracture control and fracture propagation properties. The pipe is hydrostatically tested. The pipe seams are visually and manually inspected and also inspected using ultrasonic instruments. Each piece of pipe and joint is traceable to the steel supplier and pipe mill shift during production. The coating is inspected at the plant with stringent tolerances on roundness and nominal wall thickness. A formal quality surveillance program is in place at the steel mill and at the coating plant. Ex TC-8, ¶ 24; TR 59-60.

66. All pipe welds will be examined around 100 percent of their circumferences using ultrasonic or radiographic inspection. The coating is inspected and repaired if required prior to lowering into the trench. After construction the pipeline is hydrostatically tested in the field to 125 percent of its maximum operating pressure, followed by caliper tool testing to check for dents and ovality. Ex TC-8, ¶ 25.

67. A fusion-bonded epoxy ("FBE") coating will be applied to the external surface of the pipe to prevent corrosion. Ex TC- 8, ¶ 26.

68. TransCanada has thousands of miles of this particular grade of pipeline steel installed and in operation. TransCanada pioneered the use of FBE, which has been in use on its system for over 29 years. There have been no leaks on this type of pipe installed by TransCanada with the FBE coating and cathodic protection system during that time. When TransCanada has excavated pipe to validate FBE coating performance, there has been no evidence of external corrosion. Ex TC-8, ¶ 27.

69. A cathodic protection system will be installed comprised of engineered metal anodes, which are connected to the pipeline. A low voltage direct current is applied to the pipeline, resulting in corrosion of the anodes rather than the pipeline. Ex TC-8, ¶ 27. FBE coating and cathodic protection mitigate external corrosion. Ex TC-8, ¶ 26.

70. A tariff specification of 0.5 percent solids and water by volume will be utilized to minimize the potential for internal corrosion. This specification is half the industry standard of one percent. In Condition 32, the Commission requires Keystone to implement and enforce its crude oil specifications in order to minimize the potential for internal corrosion. Further, the pipeline is designed to operate in turbulent flow to minimize water drop out, another potential cause of internal corrosion. During operations, the pipeline will be cleaned using in-line inspection tools, which measure internal and external corrosion. Keystone will repair areas of pipeline corrosion as required by federal regulation. Ex TC-8, ¶ 26. Staff expert Schramm concluded that the cathodic protection and corrosion control measures that Keystone committed to utilize would meet or exceed applicable federal standards. TR 407-427; Ex S-12.

71. To minimize the risk of mechanical damage to the pipeline, it will be buried with a minimum of four feet of cover, one foot deeper than the industry standard, reducing the likelihood of mechanical damage. The steel specified for the pipeline is high-strength steel with engineered puncture resistance of approximately 51 tons of force. Ex TC-8, ¶ 28.

72. Hydraulic damage is caused by over-pressurization of the pipeline. The risk of hydraulic damage will be minimized through the SCADA system's continuous, real-time pressure monitoring systems and through operator training. Ex TC-8, ¶ 29.

73. The Applicant has prepared a detailed CMR Plan that describes procedures for crossing cultivated lands, grasslands, including native grasslands, wetlands, streams and the procedures for restoring or reclaiming and monitoring those features crossed by the Project. The CMR Plan is a summary of the commitments that Keystone has made for environmental mitigation, restoration and post-construction monitoring and compliance related to the construction phase of the Project. Among these, Keystone will utilize construction techniques that will retain the original characteristics of the lands crossed as detailed in the CMR Plan. Keystone's thorough implementation of these procedures will minimize the impacts associated with the Project. A copy of the CMR Plan was filed as Exhibit B to Keystone's permit application and introduced into evidence as TC-1, Exhibit B.

74. The CMR Plan establishes procedures to address a multitude of construction-related issues, including but not limited to the following:

- Training
- Advance Notice of Access
- Depth of Cover
- Noise Control
- Weed Control
- Dust Control
- Fire Prevention and Control
- Spill Prevention and Containment
- Irrigation Systems
- Clearing
- Grading
- Topsoil Removal and Storage
- Temporary Erosion and Sediment Control
- Clean-Up
- Reclamation and Revegetation
- Compaction Relief

- Rock Removal
- Soil Additives
- Seeding
- Construction in Residential and Commercial/Industrial Areas
- Drain Tile Damage Mitigation and Repair

Ex TC-1, Exhibit B.

75. The fire prevention and containment measures outlined in the CMR Plan will provide significant protection against uncontrolled fire in the arid region to be crossed by the Project. The Commission finds, however, that these provisions are largely centered on active construction areas and that certain additional fire prevention and containment precautions are appropriate as well for vehicles performing functions not in proximity to locations where fire suppression equipment will be based, such as route survey vehicles and vehicles involved in surveillance and inspection activities whether before, during and after construction. The Commission accordingly adopts Conditions 16(p) and the last sentence of Condition 30 to address these situations.

76. Keystone's CMR Plan includes many mitigation steps designed to return the land to its original production. These include topsoil removal and replacement, compaction of the trench line, decompaction of the working area, and tilling the topsoil after replacement. Ex TC-1, Exhibit B; Ex TC-6, ¶ 27; Ex TC-1, 6.1.2.2, pp. 87-88.

77. In areas where geologic conditions such as ground swelling, or slope instability, could pose a potential threat, Keystone will conduct appropriate pre-construction site assessments and subsequently will design facilities to account for various ground motion hazards as required by federal regulations. The main hazard of concern during construction of the pipeline will be from unintentional undercutting of slopes or construction on steep slopes resulting in instability that could lead to landslides. Other hazards may result from construction on Cretaceous shales that contain bentonite beds. The high swelling hazard may cause slope instability during periods of precipitation. Ex TC-1, 5.3.6, p. 44.

78. When selecting the proposed pipeline route, Keystone has attempted to minimize the amount of steep slopes crossed by the pipeline. Special pipeline construction practices described in the CMR Plan will minimize slope stability concerns during construction. Landslide hazards can be mitigated by:

- Returning disturbed areas to pre-existing conditions or, where necessary, reducing steep grades during construction;
- Preserving or improving surface drainage;
- Preserving or improving subsurface drainage during construction;
- Removing overburden where necessary to reduce weight of overlying soil mass; and
- Adding fill at toe of slope to resist movement.

Ex TC-1, 5.3.6, pp. 43-44.

79. Slope instability poses a threat of ground movement responsible for approximately 1 percent of liquid pipeline incidents (PHMSA 2008). Keystone will monitor slope stability during routine surveillance. Areas where slope stability poses a potential threat to the pipeline will be incorporated into Keystone's Integrity Management Plan. If ground movement is suspected of having caused abnormal movement of the pipeline, federal regulations (49 CFR Part 195) require

Keystone to conduct an internal inspection. Consequently, damage to the pipeline would be detected quickly and spills would be averted or minimized. Ex TC-1, 5.3.6, p. 44

80. Keystone is in the process of preparing, in consultation with the area National Resource Conservation Service, construction/reclamation unit ("Con/Rec Unit") mapping to address differing construction and reclamation techniques for different soils conditions, slopes, vegetation, and land use along the pipeline route. This analysis and mapping results in the identification of segments called Con/Rec Units. Ex. TC-5; TC-16, DR 3-25.

81. The Applicant will use special construction methods and measures to minimize and mitigate impacts where warranted by site specific conditions. These special techniques will be used when constructing across paved roads, primary gravel roads, highways, railroads, water bodies, wetlands, sand hills areas, and steep terrain. These special techniques are described in the Application. Ex TC-1, 2.2.6, p. 17; TC-6, ¶ 11.

82. Of the perennial streams that are crossed by the proposed route, the Cheyenne River is the largest water body and is classified as a warm water permanent fishery. Of the other streams that have been classified, habitat is considered more limited as indicated by a warm water semi-permanent or warm water marginal classification. Ex TC-1, 5.6.2, pp. 71-72, Table 13.

83. Keystone will utilize HDD for the Little Missouri, Cheyenne and White River crossings, which will aid in minimizing impacts to important game and commercial fish species and special status species. Open-cut trenching, which can affect fisheries, will be used at other perennial streams. Keystone will use best practices to reduce or eliminate the impact of crossings at the perennial streams other than the Cheyenne and White Rivers. Ex TC-1, 5.4.1, p. 46; 5.6.2, p. 72; TC-16, DR 3-39.

84. Water used for hydrostatic testing during construction and subsequently released will not result in contamination of aquatic ecosystems since the pipe is cleaned prior to testing and the discharge water is monitored and tested. Ex TC-1, 5.4.3.1, pp. 48-50. In Conditions 1 and 2, the Commission has required that Keystone comply with DENR's regulations governing temporary use and discharge of water and obtain and comply with the DENR General Permits for these activities.

85. During construction, Keystone will have a number of inspectors on a construction spread, including environmental inspectors, who will monitor erosion control, small spills, full tanks, and any environmental issues that arise. TR. 37-38. In Condition 14, the Commission requires that Keystone incorporate such inspectors into the CMR Plan.

86. The Pipeline corridor will pass through areas where shallow and surficial aquifers exist. Appropriate measures will be implemented to prevent groundwater contamination and steps will be taken to manage the flow of any ground water encountered. Ex TC-1, 5.4.2, p. 47-48.

87. In addition to those recommendations of Staff and its expert witnesses referenced specifically in these Findings, Staff expert witnesses made a number of recommendations which the Commission has determined will provide additional protections for affected landowners, the environment and the public, and has included Conditions in this Order requiring certain of these measures. These recommendations encompassed matters such as sediment control at water body crossings, soil profile analysis, topsoil, subsoil and rock segregation and replacement, special procedures in areas of bentenitic, sodic, or saline soils, noise, etc. Staff's final recommendations are set forth in its Brief. See also Staff Exhibits and testimony in Transcript Vols. II and III.

88. Keystone will be required to acquire permits authorizing the crossing of county roads and township roads. These permits will typically require Keystone to restore roads to their pre-construction condition. If its construction equipment causes damage to county or township roads, Keystone will be responsible for the repair of those roads to pre-construction condition. Pursuant to SDCL 49-41B-38, Keystone will be required to post a bond to ensure that any damage beyond normal wear to public roads, highways, bridges or other related facilities will be adequately compensated. Staff witness Binder recommended that the bond amount under SDCL 49-41B-38 for damage to highways, roads, bridges and other related facilities be set at \$15,600,000 for 2011 and \$15,600,000 for 2012. TR 224. Keystone did not object to this requirement.

89. The Commission finds that the procedures in the CMR Plan and the other construction plans and procedures that Keystone has committed to implement, together with the Conditions regarding construction practices adopted by the Commission herein, will minimize impacts from construction of the Project to the environment and social and economic condition of inhabitants and expected inhabitants in the Project area.

Operation and Maintenance

90. The Keystone pipeline will be designed constructed, tested and operated in accordance with all applicable requirements, including the PHMSA regulations set forth at 49 CFR Parts 194 and 195, as modified by the Special Permit. These federal regulations are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures. Ex TC-8, ¶ 2.

91. The safety features of Keystone's operations are governed by 49 CFR Part 195 and include aerial inspection 26 times per year, with any interval not to exceed three weeks, right-of-way maintenance for accessibility, and continual monitoring of the pipeline to identify potential integrity concerns. A Supervisory Control and Data Acquisition ("SCADA") system will be used to monitor the pipeline at all times. Ex TC-8, ¶ 9.

92. The Project will have a SCADA system to remotely monitor and control the pipeline. The SCADA system will include: (i) a redundant, fully functional back-up Operational Control Center available for service at all times; (ii) automatic features within the system to ensure operation within prescribed limits; and (iii) additional automatic features at the pump stations to provide pipeline pressure protection in the event that communications with the SCADA host are interrupted. Ex TC-10, ¶ 8.

93. The pipeline will have a control center manned 24 hours per day. A backup control center will also be constructed and maintained. A backup communications system is included within the system design and installation. Keystone's SCADA system should have a very high degree of reliability. TR 82-83.

94. Keystone will use a series of complimentary and overlapping SCADA-based leak detection systems and methods at the Operational Control Center, including: (i) remote monitoring; (ii) software-based volume balance systems that monitor injection and delivery volumes; (iii) Computational Pipeline Monitoring or model-based leak detection systems that break the pipeline into smaller segments and monitor each segment on a mass balance basis; and (iv) computer-based, non-real-time, accumulated gain/(loss) volume trending to assist in identifying low rate or seepage releases below the 1.5 percent by volume detection threshold. The SCADA and other monitoring and control systems to be implemented by Keystone for the Project are state of the art

and consistent with the best commercially available technology. Ex TC-10, ¶ 8. Staff witness, William Mampre, testified that Keystone's SCADA system was one he probably would have selected himself. TR 431.

95. Additionally, Keystone will implement and utilize direct observation methodologies, which include aerial patrols, ground patrols and public and landowner awareness programs designed to encourage and facilitate the reporting of suspected leaks and events that may suggest a threat to the integrity of the pipeline. Ex TC10, ¶ 8. Remote sensing technologies that could be employed in pipeline surveillance such as aerial surveillance are in their infancy and practical systems are not currently available. Keystone would consider using such technology if it becomes commercially available. TR 89-90.

96. Keystone will implement abnormal operating procedures when necessary and as required by 49 CFR 195.402(d). Abnormal operating procedures will be part of the written manual for normal operations, maintenance activities, and handling abnormal operating and emergencies. Ex TC-1, 2.3.2, p. 20.

97. As required by US DOT regulations, Keystone will prepare an emergency response plan ("ERP") for the system. Ex TC-11, ¶ 13. The ERP will be submitted to PHMSA for review prior to commencement of pipeline operations. Ex TC-11, ¶ 13. The Commission finds that the ERP and manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR195.402 should also be submitted to the Commission at the time it is submitted to PHMSA to apprise the Commission of its details. Keystone has agreed to do this. The Commission has so specified in Condition 36.

98. Keystone will utilize the ERP approved by PHMSA for the Keystone Pipeline as the basis for its ERP for the Project. Under the ERP, Keystone will strategically locate emergency response equipment along the pipeline route. The equipment will include trailers, oil spill containment and recovery equipment, boats, and a communication office. Keystone will also have a number of local contractors available to provide emergency response assistance. Ex TC-11, ¶ 15. Keystone's goal is to respond to any spill within six hours. TR 102-103. Additional details concerning the ERP and the ERP process are set forth in the Application at Section 6.5.2 and in the pre-filed and hearing testimony of John Hayes. Ex TC-11; EX TC-1, 6.5.2, pp. 96-101. Keystone has consulted with DENR in developing its ERP. TR 111-12.

99. If the Keystone pipeline should experience a release, Keystone would implement its ERP. TC-11, ¶ 10; S-18, p. 4. DENR would be involved in the assessment and abatement of the release, and require the leak to be cleaned up and remediated. S-18, p. 5. DENR has been successful in enforcing remediation laws to ensure the effects of any pipeline releases are mitigated. TR 488-89, 497, 502-03.

100. Local emergency responders may be required to initially secure the scene and ensure the safety of the public, and Keystone will provide training in that regard. Ex TC-11, ¶ 17; TR 105-107.

101. If ground movement is suspected of having caused abnormal movement of the pipeline, federal regulations (49 CFR Part 195) require Keystone to conduct an internal inspection. Consequently, damage to the pipeline would be detected quickly and spills would be averted or minimized. Ex TC-1, 5.3.6, p. 44.

102. In addition to the ERP, hazardous materials pipeline segments through High Consequence Areas (“HCAs”) are subject to the Integrity Management Rule. 49 CFR 195.452. Pipeline operators are required to develop a written Integrity Management Plan (“IMP”) that must include methods to measure the program’s effectiveness in assessing and evaluating integrity and protecting HCAs. Keystone will develop and implement an IMP for the entire pipeline including the HCAs. The overall objective of the IMP is to establish and maintain acceptable levels of integrity and having regard to the environment, public and employee safety, regulatory requirements, delivery reliability, and life cycle cost. The IMP uses advanced in-line inspection and mitigation technologies applied with a comprehensive risk-based methodology. 49 CFR Part 195 also requires pipeline operators to develop and implement public awareness programs consistent with the API’s Recommended Practice 1162, Public Awareness Programs for Pipeline Operators. Staff witness Jenny Hudson testified that Keystone’s planning and preparation of the IMP were fully compliant with the PHMSA regulations and had no recommendations for conditions. Ex S-9, p.5.

103. The Commission finds that the threat of serious injury to the environment or inhabitants of the State of South Dakota from a crude oil release is substantially mitigated by the integrity management, leak detection and emergency response processes and procedures that Keystone is continuing to plan and will implement.

Rural Water Crossings

104. The route crosses through two rural water system districts, the West River/Lyman-Jones Rural Water District and the Tripp County Water User District. Keystone met with these rural water districts to discuss the Project and will continue to coordinate with these districts. During construction and maintenance, Keystone will coordinate with the One Call system to avoid impacts to underground utilities, including water lines. Ex TC-4.

Alternative Routes

105. The proposed Project route was developed through an, iterative process. TC-1, 4.1, p. 25. During the course of the route evaluation process, Keystone held public meetings, open houses, and one-on-one meetings with stakeholders to discuss and review the proposed routing through South Dakota. TC-1, 4.1.5, p. 27. The route was refined in Mellette County to avoid environmentally sensitive areas and reduce wetland crossings, and near Colome to avoid groundwater protection areas. Ex TC-3; TC-1, 4.2.1-4.2.2, p. 28.

106. SDCL 49-41B-36 explicitly states that Chapter 49-41B “shall not be construed as a delegation to the Public Utilities Commission of the authority to route a facility.” The Commission accordingly finds and concludes that it lacks authority to compel the Applicant to select an alternative route or to base its decision on whether to grant or deny a permit for a proposed facility on whether the selected route is the route the Commission itself might select.

Socio-Economic Factors

107. Socio-economic evidence offered by both Keystone and Staff demonstrates that the welfare of the citizens of South Dakota will not be impaired by the Project. Staff expert Dr. Michael Madden conducted a socio-economic analysis of the Keystone Pipeline, and concluded that the positive economic benefits of the project were unambiguous, while most if not all of the social impacts were positive or neutral. S-2, Madden Assessment at 21. The Project, subject to compliance with the Special Permit and the Conditions herein, would not, from a socioeconomic standpoint: (i) pose a threat of serious injury to the socioeconomic conditions in the project area; (ii)

substantially impair the health, safety, or welfare of the inhabitants in the project area; or (iii) unduly interfere with the orderly development of the region.

108. The Project will pay property taxes to local governments on an annual basis estimated to be in the millions of dollars. Ex TC-2, ¶ 24, TC-13, S-13; TR 584. An increase in assessed, taxable valuation for school districts is a positive development. TR 175.

109. The Project will bring jobs, both temporary and permanent, to the state of South Dakota and specifically to the areas of construction and operation. Ex TC-1 at 6.1.1, pp. 85-86.

110. The Project will have minimal effect in the areas of agriculture, commercial and industrial sectors, land values, housing, sewer and water, solid waste management, transportation, cultural and historical resources, health services, schools, recreation, public safety, noise, and visual impacts. Ex TC-1. It follows that the project will not substantially impair the health, safety, or welfare of the inhabitants.

General

111. Applicant has provided all information required by ARSD Chapter 20:10:22 and SDCL Chapter 49-41B. S-1.

112. The Commission finds that the Conditions attached hereto as Exhibit A and incorporated herein by reference are supported by the record, are reasonable and will help ensure that the Project will meet the standards established for approval of a construction permit for the Project set forth in SDCL 49-41B-22 and should be adopted.

113. The Commission finds that subject to the conditions of the Special Permit and the Conditions set forth as Exhibit A hereto, the Project will (i) comply with all applicable laws and rules; (ii) not pose an unacceptable threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area; (iii) not substantially impair the health, safety or welfare of the inhabitants; and (iv) not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

114. The Commission finds that a permit to construct the Project should be granted subject to the Conditions set forth in Exhibit A.

115. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated by reference as a Finding of Fact.

Based on the foregoing Findings of Fact, the Commission hereby makes the following:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding pursuant to SDCL Chapter 49-41B and ARSD Chapter 20:10:22. Subject to the findings made on the four elements of proof under SDCL 49-41B-22, the Commission has authority to grant,

deny or grant upon reasonable terms, conditions or modifications, a permit for the construction, operation and maintenance of the TransCanada Keystone Pipeline.

2. The TransCanada Keystone Pipeline Project is a transmission facility as defined in SDCL 49-41B-2.1(3).

3. Applicant's permit application, as amended and supplemented through the proceedings in this matter, complies with the applicable requirements of SDCL Chapter 49-41B and ARSD Chapter 20:10:22.

4. The Project, if constructed and operated in accordance with the terms and conditions of this decision, will comply with all applicable laws and rules, including all requirements of SDCL Chapter 49-41B and ARSD 20:10:22.

5. The Project, if constructed and operated in accordance with the terms and conditions of this decision, will not pose an unacceptable threat of serious injury to the environment nor to the social and economic conditions of inhabitants or expected inhabitants in the siting area.

6. The Project, if constructed and operated in accordance with the terms and conditions of this decision, will not substantially impair the health, safety or welfare of the inhabitants in the siting area.

7. The Project, if constructed and operated in accordance with the terms and conditions of this decision, will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

8. The standard of proof is by the preponderance of evidence. The Applicant has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to a permit as provided in SDCL 49-41B-25.

9. The Commission has authority to revoke or suspend any permit granted under the South Dakota Energy Facility Permit Act for failure to comply with the terms and conditions of the permit pursuant to SDCL 49-41B-33 and must approve any transfer of the permit granted by this Order pursuant to SDCL 49-41B-29.

10. To the extent that any of the Findings of Fact in this decision are determined to be conclusions of law or mixed findings of fact and conclusions of law, the same are incorporated herein by this reference as a Conclusion of Law as if set forth in full herein.

11. Because a federal EIS will be required and completed for the Project and because the federal EIS complies with the requirements of SDCL Chapter 34A-9, the Commission appropriately exercised its discretion under SDCL 49-41B-21 in determining not to prepare or require the preparation of a second EIS.

12. PHMSA is delegated exclusive authority over the establishment and enforcement of safety-orientated design and operational standards for hazardous materials pipelines. 49 U.S.C. 60101, et seq.

13. SDCL 49-41B-36 explicitly states that SDCL Chapter 49-41B "shall not be construed as a delegation to the Public Utilities Commission of the authority to route a facility." The

Commission accordingly concludes that it lacks authority (i) to compel the Applicant to select an alternative route or (ii) to base its decision on whether to grant or deny a permit for a proposed facility on whether the selected route is the route the Commission might itself select.

14. The Commission concludes that it needs no other information to assess the impact of the proposed facility or to determine if Applicant or any Intervenor has met its burden of proof.

15. The Commission concludes that the Application and all required filings have been filed with the Commission in conformity with South Dakota law and that all procedural requirements under South Dakota law, including public hearing requirements, have been met or exceeded.

16. The Commission concludes that it possesses the authority under SDCL 49-41B-25 to impose conditions on the construction, operation and maintenance of the Project, that the Conditions set forth in Exhibit A are supported by the record, are reasonable and will help ensure that the Project will meet the standards established for approval of a construction permit for the Project set forth in SDCL 49-41B-22 and that the Conditions are hereby adopted.

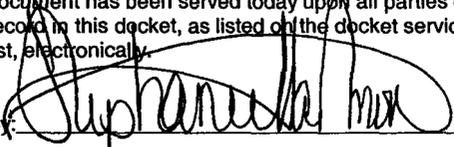
It is therefore

ORDERED, that a permit to construct the Keystone Pipeline Project is granted to TransCanada Keystone Pipeline, LP, subject to the Conditions set forth in Exhibit A.

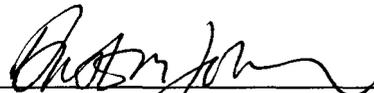
NOTICE OF ENTRY AND OF RIGHT TO APPEAL

PLEASE TAKE NOTICE that this Amended Final Decision and Order was duly issued and entered on the ____ day of June, 2010. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days from the date of issuance of this Final Decision and Order; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 29th of June, 2010.

<p align="center">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.</p> <p>By: </p> <p>Date: 06/29/10</p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:


DUSTIN M. JOHNSON, Chairman


STEVE KOLBECK, Commissioner


GARY HANSON, Commissioner

Exhibit A

AMENDED PERMIT CONDITIONS

I. Compliance with Laws, Regulations, Permits, Standards and Commitments

1. Keystone shall comply with all applicable laws and regulations in its construction and operation of the Project. These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes currently codified at 49 U.S.C. § 60101 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01:32 through 74:02:01:34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD § 74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and hydrostatic testing.

2. Keystone shall obtain and shall thereafter comply with all applicable federal, state and local permits, including but not limited to: Presidential Permit from the United States Department of State, Executive Order 11423 of August 16, 1968 (33 Fed. Reg. 11741) and Executive Order 13337 of April 30, 2004 (69 Fed. Reg. 25229), for the construction, connection, operation, or maintenance, at the border of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country; Clean Water Act § 404 and Rivers and Harbors Act Section 10 Permits; Special Permit if issued by the Pipeline and Hazardous Materials Safety Administration; Temporary Water Use Permit, General Permit for Temporary Discharges and federal, state and local highway and road encroachment permits. Any of such permits not previously filed with the Commission shall be filed with the Commission upon their issuance. To the extent that any condition, requirement or standard of the Presidential Permit, including the Final EIS Recommendations, or any other law, regulation or permit applicable to the portion of the pipeline in this state differs from the requirements of these Conditions, the more stringent shall apply.

3. Keystone shall comply with and implement the Recommendations set forth in the Final Environmental Impact Statement when issued by the United States Department of State pursuant to its Amended Department of State Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and To Initiate Consultation Under Section 106 of the National Historic Preservation Act for the Proposed Transcanada Keystone XL Pipeline; Notice of Intent--Rescheduled Public Scoping Meetings in South Dakota and extension of comment period (FR vol. 74, no. 54, Mar. 23, 2009). The Amended Notice and other Department of State and Project Documents are available on-line at: <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open>.

4. The permit granted by this Order shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.

5. Keystone shall undertake and complete all of the actions that it and its affiliated entities committed to undertake and complete in its Application as amended, in its testimony and

exhibits received in evidence at the hearing, and in its responses to data requests received in evidence at the hearing.

II. Reporting and Relationships

6. The most recent and accurate depiction of the Project route and facility locations is found on the maps in Exhibit TC-14. The Application indicates in Section 4.2.3 that Keystone will continue to develop route adjustments throughout the pre-construction design phase. These route adjustments will accommodate environmental features identified during surveys, property-specific issues, and civil survey information. The Application states that Keystone will file new aerial route maps that incorporate any such route adjustments prior to construction. Ex TC-1.4.2.3, p. 27. Keystone shall notify the Commission and all affected landowners, utilities and local governmental units as soon as practicable if material deviations are proposed to the route. Keystone shall notify affected landowners of any change in the route on their land. At such time as Keystone has finalized the pre-construction route, Keystone shall file maps with the Commission depicting the final pre-construction route. If material deviations are proposed from the route depicted on Exhibit TC-14 and accordingly approved by this Order, Keystone shall advise the Commission and all affected landowners, utilities and local governmental units prior to implementing such changes and afford the Commission the opportunity to review and approve such modifications. At the conclusion of construction, Keystone shall file detail maps with the Commission depicting the final as-built location of the Project facilities.

7. Keystone shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between Keystone, including its contractors, and landowners, local communities and residents and to promptly resolve complaints and problems that may develop for landowners, local communities and residents as a result of the Project. Keystone shall file with the Commission its proposed public liaison officer's credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by Keystone without the approval of the Commission. The public liaison officer shall be afforded immediate access to Keystone's on-site project manager, its executive project manager and to contractors' on-site managers and shall be available at all times to the Staff via mobile phone to respond to complaints and concerns communicated to the Staff by concerned landowners and others. Keystone shall also implement and keep an up-dated web site covering the planning and implementation of construction and commencement of operations in this state as an informational medium for the public. As soon as the Keystone's public liaison officer has been appointed and approved, Keystone shall provide contact information for him/her to all landowners crossed by the Project and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Keystone and the public liaison officer, take action to remove the public liaison officer.

8. Until construction of the Project, including reclamation, is completed, Keystone shall submit quarterly progress reports to the Commission that summarize the status of land acquisition and route finalization, the status of construction, the status of environmental control activities, including permitting status and Emergency Response Plan and Integrity Management Plan development, the implementation of the other measures required by these conditions, and the overall percent of physical completion of the project and design changes of a substantive nature. Each report shall include a summary of consultations with the South Dakota Department of Environment and Natural Resources and other agencies concerning the issuance of permits. The

reports shall list dates, names, and the results of each contact and the company's progress in implementing prescribed construction, land restoration, environmental protection, emergency response and integrity management regulations, plans and standards. The first report shall be due for the period ending June 30, 2010. The reports shall be filed within 31 days after the end of each quarterly period and shall continue until the project is fully operational.

9. Until one year following completion of construction of the Project, including reclamation, Keystone's public liaison officer shall report quarterly to the Commission on the status of the Project from his/her independent vantage point. The report shall detail problems encountered and complaints received. For the period of three years following completion of construction, Keystone's public liaison officer shall report to the Commission annually regarding post-construction landowner and other complaints, the status of road repair and reconstruction and land and crop restoration and any problems or issues occurring during the course of the year.

10. Not later than six months prior to commencement of construction, Keystone shall commence a program of contacts with state, county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies serving the Project area in order to educate such agencies concerning the planned construction schedule and the measures that such agencies should begin taking to prepare for construction impacts and the commencement of project operations.

11. Keystone shall conduct a preconstruction conference prior to the commencement of construction to ensure that Keystone fully understands the conditions set forth in this order. At a minimum, the conference shall include a Keystone representative, Keystone's construction supervisor and Staff.

12. Once known, Keystone shall inform the Commission of the date construction will commence, report to the Commission on the date construction is started and keep the Commission updated on construction activities as provided in Condition 8.

III. Construction

13. Except as otherwise provided in the conditions of this Order and Permit, Keystone shall comply with all mitigation measures set forth in the Construction Mitigation and Reclamation Plan (CMR Plan) as set forth in Exhibit TC-1, Exhibit B. If modifications to the CMR Plan are made by Keystone as it refines its construction plans or are required by the Department of State in its Final EIS Record of Decision or the Presidential Permit, the CMR Plan as so modified shall be filed with the Commission and shall be complied with by Keystone.

14. Keystone shall incorporate environmental inspectors into its CMR Plan and obtain follow-up information reports from such inspections upon the completion of each construction spread to help ensure compliance with this Order and Permit and all other applicable permits, laws, and rules.

15. Prior to construction, Keystone shall, in consultation with area NRCS staff, develop specific construction/reclamation units (Con/Rec Units) that are applicable to particular soil and subsoil classifications, land uses and environmental settings. The Con/Rec Units shall contain information of the sort described in response to Staff Data Request 3-25 found in Exhibit TC-16.

a) In the development of the Con/Rec Units in areas where NRCS recommends, Keystone shall conduct analytical soil probing and/or soil boring and analysis in areas of

particularly sensitive soils where reclamation potential is low. Records regarding this process shall be available to the Commission and to the specific land owner affected by such soils upon request.

b) Through development of the Con/Rec Units and consultation with NRCS, Keystone shall identify soils for which alternative handling methods are recommended. Alternative soil handling methods shall include but are not limited to the "triple-lift" method where conditions justify such treatment. Keystone shall thoroughly inform the landowner regarding the options applicable to their property, including their respective benefits and negatives, and implement whatever reasonable option for soil handling is selected by the landowner. Records regarding this process shall be available to the Commission upon request.

c) Keystone shall, in consultation with NCRS, ensure that its construction planning and execution process, including Con/Rec Units, CMR Plan and its other construction documents and planning shall adequately identify and plan for areas susceptible to erosion, areas where sand dunes are present, areas with high concentrations of sodium bentonite, areas with sodic, saline and sodic-saline soils and any other areas with low reclamation potential.

d) The Con/Rec Units shall be available upon request to the Commission and affected landowners. Con/Rec Units may be evaluated by the Commission upon complaint or otherwise, regarding whether proper soil handling, damage mitigation or reclamation procedures are being followed.

e) Areas of specific concern or of low reclamation potential shall be recorded in a separate database. Action taken at such locations and the results thereof shall also be recorded and made available to the Commission and the affected property owner upon request.

16. Keystone shall provide each landowner with an explanation regarding trenching and topsoil and subsoil/rock removal, segregation and restoration method options for his/her property consistent with the applicable Con/Rec Unit and shall follow the landowner's selected preference as documented on its written construction agreement with the landowner, as modified by any subsequent amendments, or by other written agreement(s).

a) Keystone shall separate and segregate topsoil from subsoil in agricultural areas, including grasslands and shelter belts, as provided in the CMR Plan and the applicable Con/Rec Unit.

b) Keystone shall repair any damage to property that results from construction activities.

c) Keystone shall restore all areas disturbed by construction to their preconstruction condition, including their original preconstruction topsoil, vegetation, elevation, and contour, or as close thereto as is feasible, except as is otherwise agreed to by the landowner.

d) Except where practicably infeasible, final grading and topsoil replacement and installation of permanent erosion control structures shall be completed in non-residential areas within 20 days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Keystone's control prevent compliance with this time frame, temporary erosion controls shall be maintained until conditions allow completion of cleanup and reclamation. In the event

Keystone can not comply with the 20-day time frame as provided in this Condition, it shall give notice of such fact to all affected landowners, and such notice shall include an estimate of when such restoration is expected to be completed.

e) Keystone shall draft specific crop monitoring protocols for agricultural lands. If requested by the landowner, Keystone shall provide an independent crop monitor to conduct yield testing and/or such other measurements of productivity as he shall deem appropriate. The independent monitor shall be a qualified agronomist, rangeland specialist or otherwise qualified with respect to the species to be restored. The protocols shall be available to the Commission upon request and may be evaluated for adequacy in response to a complaint or otherwise.

f) Keystone shall work closely with landowners or land management agencies to determine a plan to control noxious weeds. Landowner permission shall be obtained before the application of herbicides.

g) Keystone's adverse weather plan shall apply to improved hay land and pasture lands in addition to crop lands.

h) The size, density and distribution of rock within the construction right-of-way following reclamation shall be similar to adjacent undisturbed areas. Keystone shall treat rock that cannot be backfilled within or below the level of the natural rock profile as construction debris and remove it for disposal offsite except when the landowner agrees to the placement of the rock on his property. In such case, the rock shall be placed in accordance with the landowner's directions.

i) Keystone shall utilize the proposed trench line for its pipe stringing trucks where conditions allow and shall employ adequate measures to decompact subsoil as provided in its CMR Plan. Topsoil shall be decompacted if requested by the landowner.

j) Keystone shall monitor and take appropriate mitigative actions as necessary to address salinity issues when dewatering the trench, and field conductivity and/or other appropriate constituent analyses shall be performed prior to disposal of trench water in areas where salinity may be expected. Keystone shall notify landowners prior to any discharge of saline water on their lands or of any spills of hazardous materials on their lands of one pint or more or of any lesser volume which is required by any federal, state, or local law or regulation or product license or label to be reported to a state or federal agency, manufacturer, or manufacturer's representative.

k) Keystone shall install trench and slope breakers where necessary in accordance with the CMR Plan as augmented by Staff's recommendations in Post Hearing Commission Staff Brief, pp. 26-27.

l) Keystone shall apply mulch when reasonably requested by landowners and also wherever necessary following seeding to stabilize the soil surface and to reduce wind and water erosion. Keystone shall follow the other recommendations regarding mulch application in Post Hearing Commission Staff Brief, p. 27.

m) Keystone shall reseed all lands with comparable crops to be approved by landowner in landowner's reasonable discretion, or in pasture, hay or native species areas with comparable grass or forage crop seed or native species mix to be approved by landowner in

landowner's reasonable discretion. Keystone shall actively monitor revegetation on all disturbed areas for at least two years.

n) Keystone shall coordinate with landowners regarding his/her desires to properly protect cattle, shall implement such protective measures as are reasonably requested by the landowner and shall adequately compensate the landowner for any loss.

o) Prior to commencing construction, Keystone shall file with the Commission a confidential list of property owners crossed by the pipeline and update this list if route changes during construction result in property owner changes.

p) Except in areas where fire suppression resources as provided in CMR Plan 2.16 are in close proximity, to minimize fire risk, Keystone shall, and shall cause its contractor to, equip each of its vehicles used in pre-construction or construction activities, including off-road vehicles, with a hand held fire extinguisher, portable compact shovel and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with Keystone's fire suppression resources and emergency services.

17. Keystone shall cover open-bodied dump trucks carrying sand or soil while on paved roads and cover open-bodied dump trucks carrying gravel or other materials having the potential to be expelled onto other vehicles or persons while on all public roads.

18. Keystone shall use its best efforts to not locate fuel storage facilities within 200 feet of private wells and 400 feet of municipal wells and shall minimize and exercise vigilance in refueling activities in areas within 200 feet of private wells and 400 feet of municipal wells.

19. If trees are to be removed that have commercial or other value to affected landowners, Keystone shall compensate the landowner for the fair market value of the trees to be cleared and/or allow the landowner the right to retain ownership of the felled trees. Except as the landowner shall otherwise agree in writing, the width of the clear cuts through any windbreaks and shelterbelts shall be limited to 50 feet or less, and the width of clear cuts through extended lengths of wooded areas shall be limited to 85 feet or less. The environmental inspection in Condition 14 shall include forested lands.

20. Keystone shall implement the following sediment control practices:

a) Keystone shall use floating sediment curtains to maintain sediments within the construction right of way in open water bodies with no or low flow when the depth of non-flowing water exceeds the height of straw bales or silt fence installation. In such situations the floating sediment curtains shall be installed as a substitute for straw bales or silt fence along the edge or edges of each side of the construction right-of-way that is under water at a depth greater than the top of a straw bale or silt fence as portrayed in Keystone's construction Detail #11 included in the CMR Plan.

b) Keystone shall install sediment barriers in the vicinity of delineated wetlands and water bodies as outlined in the CMR Plan regardless of the presence of flowing or standing water at the time of construction.

c) The Applicant should consult with South Dakota Game, Fish and Parks (SDGFP) to avoid construction near water bodies during fish spawning periods in which in-stream

construction activities should be avoided to limit impacts on specific fisheries, if any, with commercial or recreational importance.

21. Keystone shall develop frac-out plans specific to areas in South Dakota where horizontal directional drilling will occur. The plan shall be followed in the event of a frac-out. If a frac-out event occurs, Keystone shall promptly file a report of the incident with the Commission. Keystone shall also, after execution of the plan, provide a follow-up report to the Commission regarding the results of the occurrence and any lingering concerns.

22. Keystone shall comply with the following conditions regarding construction across or near wetlands, water bodies and riparian areas:

a) Unless a wetland is actively cultivated or rotated cropland or unless site specific conditions require utilization of Keystone's proposed 85 foot width and the landowner has agreed to such greater width, the width of the construction right-of-way shall be limited to 75 feet in non-cultivated wetlands unless a different width is approved or required by the United States Army Corps of Engineers.

b) Unless a wetland is actively cultivated or rotated cropland, extra work areas shall be located at least 50 feet away from wetland boundaries except where site-specific conditions render a 50-foot setback infeasible. Extra work areas near water bodies shall be located at least 50 feet from the water's edge, except where the adjacent upland consists of actively cultivated or rotated cropland or other disturbed land or where site-specific conditions render a 50-foot setback infeasible. Clearing of vegetation between extra work space areas and the water's edge shall be limited to the construction right-of-way.

c) Water body crossing spoil, including upland spoil from crossings of streams up to 30 feet in width, shall be stored in the construction right of way at least 10 feet from the water's edge or in additional extra work areas and only on a temporary basis.

d) Temporary in-stream spoil storage in streams greater than 30 feet in width shall only be conducted in conformity with any required federal permit(s) and any applicable federal or state statutes, rules and standards.

e) Wetland and water body boundaries and buffers shall be marked and maintained until ground disturbing activities are complete. Keystone shall maintain 15-foot buffers where practicable, which for stream crossings shall be maintained except during the period of trenching, pipe laying and backfilling the crossing point. Buffers shall not be required in the case of non-flowing streams.

f) Best management practices shall be implemented to prevent heavily silt-laden trench water from reaching any wetland or water body directly or indirectly.

g) Erosion control fabric shall be used on water body banks immediately following final stream bank restoration unless riprap or other bank stabilization methods are utilized in accordance with federal or state permits.

h) The use of timber and slash to support equipment crossings of wetlands shall be avoided.

i) Subject to Conditions 37 and 38, vegetation restoration and maintenance adjacent to water bodies shall be conducted in such manner to allow a riparian strip at least 25 feet wide as measured from the water body's mean high water mark to permanently re-vegetate with native plant species across the entire construction right-of way.

23. Keystone shall comply with the following conditions regarding road protection and bonding:

a) Keystone shall coordinate road closures with state and local governments and emergency responders and shall acquire all necessary permits authorizing crossing and construction use of county and township roads.

b) Keystone shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the general public.

c) Prior to their use for construction, Keystone shall videotape those portions of all roads which will be utilized by construction equipment or transport vehicles in order to document the pre-construction condition of such roads.

d) After construction, Keystone shall repair and restore, or compensate governmental entities for the repair and restoration of, any deterioration caused by construction traffic, such that the roads are returned to at least their preconstruction condition.

e) Keystone shall use appropriate preventative measures as needed to prevent damage to paved roads and to remove excess soil or mud from such roadways.

f) Pursuant to SDCL 49-41B-38, Keystone shall obtain and file for approval by the Commission prior to construction in such year a bond in the amount of \$15.6 million for the year in which construction is to commence and a second bond in the amount of \$15.6 million for the ensuing year, including any additional period until construction and repair has been completed, to ensure that any damage beyond normal wear to public roads, highways, bridges or other related facilities will be adequately restored or compensated. Such bonds shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the Project. Each bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Either at the contact meetings required by Condition 10 or by mail, Keystone shall give notice of the existence and amount of these bonds to all counties, townships and other governmental entities whose property is crossed by the Project.

24. Although no residential property is expected to be encountered in connection with the Project, in the event that such properties are affected and due to the nature of residential property, Keystone shall implement the following protections in addition to those set forth in its CMR Plan in areas where the Project passes within 500 feet of a residence:

a) To the extent feasible, Keystone shall coordinate construction work schedules with affected residential landowners prior to the start of construction in the area of the residences.

- b) Keystone shall maintain access to all residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Keystone and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with affected residential landowners and occupants, to the extent possible.
- c) Keystone shall install temporary safety fencing, when reasonably requested by the landowner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment in a residential area.
- d) Keystone shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption.
- e) Keystone shall repair any damage to property that results from construction activities.
- f) Keystone shall separate topsoil from subsoil and restore all areas disturbed by construction to at least their preconstruction condition.
- g) Except where practicably infeasible, final grading and topsoil replacement, installation of permanent erosion control structures and repair of fencing and other structures shall be completed in residential areas within 10 days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Keystone's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigative measures shall be maintained until conditions allow completion of cleanup and reclamation.

25. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken. At least two months prior to the start of construction in South Dakota, Keystone shall file with the Commission an adverse weather land protection plan containing appropriate adverse weather land protection measures, the conditions in which such measures may be appropriately used, and conditions in which no construction is appropriate, for approval or modification by the Commission prior to the start of construction. The Commission shall make such plan available to impacted landowners who may provide comment on such plan to the Commission.

26. Reclamation and clean-up along the right-of-way must be continuous and coordinated with ongoing construction.

27. All pre-existing roads and lanes used during construction must be restored to at least their pre-construction condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition, except as otherwise requested or agreed to by the landowner or any governmental authority having jurisdiction over such roadway.

28. Keystone shall, prior to any construction, file with the Commission a list identifying private and new access roads that will be used or required during construction and file a description of methods used by Keystone to reclaim those access roads.

29. Prior to construction, Keystone shall have in place a winterization plan and shall implement the plan if winter conditions prevent reclamation completion until spring. The plan shall be provided to affected landowners and, upon request, to the Commission.

30. Numerous Conditions of this Order, including but not limited to 16, 19, 24, 25, 26, 27 and 51 relate to construction and its effects upon affected landowners and their property. The Applicant may encounter physical conditions along the route during construction which make compliance with certain of these Conditions infeasible. If, after providing a copy of this order, including the Conditions, to the landowner, the Applicant and landowner agree in writing to modifications of one or more requirements specified in these conditions, such as maximum clearances or right-of-way widths, Keystone may follow the alternative procedures and specifications agreed to between it and the landowner.

IV. Pipeline Operations, Detection and Emergency Response

31. Keystone shall construct and operate the pipeline in the manner described in the application and at the hearing, including in Keystone's exhibits, and in accordance with the conditions of this permit, the PHMSA Special Permit, if issued, and the conditions of this Order and the construction permit granted herein.

32. Keystone shall require compliance by its shippers with its crude oil specifications in order to minimize the potential for internal corrosion.

33. Keystone's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the pipeline. In its surveillance and maintenance activities, Keystone shall, and shall cause its contractor to, equip each of its vehicles, including off-road vehicles, with a hand held fire extinguisher, portable compact shovel and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with emergency services.

34. In accordance with 49 C.F.R. 195, Keystone shall continue to evaluate and perform assessment activities regarding high consequence areas. Prior to Keystone commencing operation, all unusually sensitive areas as defined by 49 CFR 195.6 that may exist, whether currently marked on DOT's HCA maps or not, should be identified and added to the Emergency Response Plan and Integrity Management Plan. In its continuing assessment and evaluation of environmentally sensitive and high consequence areas, Keystone shall seek out and consider local knowledge, including the knowledge of the South Dakota Geological Survey, the Department of Game Fish and Parks and local landowners and governmental officials.

35. The evidence in the record demonstrates that in some reaches of the Project in southern Tripp County, the High Plains Aquifer is present at or very near ground surface and is overlain by highly permeable sands permitting the uninhibited infiltration of contaminants. This aquifer serves as the water source for several domestic farm wells near the pipeline as well as public water supply system wells located at some distance and upgradient from the pipeline route. Keystone shall identify the High Plains Aquifer area in southern Tripp County as a hydrologically sensitive area in its Integrity Management and Emergency Response Plans. Keystone shall similarly treat any other similarly vulnerable and beneficially useful surficial aquifers of which it becomes aware during construction and continuing route evaluation.

36. Prior to putting the Keystone Pipeline into operation, Keystone shall prepare, file with PHMSA and implement an emergency response plan as required under 49 CFR 194 and a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR 195.402. Keystone shall also prepare and implement a written integrity management program in the manner and at such time as required under 49 CFR 195.452. At such time as Keystone files its Emergency Response Plan and

Integrity Management Plan with PHMSA or any other state or federal agency, it shall also file such documents with the Commission. The Commission's confidential filing rules found at ARSD 20:10:01:41 may be invoked by Keystone with respect to such filings to the same extent as with all other filings at the Commission. If information is filed as "confidential," any person desiring access to such materials or the Staff or the Commission may invoke the procedures of ARSD 20:10:01:41 through 20:10:01:43 to determine whether such information is entitled to confidential treatment and what protective provisions are appropriate for limited release of information found to be entitled to confidential treatment.

37. To facilitate periodic pipeline leak surveys during operation of the facilities in wetland areas, a corridor centered on the pipeline and up to 15 feet wide shall be maintained in an herbaceous state. Trees within 15 feet of the pipeline greater than 15 feet in height may be selectively cut and removed from the permanent right-of-way.

38. To facilitate periodic pipeline leak surveys in riparian areas, a corridor centered on the pipeline and up to 10 feet wide shall be maintained in an herbaceous state.

V. Environmental

39. Except to the extent waived by the owner or lessee in writing or to the extent the noise levels already exceed such standard, the noise levels associated with Keystone's pump stations and other noise-producing facilities will not exceed the L10=55dbA standard at the nearest occupied, existing residence, office, hotel/motel or non-industrial business not owned by Keystone. The point of measurement will be within 100 feet of the residence or business in the direction of the pump station or facility. Post-construction operational noise assessments will be completed by an independent third-party noise consultant, approved by the Commission, to show compliance with the noise level at each pump station or other noise-producing facility. The noise assessments will be performed in accordance with applicable American National Standards Institute standards. The results of the assessments will be filed with the Commission. In the event that the noise level exceeds the limit set forth in this condition at any pump station or other noise producing facility, Keystone shall promptly implement noise mitigation measures to bring the facility into compliance with the limits set forth in this condition and shall report to the Commission concerning the measures taken and the results of post-mitigation assessments demonstrating that the noise limits have been met.

40. At the request of any landowner or public water supply system that offers to provide the necessary access to Keystone over his/her property or easement(s) to perform the necessary work, Keystone shall replace at no cost to such landowner or public water supply system, any polyethylene water piping located within 500 feet of the Project with piping that is resistant to permeation by BTEX. Keystone shall not be required to replace that portion of any piping that passes through or under a basement wall or other wall of a home or other structure. At least forty-five (45) days prior to commencing construction, Keystone shall publish a notice in each newspaper of general circulation in each county through which the Project will be constructed advising landowners and public water supply systems of this condition.

41. Keystone shall follow all protection and mitigation efforts as identified by the US Fish and Wildlife Service ("USFWS") and SDGFP. Keystone shall identify all greater prairie chicken and greater sage and sharp-tailed grouse leks within the buffer distances from the construction right of way set forth for the species in the FEIS and Biological Assessment (BA) prepared by DOS and USFWS. In accordance with commitments in the FEIS and BA, Keystone shall avoid or restrict

construction activities as specified by USFWS within such buffer zones between March 1 and June 15 and for other species as specified by USFWS and SDGFP.

42. Keystone shall keep a record of drain tile system information throughout planning and construction, including pre-construction location of drain tiles. Location information shall be collected using a sub-meter accuracy global positioning system where available or, where not available by accurately documenting the pipeline station numbers of each exposed drain tile. Keystone shall maintain the drain tile location information and tile specifications and incorporate it into its Emergency Response and Integrity Management Plans where drains might be expected to serve as contaminant conduits in the event of a release. If drain tile relocation is necessary, the applicant shall work directly with landowner to determine proper location. The location of permanent drain tiles shall be noted on as-built maps. Qualified drain tile contractors shall be employed to repair drain tiles.

VI. Cultural and Paleontological Resources

43. In accordance with Application, Section 6.4, Keystone shall follow the "Unanticipated Discoveries Plan," as reviewed by the State Historical Preservation Office ("SHPO") and approved by the DOS and provide it to the Commission upon request. Ex TC-1.6.4, pp. 94-96; Ex S-3. If during construction, Keystone or its agents discover what may be an archaeological resource, cultural resource, historical resource or gravesite, Keystone or its contractors or agents shall immediately cease work at that portion of the site and notify the DOS, the affected landowner(s) and the SHPO. If the DOS and SHPO determine that a significant resource is present, Keystone shall develop a plan that is approved by the DOS and commenting/signatory parties to the Programmatic Agreement to salvage avoid or protect the archaeological resource. If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission and landowner approval for the new route before proceeding with any further construction. Keystone shall be responsible for any costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Keystone's construction or maintenance activities.

44. Keystone shall implement and comply with the following procedures regarding paleontological resources:

a) Prior to commencing construction, Keystone shall conduct a literature review and records search, and consult with the BLM and Museum of Geology at the S.D. School of Mines and Technology ("SDSMT") to identify known fossil sites along the pipeline route and identify locations of surface exposures of paleontologically sensitive rock formations using the BLM's Potential Fossil Yield Classification system. Any area where trenching will occur into the Hell Creek Formation shall be considered a high probability area.

b) Keystone shall at its expense conduct a pre-construction field survey of each area identified by such review and consultation as a known site or high probability area within the construction ROW. Following BLM guidelines as modified by the provisions of Condition 44, including the use of BLM permitted paleontologists, areas with exposures of high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5) rock formations shall be subject to a 100% pedestrian field survey, while areas with exposures of moderately sensitive rock formations (PFYC Class 3) shall be spot-checked for occurrences of scientifically or economically significant surface fossils and evidence of subsurface fossils. Scientifically or economically significant surface fossils shall be avoided by the Project or mitigated by collecting them if avoidance is not feasible. Following BLM guidelines for the assessment

and mitigation of paleontological resources, scientifically significant paleontological resources are defined as rare vertebrate fossils that are identifiable to taxon and element, and common vertebrate fossils that are identifiable to taxon and element and that have scientific research value; and scientifically noteworthy occurrences of invertebrate, plant and trace fossils. Fossil localities are defined as the geographic and stratigraphic locations at which fossils are found.

c) Following the completion of field surveys, Keystone shall prepare and file with the Commission a paleontological resource mitigation plan. The mitigation plan shall specify monitoring locations, and include BLM permitted monitors and proper employee and contractor training to identify any paleontological resources discovered during construction and the procedures to be followed following such discovery. Paleontological monitoring will take place in areas within the construction ROW that are underlain by rock formations with high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5), and in areas underlain by rock formations with moderate sensitivity (PFYC Class 3) where significant fossils were identified during field surveys.

d) If during construction, Keystone or its agents discover what may be a paleontological resource of economic significance, or of scientific significance, as defined in subparagraph (b) above, Keystone or its contractors or agents shall immediately cease work at that portion of the site and, if on private land, notify the affected landowner(s). Upon such a discovery, Keystone's paleontological monitor will evaluate whether the discovery is of economic significance, or of scientific significance as defined in subparagraph (b) above. If an economically or scientifically significant paleontological resource is discovered on state land, Keystone will notify SDSMT and if on federal land, Keystone will notify the BLM or other federal agency. In no case shall Keystone return any excavated fossils to the trench. If a qualified and BLM-permitted paleontologist, in consultation with the landowner, BLM, or SDSMT determines that an economically or scientifically significant paleontological resource is present, Keystone shall develop a plan that is reasonably acceptable to the landowner(s), BLM, or SDSMT, as applicable, to accommodate the salvage or avoidance of the paleontological resource to protect or mitigate damage to the resource. The responsibility for conducting such measures and paying the costs associated with such measures, whether on private, state or federal land, shall be borne by Keystone to the same extent that such responsibility and costs would be required to be borne by Keystone on BLM managed lands pursuant to BLM regulations and guidelines, including the BLM Guidelines for Assessment and Mitigation of Potential Impacts to Paleontological Resources, except to the extent factually inappropriate to the situation in the case of private land (e.g. museum curation costs would not be paid by Keystone in situations where possession of the recovered fossil(s) was turned over to the landowner as opposed to curation for the public). If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission approval for the new route before proceeding with any further construction. Keystone shall, upon discovery and salvage of paleontological resources either during pre-construction surveys or construction and monitoring on private land, return any fossils in its possession to the landowner of record of the land on which the fossil is found. If on state land, the fossils and all associated data and documentation will be transferred to the SDSMT; if on federal land, to the BLM.

e) To the extent that Keystone or its contractors or agents have control over access to such information, Keystone shall, and shall require its contractors and agents to, treat the locations of sensitive and valuable resources as confidential and limit public access to this information.

VII. Enforcement and Liability for Damage

45. Keystone shall repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility, including but not limited to, all fences, gates and utility, water supply, irrigation or drainage systems. Keystone shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses or loss of value to a paleontological resource damaged by construction or other activities.

46. In the event that a person's well is contaminated as a result of construction or pipeline operation, Keystone shall pay all costs associated with finding and providing a permanent water supply that is at least of similar quality and quantity; and any other related damages, including but not limited to any consequences, medical or otherwise, related to water contamination.

47. Any damage that occurs as a result of soil disturbance on a persons' property shall be paid for by Keystone.

48. No person will be held responsible for a pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the pipeline.

49. Keystone shall pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damage, claim or action resulting from Keystone's use of the easement, including any resulting from any release of regulated substances or from abandonment of the facility, except to the extent such loss, damage claim or action results from the gross negligence or willful misconduct of the landowner or its agents.

50. The Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage or the consequences of Keystone's failure to abide by the conditions of this permit or otherwise having standing to obtain enforcement of the conditions of this Order and Permit.

Exhibit B

RULINGS ON PROPOSED FINDINGS OF FACT

Rulings on Applicants' Proposed Findings of Fact

As Applicant is the prevailing party, most of Applicant's Proposed Findings of Fact have been accepted in their general substance and incorporated in the Findings of Fact, with additions and modifications to reflect the Commission's understanding of the record.