

EXHIBIT B

APPENDIX E

Amended Programmatic Agreement and Record of Consultation

E1 Amended Programmatic Agreement

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Programmatic Agreement

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

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

Regarding the Keystone XL Pipeline Project

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STIPULATIONS

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

I. STANDARDS AND DEFINITIONS

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

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

C. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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II. CONFIDENTIALITY

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

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

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

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

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

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

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

V. KEYSTONE XL PROJECT – PIPELINE CONSTRUCTION

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

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

C. Treatment of Historic Properties

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

Avoidance measures may include:

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

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

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

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

D. Coordination of Construction and Historic Preservation Activities

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

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

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

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

F. Construction

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

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

F. Scheduling

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

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

A. Pipeline Construction

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

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

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

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

B. Construction or Modification of Electrical Facilities

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

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

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

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

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

VII. CURATION

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

VIII. REPORTING

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

IX. MONITORING IMPLEMENTATION OF THE PA

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

X. DISPUTE RESOLUTION

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

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XI. DURATION

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

XII. AMENDMENT

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

XIII. TERMINATION

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

XIV. COORDINATION WITH OTHER FEDERAL REVIEWS

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

XV. SCOPE OF THE PA

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

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

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

Deborah Klepp

Date

Director

Office of Environmental Quality and Transboundary Issues

Bureau of Oceans and International Environmental and Scientific Affairs

United States Department of State



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

434 0/3

Date



18 DEC 2013

Joel R. Cross
Colonel, Corps of Engineers
District Commander

Date

Bennet Horter

12/17/2013

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

Date

Salvador Salinas

12-17-13

Salvador Salinas

Date

State Conservationist

United States Department of Agriculture Natural Resources Conservation Services

Mark S. Plank

12/17/13

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

Date



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

12-18-13

Date

Diane M Friez

12/18/2013

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

Date



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

DECEMBER 18, 2013

Date

Robert J. Harris

12/19/13

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

Date

John M. Fowler

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


12/19/13
Date

Patrick Selmer DSHPO for

12-17-13

**Jennie Chinn
State Historic Preservation Officer
Kansas**

Date


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

12.19.13

Date



12-19-13

John Tubbs
Director

Date

Montana Department of Natural Resources and Conservation
(Invited Signatory)

Mark Baunler

Mark Baunler
State Historic Preservation Officer
Montana

12/18/2013

Date



Michael J. Smith
State Historic Preservation Officer
Nebraska

Dec. 18, 2013

Date



Jay D. Vogt
State Historic Preservation Officer
South Dakota

17 Dec 13

Date



Dec 18 / 13

Corey Goulet
Vice President
TransCanada Pipelines Limited
(Invited Signatory)

Date

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ATTACHMENT A

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

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

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ATTACHMENT B

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

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

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ATTACHMENT C

Plans for the Unanticipated Discovery of Cultural Resources

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

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UNANTICIPATED DISCOVERIES PLAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contact Information:

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

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

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UNANTICIPATED DISCOVERIES PLAN

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

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

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

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

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

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

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

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

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