September 19, 2007

Elizabeth Orlando
NEPA Coordinator, Keystone EIS Project Manager
US Department of State
OES/ENV Room 2657A
Washington, DC 20520

Re: Keystone Pipeline DEIS comments

Dear Ms. Orlando:

The Standing Rock Tribal Historic Preservation Office rejects the draft EIS as written. We believe that there are major, unresolved issues regarding the identification and evaluation of cultural resources within the proposed corridor of TransCanada's Keystone Pipeline where it crosses the ancestral homelands of the Great Plains Tribes.

Our comments are as follows.

3.11 Cultural Resources:

- 3.11, paragraph #3 outlines the legal responsibilities of the federal agency in regards to consultation with the SHPO and their role in evaluating cultural resources. The SHPO's responsibility, as described, includes working with Native American tribes "to mitigate any negative impacts that could occur to NRHP-eligible or –listed properties." The use of the word mitigate assumes that avoidance is not an option for the construction of the Keystone Pipeline. This is whole sale destruction of sites within the corridor without Tribal participation and DOS doesn't have a process Identified to address this in the draft EIS. Please clarify this fatal flaw.
- 3.11, paragraph #4 asserts the "importance of consulting with tribes for federal undertakings that are proposed within Native American ancestral territories," as described in 36 CFR 800.2(c)(2)(ii). According to the Draft EIS, the cultural resources surveys for the proposed corridor began in early 2006, yet consultation with affected Native American tribes and THPOs was not initiated until August 2006. Research designs were submitted to State SHPOs and approved in early 2007, yet efforts were

not made to do the same with the appropriate THPOs.The DOS must initiate consultation on the archaeology conducted by Metcalf, Inc.

- 3.11, paragraph #7 states that the guidelines used to assess cultural resources was developed by FERC, and that Keystone assisted DOS in complying with Section 106. This indicates that the DOS has delegated its responsibilities to the very company that they are supposed to be evaluating. This assistance shows a clear conflict of interest on the part of Keystone, who cannot be expected to provide unbiased information and analyses for a survey that may determine the outcome of their application for a federal permit. Also, the FERC guidelines provide for the input and guidance of relevant THPOs in evaluating the significance of any cultural resources found (page 13). The DEIS indicates that evaluations were made only by the contracted group selected by Keystone to perform the required assessments. This action doesn't fulfill the requirements of Section 106 of NHPA.
- 3.11, paragraph #8 defines Traditional Cultural Properties (TCPs) as in Bulletin #38 of the National Register, and "traditional" is an identified category of cultural resources for the analysis. Neither the Class I nor the Class II survey conducted identified any resources that fell into this category. This is most probably due to a lack of consultation with appropriate THPOs during the survey process. How will DOS address this?

3.11.1.1 and 3.11.1.2 Potential Impacts and Mitigation:

The Standing Rock Sioux Tribe is particularly concerned about those types of sites that archaeologists describe as "archaeological sites" rather than "historic" or "architectural sites." Occupation of the project area by ancestral Sioux bands is most likely reflected by pre-contact, archaeological sites.

Metcalf Archaeological Consultants (MAC) recommended a Class II inventory of the Keystone pipeline route in North Dakota based upon a "sampling strategy focused on landform types that were derived from the known site database and the results of previous surveys" (DEIS 3.11-4). On the basis of this strategy, MAC recommended conducting on-the-ground inventories on only 22.8% of the project corridor (49.5 miles of 216.9 miles). MAC's sampling strategy assumes either (1) that there are sufficient numbers of previously recorded sites to predict the types of landforms on which sites most frequently occur or (2) that there are sufficient numbers of previous surveys to predict where sites occur. Neither assumption is warranted along the Keystone pipeline route.

In the 388 sections included in the Class I inventory of the North Dakota segment by MAC inventory there is a total of only 18 pre-contact sites. Obviously, a sample limited to 18 sites over a distance of approximately 216.9 miles is not statistically valid and does not provide a large enough data base to formulate a predictive model. Moreover, nine of the previously-recorded sites are in two heavily inventoried sections (135/59-11 and 136/58-35). These two sections demonstrate the value of conducting intensive ground searches (Class

III). For the remaining 215 miles of pipeline corridor there are only nine recorded archaeological sites. Clearly, this small number reflects a lack of inventories rather than a low site density.

The number of previous inventories is also not sufficient to formulate a predictive model. Of the 388 sections in the Class I inventory, 210 are listed as "no sites/no surveys." To this number can be added an additional 17 sections where there is a recorded historic site or site lead but no survey has been conducted. This data indicates that of the 388 sections, 58.5% of the sections have received no archaeological surveys. When constructing predictive models the data from Class II (reconnaissance) inventories also must be excluded because Class II inventories by design provide a biased sample. Class I inventories are excluded since no fieldwork was conducted and inventories restricted to historic sites are excluded because they are not relevant to prehistoric site locations. Excluding these inventories excludes an additional 49 sections. Taken cumulatively, there is no data or only biased data on 276 sections. There is no data or inadequate inventory data for over 70% of the project corridor in North Dakota.

Along the South Dakota segment of the Keystone pipeline MAC recommended a Class II inventory based upon a "sampling strategy focused on landform types that were derived from the known site database and the results of previous surveys" (DEIS 3.11-8). On the basis of this strategy, MAC recommended conducting on-the-ground inventories on only 17.6% of the project corridor (38.5 miles of 218.9 miles). As with the North Dakota segment, MAC's South Dakota sampling strategy assumes either (1) that there are sufficient numbers of previously recorded sites to predict the types of landforms on which sites most frequently occur or (2) that there are sufficient numbers of previous surveys to predict where sites occur. Neither assumption is valid.

In the 736 sections included in the Class I inventory of the South Dakota segment there is a total of only 10 pre-contact sites. Obviously, a sample limited to 10 sites over a distance of approximately 218.9 miles is not statistically valid and does not provide a large enough data base to formulate a predictive model.

The number of previous inventories is also not sufficient to formulate a predictive model. Of the 736 sections in the Class I inventory, 485 are listed as "no sites/no surveys." To this number can be added an additional 81 sections where there is a recorded historic site or site lead but no survey has been conducted. This data indicates that of the 736 sections, 76.9% of the sections have received no archaeological surveys. When Class II (reconnaissance) are excluded data from an additional 19 sections is excluded. In sum, there is no data or inadequate inventory data for almost 80% of the project corridor in South Dakota.

On the basis of the above, the Class II inventories of the North Dakota and South Dakota segments of the Keystone pipeline are not adequate because there is insufficient data to formulate statistically-significant predictions about what landforms have the highest probability of having archaeological sites. The cultural resources summaries of the North and South Dakota segments in the EIS must be rejected because the modeling underpinning the Class II inventories

is fatally flawed. Class III inventories must be conducted along both the North and South Dakota segments.

3.11.2 Potential Impacts and Mitigation

- Paragraph #3 addresses the development of a PA to establish protocol for "unanticipated discoveries, future cultural resources identification and avoidance commitments and measures, and the process for future consultation." However, **3.11.4** shows that an Unanticipated Discoveries Plan has already been established, without considering the interests of affected Native American tribes.
- Tables for identified cultural resources show that determinations regarding NRHP eligibility have been made for many sites. These determinations were made without the knowledge or input from any Native American tribes who may know of their significance, contrary to the FERC guidelines that were supposedly followed.

5.11 Cultural Resources, Conclusions

- "Cultural resources inventory and geoarcheological studies will be completed and reported to DOS by April 2008." **2.2.4**, Construction Schedule and Workforce anticipates construction to begin in April 2008. This assumes that the DOS will approve the project (a decision is expected in "early 2008") without a completed 100% Class III survey. Approval of a major undertaking while such important information has not been compiled is unacceptable.

Information recently surfaced concerning land in South Dakota that was stolen from the Lakota people without the benefit of treaty. As forty-five days is an insufficient amount of time to review and comment on the entire Draft EIS, we were unable to research this concern further, but we would like this issue to be addressed in the Final EIS as more information becomes available.

We request a response in detail to each of the above issues. Thank you for your time and your consideration.

Sincerely,

Standing Rock Sioux Tribe

Tim Mentz, Sr.
Tribal Historic Preservation Officer

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