



KEYSTONE XL PIPELINE PROJECT

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION QUARTERLY REPORT

For the Quarter Ending: December 31, 2013

TABLE OF CONTENTS

| | | |
|-----|---|---|
| 1.0 | EXECUTIVE SUMMARY | 1 |
| 1.1 | Pipeline Right-of-Way Acquisition | 1 |
| 1.2 | Pump Stations | 1 |
| 1.3 | Pipe and Contractor Yards | 2 |
| 1.4 | Contractor Housing Camps | 2 |
| 2.0 | NON-ENVIRONMENTAL PERMITTING STATUS (South Dakota) | 2 |
| 2.1 | County Roads | 2 |
| 2.3 | Railroads | 2 |
| 2.4 | Pump Stations | 3 |
| 2.5 | Contractor Camps | 3 |
| 3.0 | ENVIRONMENTAL PERMITTING STATUS (South Dakota) | 3 |
| 4.1 | Federal Permits | 3 |
| 4.2 | Permit Compliance | 4 |
| 4.0 | CONSTRUCTION STATUS..... | 4 |
| 5.0 | ENVIRONMENTAL CONTROL ACTIVITIES..... | 4 |
| 6.0 | STATUS OF EMERGENCY RESPONSE AND INTEGRITY MANAGEMENT PLANS | 5 |
| 6.1 | Emergency Response Plan | 5 |
| 6.2 | Integrity Management Plan for High Consequence Areas | 5 |

1.0 EXECUTIVE SUMMARY

TransCanada filed a new a Presidential Permit application with the Department of State on May 4, 2012. The 36 inch diameter pipeline will extend 875 miles from the Canadian–U.S. border, southeast to Steele City, Nebraska. The route through Montana and South Dakota is largely unchanged from the route analyzed in the previous August 2011 Final Environmental Impact Statement (FEIS). That FEIS addressed Keystone’s September 2008 Presidential Permit application. This previous Presidential Permit was denied on the grounds that a legislatively imposed deadline did not permit sufficient time to consider concerns about the route through the Sand Hills area of Nebraska. Construction activities have not taken place, or will take place, in South Dakota until the required permits and regulatory approvals are obtained for any proposed construction site. Project personnel are continuing to review the proposed pipeline route to identify any potential construction issues before construction. The construction plan for the portion of the Keystone XL Pipeline Project through South Dakota is dependent on the timing of final regulatory approval and may include three or four spreads.

Keystone will implement the conditions of federal and state permits at the times specified by those permits. (See Appendix A for a table of the Summary of Consultations with the South Dakota Department of Environmental and Natural Resources.)

LAND ACQUISITION STATUS (South Dakota)

1.1 Pipeline Right-of-Way Acquisition

The pipeline centerline crosses property owned by 301 landowners. Keystone has acquired easements from over 99% of the landowners. Easements have been acquired from all private landowners. The only outstanding easements are for the tracts owned by the State of South Dakota. Acquisition of those agreements is in process.

1.2 Pump Stations

The pump stations will be located in Harding, Meade, Haakon, Jones, and Tripp County, South Dakota. Keystone has purchased all seven pump station sites. The size of each pump station site is approximately 10 acres.

1.3 Pipe and Contractor Yards

Keystone has leased 11 pipe yards and five contractor yards in South Dakota. The leases were originally for 36 months, commencing on October 10, 2010. The leases have been extended an additional 24 months, expiring on October 1, 2015. The yards are in Harding, Butte, Meade, Haakon, Jones, and Tripp Counties. Each yard is approximately 30 acres in size.

1.4 Contractor Housing Camps

As outlined in the Keystone XL Final Environmental Impact Statement (FEIS), in Section 2.2.7.4 - Construction Camps, some remote areas in South Dakota do not have sufficient temporary housing near the proposed route to house all construction personnel working on spreads in those areas. In those remote areas, temporary work camps would be constructed to meet the housing needs of the construction workforce. Details of the construction camp configuration will depend on the final construction spread configuration and construction schedule, which is dependent on receipt of the final federal approval.

2.0 NON-ENVIRONMENTAL PERMITTING STATUS (South Dakota)

2.1 County Roads

102 crossing permit applications have been filed for the pipeline to cross under all county road rights-of-way. Of the 102 applications filed, 101 have been acquired as of September 30, 2013.

2.2 State Roads

Thirteen (13) crossing permits and twenty-four (24) temporary approach permit applications have been filed with the state of South Dakota Department of Transportation (SD DOT) for the pipeline to cross under the state road rights-of-way. All crossing and temporary approach permits have been received from the SD DOT.

2.3 Railroads

Two crossing easement permits are being negotiated for the pipeline to cross under existing railroad rights-of-way. The Canadian Pacific railroad application has been submitted and is pending a signed license agreement. The South Dakota State Railroad application has been received.

2.4 Pump Stations

The special use permits required for the two Harding County pump stations were approved on September 28, 2010. Of the remaining five pump stations, four do not require a special use permit, leaving only one special use permit needed for the pump station in Jones County.

2.5 Contractor Camps

All construction camps will be permitted, constructed and operated consistent with applicable county, state, and federal regulations. (See Table 2.2.7-3 of the FEIS for relevant regulations and permits required for the construction.)

3.0 ENVIRONMENTAL PERMITTING STATUS (South Dakota)

Keystone is awaiting or will be preparing and submitting all remaining applications for required federal and state environmental permits for work in South Dakota and will obtain the required permits in advance of pipeline construction activities.

4.1 Federal Permits

TransCanada filed a new Presidential Permit application with the U.S. Department of State on May 4, 2012 to authorize the international border crossing for the Keystone XL Project. The route through Montana and South Dakota is largely unchanged from the route analyzed in the previous August 2011 Final Environmental Impact Statement (FEIS). That FEIS addressed Keystone's September 2008 Presidential Permit application. The route in Nebraska has been modified to address concerns about impacts to the Sand Hills area in Nebraska.

The former "Gulf Coast Segment" of the Keystone XL Project (a pipeline from Cushing Oklahoma to the Gulf Coast in Texas) was determined to have independent utility and was constructed as the stand-alone Gulf Coast pipeline separate from the Keystone XL Project.

Keystone XL pipeline will also file permit applications with the US Army Corps of Engineers for the necessary authorizations under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

4.2 Permit Compliance

Keystone will implement the conditions of federal and state permits at the times specified by those permits. (See Appendix A for a table of the Summary of Consultations with the South Dakota Department of Environmental and Natural Resources.)

4.0 CONSTRUCTION STATUS

No construction activities have taken place, or will take place, in South Dakota until the required permits and regulatory approvals are obtained for any proposed construction site. Project personnel are continuing to review the proposed pipeline route to identify any potential construction issues before construction.

5.0 ENVIRONMENTAL CONTROL ACTIVITIES

Environmental control activities, as required by applicable permit conditions, will be implemented when construction activities start in South Dakota.

6.0 STATUS OF EMERGENCY RESPONSE AND INTEGRITY MANAGEMENT PLANS

6.1 Emergency Response Plan

Development of the Keystone Pipeline Project operational Emergency Response Plan for the U.S. is ongoing and will be submitted to Pipeline and Hazardous Materials Safety Administration (PHMSA) six months before pipeline in-service. New TransCanada-owned emergency response equipment trailers are planned for storage in South Dakota.

Through its public awareness program, TransCanada continues to provide various types of information related to Keystone emergency response and pipeline safety awareness.

6.2 Integrity Management Plan for High Consequence Areas

Development of the Integrity Management Plan for the high consequence areas is ongoing. Progress in identifying high consequence areas and creating their subsequent tactical plans is about 70% complete. These tactical plans will be included in the Emergency Response Plan. After further discussions and coordination with PHMSA, the Integrity Management Plan will be formally submitted to PHMSA.

7.0 OTHER COMPLIANCE MEASURES

See Appendix B for the status of implementation of South Dakota Public Utilities Commission (PUC) conditions.

APPENDIX A

**Table 1: Recent Consultations with South Dakota
Department of Environment and Natural Resources**

| Date of Contact | Agency / Individual | Purpose of Consultation | Results of Consultation | Follow-up Required |
|------------------------|--|--|--|---|
| 8-3-10 | SD DENR Kelli Buscher, John Miller, Albert Spangler, Brian Walsh, Mike DeFea SDGFP Leslie Murphy, John Lott SD DAG Raymond Sowers, Bill Smith | Discuss both state and federal permitting for the Keystone XL Pipeline project in South Dakota as well as to review the current project status and schedule in South Dakota. | Laid out a blue print for State permitting. | Determine if a construction stormwater discharge permit is required for the camps as it is not required for pipeline related construction |
| 10-23-12 | SDGFP Silka Kempana, Travis Runia | Coordination with FWS, DOS, SD GFP regarding Keystone Sage Grouse Protection Plan and mitigation plans | Keystone will modify Sage Grouse Protection Plan to account for SD GFP additional input, conduct ambient noise studies and additional modeling, and revise mitigation plans for SD GFP review. | Updating Sage Grouse Protection Plan, mitigation plans and noise modeling |
| 10-25-12 | SD DENR Al Spangler | Verification of permit application process | Discussed water withdrawal and discharge permit application and format required | Keystone will prepare permit applications |
| 12-3-12 | SD DENR Ashley Brakke | Followed up with SD DENR with the submitted air permit applications for the contractor camps [for emergency generators]. | DENR needs a notarized statement from the applicant saying these were the generators that would be used for emergency electric power. Ms. Brakke was about ½ way through with the applications and none yet required the permit. | Prepare statement for SD Camp Contractor(s) to sign, notarize and send to the DENR Air Quality representative when they are on board. |
| 12-5-12 | SD DENR Ashley Brakke | Followed up with SD DENR with the submitted air permit applications for the contractor camps [for emergency generators]. | DENR stated that they were OK with the notarized letter not being submitted until the camp contractor had been identified and on board. | Prepare statement for SD Camp Contractor(s) to sign, notarize and send to the DENR Air Quality representative when they are on board. |

Keystone XL Pipeline Project

Response to Condition 8 for the
South Dakota Public Utilities Commission



| Date of Contact | Agency / Individual | Purpose of Consultation | Results of Consultation | Follow-up Required |
|-----------------|--|---|--|---|
| 4-10-13 | SD DENR Al Spangler | Confirm/discuss whether there would be any issues associated with hydrotest water obtained in SD being used to test pipe in Nebraska as long as the water was pushed back and released in SD near the location where the water was withdrawn. | Al Spangler confirmed that he did not see any issue with this approach. He would double-check with the water people and confirm. | Keystone will follow up with SD DENR on the feasibility of using SD test water in NE. |
| 4-15-13 | SD GFP Paul Coughlin | Discuss the potential for water withdrawal from Lake Gardner, which is a SD Game Protection Area. | SD GFP was receptive to the potential water withdrawal from Lake Gardner. SD GFP requested a formal written request. | Keystone will prepare a formal written request for the withdrawal of water from Lake Gardner |
| 5-7-13 | SD DENR Genny McMat, Marc Rush SDGFP Leslie Murphy, Gene Galinat, John Lott | Discuss the feasibility of the Keystone utilizing Lake Gardner as a source for hydrostatic test water and dust control water | SDGFP conditionally approved of the water withdrawal from Lake Gardner as long as there was adequate water present. SD GFP also stated that they would have to determine if there would be any other conditions that would need to be met to allow for the water withdrawal. | Follow-up with SDGFP on their progress developing a list of conditions that would permit the use of water from Lake Gardner for the proposed use [no further conditions were proposed] Work with SD GFP to fund restoration or conservation project in exchange for water use. |
| 5-9-13 | SDGFP Leslie Murphy | Emailed a pdf map of the proposed water withdrawal location for Lake Gardner | Provided the map following May 7, 2013 meeting | None |
| 11-14-13 | SD DENR William Marcouiller | Discuss the renewal process for the temporary discharge permit that had been issued to Keystone in April 2013. | SD DENR confirmed that the permit was good through December 31, 2015. | Keystone would need to renew the permit if discharge activities would occur after December 2015. |

APPENDIX B

Table 2: Status of Implementation of South Dakota PUC Conditions

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
|-----|--|---|
| 1 | <p>Keystone shall comply with all applicable laws and regulations in its construction and operation of the Project. These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes currently codified at 49 U.S.C. § 601 01 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01 :32 through 74:02:01 :34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD § 74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and hydrostatic testing.</p> | <p>Construction of the project has not been initiated. Keystone will comply with all applicable laws and regulations during construction and operation of the Project.</p> |
| 2 | <p>Keystone shall obtain and shall thereafter comply with all applicable federal, state and local permits, including but not limited to: Presidential Permit from the United States Department of State, Executive Order 11423 of August 16, 1968 (33 Fed. Reg. 11741) and Executive Order 13337 of April 30, 2004 (69 Fed. Reg. 25229), for the construction, connection, operation, or maintenance, at the border of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country; Clean Water Act § 404 and Rivers and Harbors Act Section 10 Permits; Special Permit if issued by the Pipeline and Hazardous Materials Safety Administration; Temporary Water Use Permit, General Permit for Temporary Discharges and federal, state and local highway and road encroachment permits. Any of such permits not previously filed with the Commission shall be filed with the Commission upon their issuance. To the extent that any condition, requirement or standard of the Presidential Permit, including the Final EIS Recommendations, or any other law, regulation or permit applicable to the portion of the pipeline in this state differs from the requirements of these Conditions, the more stringent shall apply.</p> | <p>Construction of the project has not been initiated. Keystone is in the process of obtaining all applicable permits from Federal, State and Local entities. Upon commencement of construction Keystone will follow all applicable laws and conditions related to these permits.</p> |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
|-----|---|---|
| 3 | <p>Keystone shall comply with and implement the Recommendations set forth in the Final Environmental Impact Statement when issued by the United States Department of State pursuant to its Amended Department of State Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and To Initiate Consultation Under Section 106 of the National Historic Preservation Act for the Proposed TransCanada Keystone XL Pipeline; Notice of Intent--Rescheduled Public Scoping Meetings in South Dakota and extension of comment period (FR vol. 74, no. 54, Mar. 23, 2009). The Amended Notice and other Department of State and Project Documents are available on-line at: http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open.</p> | <p>The Department of State re-initiated its NEPA review upon receipt of Keystone's May 4, 2012 application for a Presidential Permit. The Department is in the process of preparing a Supplement to the August 2011 Final Environmental Impact Statement for the project. Construction of the project has not been initiated. Keystone will comply with and implement the Recommendations set forth in the Final Environmental Impact Statement, and the Supplemental Environmental Impact Statement, as reflected in the Record of Decision, when issued by the Department of State.</p> |
| 4 | <p>The permit granted by this Order shall not be transferable without the approval of the Commission pursuant to SDCL 49-418-29.</p> | <p>N/A at this time.</p> |
| 5 | <p>Keystone shall undertake and complete all of the actions that it and its affiliated entities committed to undertake and complete in its Application as amended, in its testimony and exhibits received in evidence at the hearing, and in its responses to data requests received in evidence at the hearing.</p> | <p>Construction of the project has not been initiated. When construction is initiated, Keystone will undertake the actions committed to during the SDPUC hearings.</p> |
| 6.a | <p>The most recent and accurate depiction of the Project route and facility locations is found on the maps in Exhibit TC-14. The Application indicates in Section 4.2.3 that Keystone will continue to develop route adjustments throughout the pre-construction design phase. These route adjustments will accommodate environmental features identified during surveys, property-specific issues, and civil survey information. The Application states that Keystone will file new aerial route maps that incorporate any such route adjustments prior to construction. Ex TC-1.4.2.3, p. 27.</p> | <p>Keystone will file new aerial route maps reflecting route adjustments prior to construction.</p> |
| 6.b | <p>Keystone shall notify the Commission and all affected landowners, utilities and local governmental units as soon as practicable if material deviations are proposed to the route.</p> | <p>Keystone will continue to work with all landowners, utilities, local government and other affected parties as the final route is being developed and will notify the Commission and all affected parties of any material deviations to the proposed route.</p> |
| 6.c | <p>Keystone shall notify affected landowners of any change in the route on their land.</p> | <p>This is a continuing occurrence during engineering review. Keystone will continue to notify landowners of route changes on their land as well as inform them of associated activities, such as civil and environmental surveys.</p> |
| 6.d | <p>At such time as Keystone has finalized the pre-construction route, Keystone shall file maps with the Commission depicting the final preconstruction route</p> | <p>Construction of the project has not been initiated. Keystone will finalize the route and submit to the Commission new maps depicting the final preconstruction route prior to construction.</p> |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
|-----|---|---|
| 6.e | If material deviations are proposed from the route depicted on Exhibit TC-14 and accordingly approved by this Order, Keystone shall advise the Commission and all affected landowners, utilities and local governmental units prior to implementing such changes and afford the Commission the opportunity to review and approve such modifications. | Keystone has advised the Commission of all material route changes to date and has afforded the commission the opportunity to review and approve such modifications. |
| 6.f | At the conclusion of construction, Keystone shall file detail maps with the Commission depicting the final as-built location of the Project facilities. | Keystone will submit final route maps to the Commission at the conclusion of construction. |
| 7 | Keystone shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between Keystone, including its contractors, and landowners, local communities and residents and to promptly resolve complaints and problems that may develop for landowners, local communities and residents as a result of the Project. Keystone shall file with the Commission its proposed public liaison officer's credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by Keystone without the approval of the Commission. The public liaison officer shall be afforded immediate access to Keystone's on-site project manager, its executive project manager and to contractors' on-site managers and shall be available at all times to the Staff via mobile phone to respond to complaints and concerns communicated to the Staff by concerned landowners and others. Keystone shall also implement and keep an up-dated web site covering the planning and implementation of construction and commencement of operations in this state as an informational medium for the public. As soon as the Keystone's public liaison officer has been appointed and approved, Keystone shall provide contact information for him/her to all landowners crossed by the Project and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Keystone and the public liaison officer, take action to remove the public liaison officer. | <p>The Commission has approved Sarah Metcalf as the public liaison officer for the Keystone XL project. The liaison can be reached at:</p> <p>Mailing Address:</p> <p>South Dakota Pipeline Liaison Officer PO Box 904 Aberdeen, South Dakota 57402 Phone: (888) 375-1370 Email: Smetcalf12@gmail.com</p> <p>Contact information for the South Dakota liaison was sent out in December 2010 to landowners. Notification to law enforcement agencies and local governments in the vicinity of the Project was completed in 1st quarter 2011 in conjunction with notice required by other conditions for these groups.</p> <p>The TransCanada Keystone Pipeline website at: http://www.transcanada.com/keystone.html provides general information about planning for construction of the project. When construction commences, more detailed construction information will be posted.</p> |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
|-----|---|--|
| 8 | <p>Until construction of the Project, including reclamation, is completed, Keystone shall submit quarterly progress reports to the Commission that summarize the status of land acquisition and route finalization, the status of construction, the status of environmental control activities, including permitting status and Emergency Response Plan and Integrity Management Plan development, the implementation of the other measures required by these conditions, and the overall percent of physical completion of the project and design changes of a substantive nature. Each report shall include a summary of consultations with the South Dakota Department of Environment and Natural Resources and other agencies concerning the issuance of permits. The reports shall list dates, names, and the results of each contact and the company's progress in implementing prescribed construction, land restoration, environmental protection, emergency response and integrity management regulations, plans and standards. The first report shall be due for the period ending June 30, 2010. The reports shall be filed within 31 days after the end of each quarterly period and shall continue until the project is fully operational.</p> | <p>Keystone will continue to submit quarterly reports until the construction and reclamation of the Keystone XL pipeline is complete and the pipeline is operational.</p> |
| 9 | <p>Until one year following completion of construction of the Project, including reclamation, Keystone's public liaison officer shall report quarterly to the Commission on the status of the Project from his/her independent vantage point. The report shall detail problems encountered and complaints received. For the period of three years following completion of construction, Keystone's public liaison officer shall report to the Commission annually regarding post-construction landowner and other complaints, the status of road repair and reconstruction and land and crop restoration and any problems or issues occurring during the course of the year</p> | <p>The public liaison officer will comply with this condition and is currently available to affected landowners and parties in the State. Quarterly reporting will begin with active construction activities.</p> |
| 10 | <p>Not later than six months prior to commencement of construction, Keystone shall commence a program of contacts with state, county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies serving the Project area in order to educate such agencies concerning the planned construction schedule and the measures that such agencies should begin taking to prepare for construction impacts and the commencement of project operations.</p> | <p>Keystone has commenced and will continue a program of contacts to inform and coordinate with county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies regarding planned construction and eventual operation of the Keystone XL Pipeline.</p> |
| 11 | <p>Keystone shall conduct a preconstruction conference prior to the commencement of construction to ensure that Keystone fully understands the conditions set forth in this order. At a minimum, the conference shall include a Keystone representative, Keystone's construction supervisor and Staff.</p> | <p>Prior to the start of construction a Keystone representative, the Keystone construction supervisor, and staff will arrange a preconstruction conference with the Commission to ensure a full understanding of the conditions set forth in this order.</p> |
| 12 | <p>Once known, Keystone shall inform the Commission of the date construction will commence, report to the Commission on the date construction is started and keep the Commission updated on construction activities as provided in Condition 8.</p> | <p>Keystone will inform the Commission accordingly during the preconstruction conference.</p> |
| 13 | <p>Except as otherwise provided in the conditions of this Order and Permit, Keystone shall comply with all mitigation measures set forth in the Construction Mitigation and Reclamation Plan (CMR Plan)</p> | <p>Construction of the project has not been initiated. Keystone will comply with the requirements set forth in the CMR Plan during construction.</p> |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
|--------|---|---|
| 13.a | If modifications to the CMR Plan are made by Keystone as it refines its construction plans or are required by the Department of State in its Final EIS Record of Decision or the Presidential Permit, the CMR Plan as so modified shall be filed with the Commission and shall be complied with by Keystone. | Keystone will submit any modifications to the CMR Plan to the Commission and comply with any modifications to the CMR Plan. |
| 14 | Keystone shall incorporate environmental inspectors into its CMR Plan and obtain follow-up information reports from such inspections upon the completion of each construction spread to help ensure compliance with this Order and Permit and all other applicable permits, laws, and rules | Construction of the project has not been initiated. Keystone will utilize environmental inspectors and comply with this condition during the construction of the project. |
| 15 | Prior to construction, Keystone shall, in consultation with area NRCS staff, develop specific construction/reclamation units (Con/Rec Units) that are applicable to particular soil and subsoil classifications, land uses and environmental settings. The Con/Rec Units shall contain information of the sort described in response to Staff Data Request 3-25 found in Exhibit TC-16. | Keystone has completed the consultation with NRCS and has received the concurrence of the NRCS for Con/Rec Units to be utilized in South Dakota. Keystone will consult further with the NRCS should alterations to the Con/Rec Units be required. |
| 15.a | In the development of the Con/Rec Units in areas where NRCS recommends, Keystone shall conduct analytical soil probing and/or soil boring and analysis in areas of particularly sensitive soils where reclamation potential is low. Records regarding this process shall be available to the Commission and to the specific land owner affected by such soils upon request | Keystone has completed analytical soil probing and/or soil boring and analysis in areas of particularly sensitive soils where reclamation potential is low. Records regarding the process are available to the Commission and to the specific land owner affected by such soil upon request. |
| 15.b | Through development of the Con/Rec Units and consultation with NRCS, Keystone shall identify soils for which alternative handling methods are recommended. | Keystone has completed the analytical soil probing and/or boring in areas of sensitive soils following the NRCS recommendations. |
| 15.b.1 | Keystone shall thoroughly inform the landowner regarding the options applicable to their property, including their respective benefits and negatives, and implement whatever reasonable option for soil handling is selected by the landowner. Records regarding this process shall be available to the Commission upon request. | This is discussed with the landowners and itemized in the "Binding Agreement". These agreements are available to the Commission upon request. |
| 15.c | Keystone shall, in consultation with NCRS, ensure that its construction planning and execution process, including Con/Rec Units, CMR Plan and its other construction documents and planning shall adequately identify and plan for areas susceptible to erosion, areas where sand dunes are present, areas with high concentrations of sodium bentonite, areas with sodic, saline and sodic-saline soils and any other areas with low reclamation potential | Keystone's construction planning and execution process consisted of consultation with the NRCS for identified areas susceptible to erosion, areas where sand dunes are present, areas with high concentration of sodium bentonite, areas with sodic, saline and sodic-saline soils and any other areas with low reclamation potential. The identified areas were addressed in the CON/REC Units, CMR Plan, and will be listed on construction alignment sheets. |
| 15.d | The Con/Rec Units shall be available upon request to the Commission and affected landowners. Con/Rec Units may be evaluated by the Commission upon complaint or otherwise, regarding whether proper soil handling, damage mitigation or reclamation procedures are being followed. | Con/Rec Units will be available upon request to the Commission and affected landowners. |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
|--------|--|---|
| 15.e | Areas of specific concern or of low reclamation potential shall be recorded in a separate database. Action taken at such locations and the results thereof shall also be recorded and made available to the Commission and the affected property owner upon request. | Areas of specific concern or of low reclamation potential will be recorded in a separate database. Action taken at such locations and the results thereof will be recorded and made available to the Commission and the affected property owner upon request. |
| 16 | Keystone shall provide each landowner with an explanation regarding trenching and topsoil and subsoil/rock removal, segregation and restoration method options for his/her property consistent with the applicable Con/Rec Unit and shall follow the landowner's selected preference as documented on its written construction agreement with the landowner, as modified by any subsequent amendments, or by other written agreement(s). | This is discussed with the landowners and itemized in the "Binding Agreement". |
| 16.a | Keystone shall separate and segregate topsoil from subsoil in agricultural areas, including grasslands and shelter belts, as provided in the CMR Plan and the applicable Con/Rec Unit. | Keystone will separate and segregate topsoil from subsoil in agricultural areas, including grasslands and shelter belts, as provided in the CMR Plan and the applicable Con/Rec Unit. |
| 16.b | Keystone shall repair any damage to property that results from construction activities | Keystone will address this during or following construction activities. |
| 16.c | Keystone shall restore all areas disturbed by construction to their preconstruction condition, including their original preconstruction topsoil, vegetation, elevation, and contour, or as close thereto as is feasible, except as is otherwise agreed to by the landowner. | Keystone will address this during or following construction activities and will restore disturbed areas as close as feasible to their preconstruction conditions or as otherwise agreed to by the landowner. |
| 16.d | Except where practicably infeasible, final grading and topsoil replacement and installation of permanent erosion control structures shall be completed in non-residential areas within 20 days after backfilling the trench. | Keystone will address this during construction. |
| 16.d.1 | In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Keystone's control prevent compliance with this time frame, temporary erosion controls shall be maintained until conditions allow completion of cleanup and reclamation. | Keystone will address this during construction. |
| 16.d.2 | In the event Keystone cannot comply with the 20-day time frame as provided in this Condition, it shall give notice of such fact to all affected landowners, and such notice shall include an estimate of when such restoration is expected to be completed. | Keystone will address this during construction. |
| 16.e | Keystone shall draft specific crop monitoring protocols for agricultural lands. | Keystone is in the process of developing specific crop monitoring protocols for agricultural lands. These protocols will be finalized prior to the start of construction and implemented following construction. |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
|--------|---|---|
| 16.e.1 | If requested by the landowner, Keystone shall provide an independent crop monitor to conduct yield testing and/or such other measurements of productivity as he shall deem appropriate. The independent monitor shall be a qualified agronomist, rangeland specialist or otherwise qualified with respect to the species to be restored. The protocols shall be available to the Commission upon request and may be evaluated for adequacy in response to a complaint or otherwise. | If requested by the landowner, Keystone will provide an independent crop monitor and develop appropriate protocols, which will be available to the Commission upon request |
| 16.f | Keystone shall work closely with landowners or land management agencies to determine a plan to control noxious weeds. Landowner permission shall be obtained before the application of herbicides. | Keystone has prepared a noxious weed control plan and provided a draft to the County Weed Boards for review and approval. |
| 16.g | Keystone's adverse weather plan shall apply to improved hay land and pasture lands in addition to crop lands. | Keystone is in the process of developing an adverse weather plan and will include both improved hay lands and pasture lands in addition to crop lands. |
| 16.h | The size, density and distribution of rock within the construction right-of-way following reclamation shall be similar to adjacent undisturbed areas. | Keystone will require the Contractor to remove excess rocks so that the size density and distribution of rock within the construction right-of-way is similar to the adjacent undisturbed areas. |
| 16.h.1 | Keystone shall treat rock that cannot be backfilled within or below the level of the natural rock profile as construction debris and remove it for disposal offsite except when the landowner agrees to the placement of the rock on his property. In such case, the rock shall be placed in accordance with the landowner's directions. | Keystone will require the Contractor to treat rock that cannot be backfilled within or below the level of the natural rock profile as construction debris and remove it for disposal offsite except when the landowner agrees to the placement of the rock on his property. In such case, the rock shall be placed in accordance with the landowner's directions and all Federal and State permits. |
| 16.i | Keystone shall utilize the proposed trench line for its pipe stringing trucks where conditions allow and shall employ adequate measures to de-compact subsoil as provided in its CMR Plan. Topsoil shall be de-compacted if requested by the landowner. | Keystone will utilize the trench line for its pipe stringing trucks when site conditions allow and will employ adequate measures to de-compact subsoil as provided in its CMR Plan and in the specified CON/REC unit. |
| 16.i.1 | Topsoil shall be de-compacted if requested by the landowner. | Keystone will employ adequate measures to de-compact subsoil as provided in its CMR Plan and in the specified CON/REC unit, and will de-compact topsoil if requested by the landowner. |
| 16.j | Keystone shall monitor and take appropriate mitigative actions as necessary to address salinity issues when dewatering the trench, and field conductivity and/or other appropriate constituent analyses shall be performed prior to disposal of trench water in areas where salinity may be expected. | Keystone will monitor and take appropriate actions as necessary to address salinity issues when dewatering the trench. Field conductivity and/or other appropriate constituent analyses will be performed prior to disposal of trench water in areas where salinity is expected. |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 16.j.1 | Keystone shall notify landowners prior to any discharge of saline water on their lands or of any spills of hazardous materials on their lands of one pint or more or of any lesser volume which is required by any federal, state, or local law or regulation or product license or label to be reported to a state or federal agency, manufacturer, or manufacturer's representative. | Keystone will notify landowners prior to any discharge of saline water on private lands or of any spills of hazardous materials on private lands of one pint or more or of any lesser volume which is required by any federal, state, or local law or regulation or product license or label to be reported. |
| 16.k | Keystone shall install trench and slope breakers where necessary in accordance with the CMR Plan as augmented by Staff's recommendations in Post Hearing Commission Staff Brief, pp. 26-27 | Keystone will install trench and slope breakers where necessary in accordance with the CMR Plan and SDPUC recommendations. |
| 16.l | Keystone shall apply mulch when reasonably requested by landowners and also wherever necessary following seeding to stabilize the soil surface and to reduce wind and water erosion. Keystone shall follow the other recommendations regarding mulch application in Post Hearing Commission Staff Brief, p. 27. | Keystone will apply mulch in accordance with the CMR Plan and the specific CON/REC units to stabilize the soil surface and to reduce wind and water erosion. Keystone will apply mulch at the landowners request when the request is reasonable and in accordance with site reclamation requirements. Keystone will follow the other recommendations regarding mulch application in Post Hearing Commission Staff Brief, p. 27. |
| 16.m | Keystone shall reseed all lands with comparable crops to be approved by landowner in landowner's reasonable discretion, or in pasture, hay or native species areas with comparable grass or forage crop seed or native species mix to be approved by landowner in landowner's reasonable discretion. | Keystone has developed seed mixtures in consultation with the NRCS. |
| 16.m.1 | Keystone shall actively monitor revegetation of all disturbed areas for at least two years. | Keystone will monitor revegetation on all disturbed areas for at least two years. |
| 16.n | Keystone shall coordinate with landowners regarding his/her desires to properly protect cattle, shall implement such protective measures as are reasonably requested by the landowner and shall adequately compensate the landowner for any loss. | Keystone will coordinate with landowners and implement reasonably requested protective measures during construction and adequately compensate landowners for any loss. |
| 16.o | Prior to commencing construction, Keystone shall file with the Commission a confidential list of property owners crossed by the pipeline and update this list if route changes during construction result in property owner changes | Prior to commencing construction, Keystone will submit to the Commission a confidential list of property owners crossed by the pipeline and will update this list if route changes result in property owner changes during construction. |
| 16.p | Except in areas where fire suppression resources as provided in CMR Plan 2.16 are in close proximity, to minimize fire risk, Keystone shall, and shall cause its contractor to, equip each of its vehicles used in pre-construction or construction activities, including off-road vehicles, with a hand held fire extinguisher, portable compact shovel and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with Keystone's fire suppression resources and emergency services. | Keystone will address compliance with this condition with Contractor prior to the commencement of construction on the right-of-way. Each vehicle that is subject to this condition will be equipped with fire extinguisher, portable compact shovel, and proper communications devices. |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 17 | Keystone shall cover open-bodied dump trucks carrying sand or soil while on paved roads and cover open-bodied dump trucks carrying gravel or other materials having the potential to be expelled onto other vehicles or persons while on all public roads. | Keystone will address this with the Contractor. Contractor vehicles carrying sand, soil, or gravel while traveling on paved public roads shall be covered to avoid the potential of expelling the material onto other vehicles or persons. |
| 18 | Keystone shall use its best efforts to not locate fuel storage facilities within 200 feet of private wells and 400 feet of municipal wells and shall minimize and exercise vigilance in refueling activities in areas within 200 feet of private wells and 400 feet of municipal wells. | Keystone will address this in the pre-construction planning. Fuel storage tanks and refueling activities shall follow the requirements set forth in the CMRP and Spill Prevention and Containment Plan. |
| 19 | If trees are to be removed that have commercial or other value to affected landowners, Keystone shall compensate the landowner for the fair market value of the trees to be cleared and/or allow the landowner the right to retain ownership of the felled trees. | Keystone will comply with this condition during the easement acquisition process. |
| 19.a | Except as the landowner shall otherwise agree in writing, the width of the clear cuts through any windbreaks and shelterbelts shall be limited to 50 feet or less, and the width of clear cuts through extended lengths of wooded areas shall be limited to 85 feet or less. The environmental inspection in Condition 14 shall include forested lands. | Keystone will comply with this condition prior to or during construction. |
| 20. | Keystone shall implement the following sediment control practices: a) Keystone shall use floating sediment curtains to maintain sediments within the construction right of way in open water bodies with no or low flow when the depth of non-flowing water exceeds the height of straw bales or silt fence installation. In such situations the floating sediment curtains shall be installed as a substitute for straw bales or silt fence along the edge or edges of each side of the construction right-of-way that is underwater at a depth greater than the top of a straw bale or silt fence as portrayed in Keystone's construction Detail #11 included in the CMR Plan. b) Keystone shall install sediment barriers in the vicinity of delineated wetlands and water bodies as outlined in the CMR Plan regardless of the presence of flowing or standing water at the time of construction. c) The Applicant should consult with South Dakota Game, Fish and Parks (SDGFP) to avoid construction near water bodies during fish spawning periods in which in-stream construction activities should be avoided to limit impacts on specific fisheries, if any, with commercial or recreational importance. | Keystone will comply with parts (a) and (b) of this condition during construction. Keystone will consult with SDGFP regarding spawning periods. The current construction schedule will avoid impacts to streams during the spawning season. |
| 21 | Keystone shall develop frac-out plans specific to areas in South Dakota where horizontal directional drilling will occur. The plan shall be followed in the event of a frac-out. | Keystone has developed a draft frac-out plan and HDD plan in South Dakota. The plan will be finalized with the input from the Contractor. The plan will be followed in the event of a frac-out. |

Keystone XL Pipeline Project

Response to Condition 8 for the
South Dakota Public Utilities Commission



| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 21.a | If a frac-out event occurs, Keystone shall promptly file a report of the incident with the Commission. Keystone shall also, after execution of the plan, provide a follow-up report to the Commission regarding the results of the occurrence and any lingering concerns. | Keystone will comply with this section in the event of a frac-out. |
| 22. | <p>Keystone shall comply with the following conditions regarding construction across or near wetlands, water bodies and riparian areas:</p> <p>a) Unless a wetland is actively cultivated or rotated cropland or unless site specific conditions require utilization of Keystone's proposed 85 foot width and the landowner has agreed to such greater width, the width of the construction right-of-way shall be limited to 75 feet in non-cultivated wetlands unless a different width is approved or required by the United States Army Corps of Engineers.</p> <p>b) Unless a wetland is actively cultivated or rotated cropland, extra work areas shall be located at least 50 feet away from wetland boundaries except where site-specific conditions render a 50-foot setback infeasible. Extra work areas near water bodies shall be located at least 50 feet from the water's edge, except where the adjacent upland consists of actively cultivated or rotated cropland or other disturbed land or where site-specific conditions render a 50-foot setback infeasible. Clearing of vegetation between extra work space areas and the water's edge shall be limited to the construction right-of-way.</p> <p>c) Water body crossing spoil, including upland spoil from crossings of streams up to 30 feet in width, shall be stored in the construction right of way at least 10 feet from the water's edge or in additional extra work areas and only on a temporary basis.</p> <p>d) Temporary in-stream spoil storage in streams greater than 30 feet in width shall only be conducted in conformity with any required federal permit(s) and any applicable federal or state statutes, rules and standards.</p> <p>e) Wetland and water body boundaries and buffers shall be marked and maintained until ground disturbing activities are complete. Keystone shall maintain 15-foot buffers where practicable, which for stream crossings shall be maintained except during the period of trenching, pipe laying and backfilling the crossing point. Buffers shall not be required in the case of non-flowing streams.</p> <p>f) Best management practices shall be implemented to prevent heavily silt-laden trench water from reaching any wetland or water body directly or indirectly.</p> <p>g) Erosion control fabric shall be used on water body banks immediately following final stream bank restoration unless riprap or other bank stabilization methods are utilized in accordance with federal or state permits.</p> <p>h) The use of timber and slash to support equipment crossings of wetlands shall be avoided.</p> | Keystone will comply with all ROW widths, setbacks, and BMPS as detailed by the Commission. Keystone is identifying the appropriate locations for these conditions at or near wetlands, water bodies and riparian areas during the pre-construction process and will identify the ROW widths and setbacks on the construction drawings. BMPs will be installed as detailed in the CMRP. |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| | <p>i) Subject to Conditions 37 and 38, vegetation restoration and maintenance adjacent to water bodies shall be conducted in such manner to allow a riparian strip at least 25 feet wide as measured from the water body's mean high water mark to permanently re-vegetate with native plant species across the entire construction right-of way.</p> | |
| <p>23.</p> | <p>Keystone shall comply with the following conditions regarding road protection and bonding:</p> <p>a. Keystone shall coordinate road closures with state and local governments and emergency responders and shall acquire all necessary permits authorizing crossing and construction use of county and township roads.</p> <p>b) Keystone shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the general public.</p> <p>c) Prior to their use for construction, Keystone shall videotape those portions of all roads which will be utilized by construction equipment or transport vehicles in order to document the pre-construction condition of such roads.</p> <p>d) After construction, Keystone shall repair and restore, or compensate governmental entities for the repair and restoration of, any deterioration caused by construction traffic, such that the roads are returned to at least their preconstruction condition.</p> <p>e) Keystone shall use appropriate preventative measures as needed to prevent damage to paved roads and to remove excess soil or mud from such roadways.</p> <p>f) Pursuant to SDCL 49-418-38, Keystone shall obtain and file for approval by the Commission prior to construction in such year a bond in the amount of \$15.6 million for the year in which construction is to commence and a second bond in the amount of \$15.6 million for the ensuing year, including any additional period until construction and repair has been completed, to ensure that any damage beyond normal wear to public roads, highways, bridges or other related facilities will be adequately restored or compensated. Such bonds shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the Project. Each bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Either at the contact meetings required by Condition 10 or by mail, Keystone shall give notice of the existence and amount of these bonds to all counties, townships and other governmental entities whose property is crossed by the Project.</p> | <p>During the pre-construction planning period Keystone will develop and implement videotaping of road conditions prior to construction activities. Keystone, Contractor, and County Representatives will be present for evaluation and determination of road conditions.</p> <p>Keystone will notify state and local governments and emergency responders to coordinate and implement road closures. All necessary permits authorizing crossing and construction use of county and township roads will be obtained.</p> <p>Keystone will file the necessary bond prior to construction.</p> |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 24 | <p>Although no residential property is expected to be encountered in connection with the Project, in the event that such properties are affected and due to the nature of residential property, Keystone shall implement the following protections in addition to those set forth in its CMR Plan in areas where the Project passes within 500 feet of a residence:</p> <p>a) To the extent feasible, Keystone shall coordinate construction work schedules with affected residential landowners prior to the start of construction in the area of the residences.</p> <p>b) Keystone shall maintain access to all residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Keystone and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with affected residential landowners and occupants, to the extent possible.</p> <p>c) Keystone shall install temporary safety fencing, when reasonably requested by the landowner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment in a residential area.</p> <p>d) Keystone shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption.</p> <p>e) Keystone shall repair any damage to property that results from construction activities.</p> <p>f) Keystone shall separate topsoil from subsoil and restore all areas disturbed by construction to at least their preconstruction condition.</p> <p>g) Except where practicably infeasible, final grading and topsoil replacement, installation of permanent erosion control structures and repair of fencing and other structures shall be completed in residential areas within 10 days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Keystone's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigative measures shall be maintained until conditions allow completion of cleanup and reclamation.</p> | <p>In the event that Keystone constructs within 500 feet of a residence, it will implement these protective measures and those set forth in the CMR Plan.</p> |
| 25 | <p>Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken. At least two months prior to the start of construction in South Dakota, Keystone shall file with the Commission an adverse weather land protection plan containing appropriate adverse weather land protection measures, the conditions in which such measures may be appropriately used, and conditions in which no construction is appropriate, for approval of or modification by the Commission prior to the start of construction. The Commission shall make such plan available to impacted landowners who may provide comment on such plan to the Commission</p> | <p>Keystone is preparing this adverse weather land protection plan and will submit it to the Commission after the plan has been completed but at least 2 months prior to start of construction in South Dakota.</p> |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 26 | Reclamation and clean-up along the right-of-way must be continuous and coordinated with ongoing construction. | Keystone will implement this requirement during construction of the project. |
| 27 | All pre-existing roads and lanes used during construction must be restored to at least their pre-construction condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition, except as otherwise requested or agreed to by the landowner or any governmental authority having jurisdiction over such roadway | Keystone is coordinating with county and state road authorities during the pre-construction planning phase. Pre-construction conditions will be documented and pre-existing roads will be restored to pre-construction condition following construction. Keystone will comply with the condition with respect to temporary roads after construction. |
| 28 | Keystone shall, prior to any construction, file with the Commission a list identifying private and new access roads that will be used or required during construction and file a description of methods used by Keystone to reclaim those access roads. | The list of private and new access roads that are being planned for use on the Project is being developed. This list of roads, including the reclamation methods that will be implemented will be provided to the Commission prior to construction. |
| 29 | Prior to construction, Keystone shall have in place a winterization plan and shall implement the plan if winter conditions prevent reclamation completion until spring. The plan shall be provided to affected landowners and, upon request, to the Commission. | Keystone will develop and submit to the Commission a winterization plan which addresses these factors. |
| 30 | Numerous Conditions of this Order, including but not limited to 16, 19, 24, 25, 26, 27 and 51 relate to construction and its effects upon affected landowners and their property. The Applicant may encounter physical conditions along the route during construction which makes compliance with certain of these Conditions infeasible. If, after providing a copy of this order, including the Conditions, to the landowner, the Applicant and landowner agree in writing to modifications of one or more requirements specified in these conditions, such as maximum clearances or right-of-way widths, Keystone may follow the alternative procedures and specifications agreed to between it and the landowner. | Keystone will comply with this condition and through negotiations with the landowner and any such modifications shall be agreed upon in writing. Note: Through the SDPUC liaison, Keystone has validated a typo in this condition with John Smith, the SDPUC General Counsel. The typo occurs in the first sentence and is a reference Condition 51, which does not exist. This should actually reference Condition 45. |
| 31 | Keystone shall construct and operate the pipeline in the manner described in the application and at the hearing, including in Keystone's exhibits, and in accordance with the conditions of this permit, the PHMSA Special Permit, if issued, and the conditions of this Order and the construction permit granted herein | Keystone will comply with this condition during construction and operation of the pipeline. Keystone XL has withdrawn its application to PHMSA for a Special Permit, subject to its right to apply for a Special Permit at a later time. |
| 32 | Keystone shall require compliance by its shippers with its crude oil specifications in order to minimize the potential for internal corrosion. | Keystone will require compliance by its shippers with its crude oil tariff specifications. |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 33 | Keystone's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the pipeline. | Keystone will monitor the right-of-way conditions throughout the life of the pipeline. |
| 33.a | In its surveillance and maintenance activities, Keystone shall, and shall cause its contractor to, equip each of its vehicles, including off-road vehicles, with a hand held fire extinguisher, portable compact shovel and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with emergency services. | Keystone will require all Operators to maintain the required equipment in all vehicles on the right-of-way during surveillance and maintenance activities. |
| 34 | In accordance with 49 C.F.R. 195, Keystone shall continue to evaluate and perform assessment activities regarding high consequence areas. | Keystone will identify and assess high consequence areas in accordance with 49 C.F.R. 195. |
| 34.a | Prior to Keystone commencing operation, all unusually sensitive areas as defined by 49 CFR 195.6 that may exist, whether currently marked on DOT's HCA maps or not, should be identified and added to the Emergency Response Plan and Integrity Management Plan | Keystone will identify HCA's as defined at 49 CFR 195.6 and add them to the Emergency Response Plan and Integrity Management Plan. |
| 34.b | In its continuing assessment and evaluation of environmentally sensitive and high consequence areas, Keystone shall seek out and consider local knowledge, including the knowledge of the South Dakota Geological Survey, the Department of Game Fish and Parks and local landowners and governmental officials. | Keystone has conducted numerous consultations with South Dakota state agencies, local agencies and landowners and essentially concluded the assessment and evaluation of environmentally sensitive and high consequence areas and has concurrence from stakeholders related to construction and restoration plans within these areas. If new or different information on environmentally sensitive and high consequence areas becomes available, Keystone will assess that information. |
| 35 | The evidence in the record demonstrates that in some reaches of the Project in southern Tripp County, the High Plains Aquifer is present at or very near ground surface and is overlain by highly permeable sands permitting the uninhibited infiltration of contaminants. This aquifer serves as the water source for several domestic farm wells near the pipeline as well as public water supply system wells located at some distance and upgradient from the pipeline route. Keystone shall identify the High Plains Aquifer area in southern Tripp County as a hydrologically sensitive area in its Integrity Management and Emergency Response Plans. Keystone shall similarly treat any other similarly vulnerable and beneficially useful surficial aquifers of which it becomes aware during construction and continuing route evaluation | Keystone will identify the High Plains Aquifer area in southern Tripp County and any other similarly vulnerable and beneficially useful surficial aquifers as a hydrologically sensitive area in its Integrity Management and Emergency Response Plans. |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 36 | <p>Prior to putting the Keystone Pipeline into operation, Keystone shall prepare, file with PHMSA and implement an emergency response plan as required under 49 CFR 194 and a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR 195.402. Keystone shall also prepare and implement a written integrity management program in the manner and at such time as required under 49 CFR 195.452. At such time as Keystone files its Emergency Response Plan and Integrity Management Plan with PHMSA or any other state or federal agency, it shall also file such documents with the Commission. The Commission's confidential filing rules found at ARSD 20:10:01:41 may be invoked by Keystone with respect to such filings to the same extent as with all other filings at the Commission. If information is filed as "confidential," any person desiring access to such materials or the Staff or the Commission may invoke the procedures of ARSD 20:10:01 :41 through 20: 10:01 :43 to determine whether such information is entitled to confidential treatment and what protective provisions are appropriate for limited release of information found to be entitled to confidential treatment.</p> | <p>Keystone will file its Emergency Response Plan and Integrity Management Plan with the Commission upon filing with PHMSA and will invoke the Commission's confidential filing rules.</p> |
| 37 | <p>To facilitate periodic pipeline leak surveys during operation of the facilities in wetland areas, a corridor centered on the pipeline and up to 15 feet wide shall be maintained in an herbaceous state. Trees within 15 feet of the pipeline greater than 15 feet in height may be selectively cut and removed from the permanent right-of-way.</p> | <p>Keystone will maintain a corridor centered on the pipeline and up to 15 feet wide in an herbaceous state to facilitate periodic pipeline leak surveys during operation of the facilities in wetland areas.</p> |
| 38 | <p>To facilitate periodic pipeline leak surveys in riparian areas, a corridor centered on the pipeline and up to 10 feet wide shall be maintained in an herbaceous state.</p> | <p>Keystone will maintain a corridor centered on the pipeline and up to 10 feet wide in an herbaceous state to facilitate periodic pipeline leak surveys during operation of the facilities in riparian areas.</p> |
| 39 | <p>Except to the extent waived by the owner or lessee in writing or to the extent the noise levels already exceed such standard, the noise levels associated with Keystone's pump stations and other noise-producing facilities will not exceed the L 1 0=55dba standard at the nearest occupied, existing residence, office, hotel/motel or non-industrial business not owned by Keystone. The point of measurement will be within 100 feet of the residence or business in the direction of the pump station or facility. Post-construction operational noise assessments will be completed by an independent third-party noise consultant, approved by the Commission, to show compliance with the noise level at each pump station or other noise-producing facility. The noise assessments will be performed in accordance with applicable American National Standards Institute standards. The results of the assessments will be filed with the Commission. In the event that the noise level exceeds the limit set forth in this condition at any pump station or other noise producing facility, Keystone shall promptly implement noise mitigation measures to bring the facility into compliance with the limits set forth in this condition and shall report to the Commission concerning the measures taken and the results of post-mitigation assessments demonstrating that the noise limits have been met.</p> | <p>Keystone will design pump stations and other noise-producing facilities so that noise will not exceed the L 1 0 = 55dba standard at the nearest occupied receptor (existing residence, office, hotel/motel or non-industrial business not owned by Keystone). Keystone will utilize a third-party noise consultant, approved by the Commission, to show post-construction compliance with the noise level at each pump station or other noise-producing facility and will file the assessments with the Commission.</p> |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 40 | At the request of any landowner or public water supply system that offers to provide the necessary access to Keystone over his/her property or easement(s) to perform the necessary work, Keystone shall replace at no cost to such landowner or public water supply system, any polyethylene water piping located within 500 feet of the Project with piping that is resistant to permeation by BTEX. | Keystone will replace polyethylene water piping located within 500 feet of the Project with piping that is resistant to permeation by BTEX when requested and provided access by the landowner or a public water supply system. |
| 40.a | Keystone shall publish a notice in each newspaper of general circulation in each county through which the Project will be constructed advising landowners and public water supply systems of this condition. | Keystone will publish a notice in each newspaper of general circulation in each county through which the Project will be constructed advising landowners and public water supply systems of condition 40. |
| 41 | Keystone shall follow all protection and mitigation efforts as identified by the U.S. Fish and Wildlife Service ("USFWS") and SDGFP | Keystone is currently involved in consultation with the USFWS and SDGFP and will follow protection and mitigation efforts agreed to during consultation with the agencies. |
| 41.a | Keystone shall identify all greater prairie chicken and greater sage and sharp-tailed grouse leks within the buffer distances from the construction right of way set forth for the species in the FE IS and Biological Assessment (BA) prepared by DOS and USFWS | Keystone is involved in consultations with SDGFP to identify greater prairie chicken and greater sage and sharp-tailed grouse leks and to develop construction mitigation plans for each species. |
| 41.b | In accordance with commitments in the FEIS and BA, Keystone shall avoid or restrict construction activities as specified by USFWS within such buffer zones between March 1 and June 15 and for other species as specified by USFW Sand SDGFP. | Keystone will address this requirement during pre-construction planning efforts. |
| 42 | Keystone shall keep a record of drain tile system information throughout planning and construction, including pre-construction location of drain tiles. Location information shall be collected using a sub-meter accuracy global positioning system where available or, where not available by accurately documenting the pipeline station numbers of each exposed drain tile. | Records will be kept of drain tile system information. |
| 42.a | Keystone shall maintain the drain tile location information and tile specifications and incorporate it into its Emergency Response and Integrity Management Plans where drains might be expected to serve as contaminant conduits in the event of a release. | Keystone will maintain the drain tile location information and tile specifications and incorporate it into its Emergency Response and Integrity Management Plans where drains might be expected to serve as contaminant conduits in the event of a release. |
| 42.b | If drain tile relocation is necessary, the applicant shall work directly with landowner to determine proper location. | Keystone will work directly with landowner to determine proper location should drain tile relocation be necessary. |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 42.c | The location of permanent drain tiles shall be noted on as-built maps. Qualified drain tile contractors shall be employed to repair drain tiles. | Keystone will identify the location of permanent drain tiles on as-built maps. Keystone will employ qualified drain tile contractors to repair drain tiles impacted by the project. |
| 43 | Keystone shall follow the "Unanticipated Discoveries Plan," as reviewed by the State Historical Preservation Office ("SHPO") and approved by the DOS and provide it to the Commission upon request. Ex TC-1.6.4, pp. 94-96; Ex S-3. | Keystone will comply with the "Unanticipated Discoveries Plan," as reviewed by the State Historical Preservation Office ("SHPO") and approved by the DOS and will provide the plan to the Commission upon request. |
| 43.a | If during construction, Keystone or its agents discover what may be an archaeological resource, cultural resource, historical resource or gravesite, Keystone or its contractors or agents shall immediately cease work at that portion of the site and notify the DOS, the affected landowner(s) and the SHPO. | Keystone will comply with this condition during construction. |
| 43.b | If the DOS and SHPO determine that a significant resource is present, Keystone shall develop a plan that is approved by the DOS and commenting/signatory parties to the Programmatic Agreement to salvage avoid or protect the archaeological resource. | Keystone will develop a treatment plan that is approved by the DOS and commenting/signatory parties to the Programmatic Agreement to salvage, avoid, or protect an archaeological resource that DOS and SHPO determine as significant. |
| 43.c | If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission and landowner approval for the new route before proceeding with any further construction. | Keystone will obtain approval from the Commission and affected landowner(s) for any materially different route that may be required as a result of unanticipated discoveries prior to further construction. |
| 43.d | Keystone shall be responsible for any costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Keystone's construction or maintenance activities. | Keystone will be responsible for costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Keystone's construction or maintenance activities. |
| 44.a | Prior to commencing construction, Keystone shall conduct a literature review and records search, and consult with the BLM and Museum of Geology at the S.D. School of Mines and Technology ("SDSMT") to identify known fossil sites along the pipeline route and identify locations of surface exposures of paleontologically sensitive rock formations using the BLM's Potential Fossil Yield Classification system. | Keystone is currently completing consultations with the BLM and Museum of Geology at the S.D. School of Mines and Technology ("SDSMT") to identify known fossil sites along the pipeline route and identify locations of surface exposures of paleontologically sensitive rock formations using the BLM's Potential Fossil Yield Classification system. |
| 44.a.1 | Any area where trenching will occur into the Hell Creek Formation shall be considered a high probability area. | Keystone has identified locations along the pipeline route where trenching will occur into the Hell Creek Formation and has identified these locations as areas of high probability to yield fossils. |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 44.b | <p>Keystone shall at its expense conduct a pre-construction field survey of each area identified by such review and consultation as a known site or high probability area within the construction ROW. Following BLM guidelines as modified by the provisions of Condition 44, including the use of BLM permitted paleontologists, areas with exposures of high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5) rock formations shall be subject to a 100% pedestrian field survey, while areas with exposures of moderately sensitive rock formations (PFYC Class 3) shall be spot-checked for occurrences of scientifically or economically significant surface fossils and evidence of subsurface fossils. Scientifically or economically significant surface fossils shall be avoided by the Project or mitigated by collecting them if avoidance is not feasible. Following BLM guidelines for the assessment and mitigation of paleontological resources, scientifically significant paleontological resources are defined as rare vertebrate fossils that are identifiable to taxon and element, and common vertebrate fossils that are identifiable to taxon and element and that have scientific research value; and scientifically noteworthy occurrences of invertebrate, plant and trace fossils. Fossil localities are defined as the geographic and stratigraphic locations at which fossils are found</p> | <p>Keystone has conducting pre-construction field surveys of each area identified as high probability to yield fossils within the construction ROW. Keystone is conducting pedestrian field surveys of 100% of areas with exposures of high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5) rock formations utilizing the BLM guidelines as modified by the provisions of Condition 44, including the use of BLM permitted paleontologists. Additionally, Keystone is spot-checking areas of moderately sensitive rock formations (PFYC Class 3). Keystone will avoid scientifically or economically significant surface fossils or will mitigate by collecting them if avoidance is not feasible.</p> |
| 44.c | <p>Following the completion of field surveys, Keystone shall prepare and file with the Commission a paleontological resource mitigation plan. The mitigation plan shall specify monitoring locations, and include BLM permitted monitors and proper employee and contractor training to identify any paleontological resources discovered during construction and the procedures to be followed following such discovery. Paleontological monitoring will take place in areas within the construction ROW that are underlain by rock formations with high sensitivity (PFYC Class 4) and very high sensitivity (PFYC Class 5), and in areas underlain by rock formations with moderate sensitivity (PFYC Class 3) where significant fossils were identified during field surveys.</p> | <p>Keystone will prepare and file with the Commission a paleontological resource mitigation plan upon completion of survey.</p> |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 44.d | <p>If during construction, Keystone or its agents discover what may be a paleontological resource of economic significance, or of scientific significance, as defined in subparagraph (b) above, Keystone or its contractors or agents shall immediately cease work at that portion of the site and, if on private land, notify the affected landowner(s). Upon such a discovery, Keystone's paleontological monitor will evaluate whether the discovery is of economic significance, or of scientific significance as defined in subparagraph (b) above. If an economically or scientifically significant paleontological resource is discovered on state land, Keystone will notify SDSMT and if on federal land, Keystone will notify the BLM or other federal agency. In no case shall Keystone return any excavated fossils to the trench. If a qualified and BLM-permitted paleontologist, in consultation with the landowner, BLM, or SDSMT determines that an economically or scientifically significant paleontological resource is present, Keystone shall develop a plan that is reasonably acceptable to the landowner(s), BLM, or SDSMT, as applicable, to accommodate the salvage or avoidance of the paleontological resource to protect or mitigate damage to the resource. The responsibility for conducting such measures and paying the costs associated with such measures, whether on private, state or federal land, shall be borne by Keystone to the same extent that such responsibility and costs would be required to borne by Keystone on BLM managed lands pursuant to BLM regulations and guidelines, including the BLM Guidelines for Assessment and Mitigation of Potential Impacts to Paleontological Resources, except to the extent factually inappropriate to the situation in the case of private land (e.g. museum curation costs would not be paid by Keystone in situations where possession of the recovered fossil(s) was turned over to the landowner as opposed to curation for the public). If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission approval for the new route before proceeding with any further construction. Keystone shall, upon discovery and salvage of paleontological resources either during pre-construction surveys or construction and monitoring on private land, return any fossils in its possession to the landowner of record of the land on which the fossil is found. If on state land, the fossils and all associated data and documentation will be transferred to the SDSM; if on federal land, to the BLM.</p> | <p>Keystone will comply with this condition during construction.</p> |
| 44.e | <p>To the extent that Keystone or its contractors or agents have control over access to such information, Keystone shall, and shall require its contractors and agents to, treat the locations of sensitive and valuable resources as confidential and limit public access to this information.</p> | <p>To the extent that Keystone or its contractors or agents have control over access to such information, Keystone will, and will require its contractors and agents to treat the locations of sensitive and valuable resources as confidential and limit public access to this information.</p> |

| NO. | CONDITION | STATUS OF OTHER MEASURES REQUIRED BY CONDITIONS |
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| 45 | Keystone shall repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility, including but not limited to, all fences, gates and utility, water supply, irrigation or drainage systems. | Keystone will repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility. |
| 45.a | Keystone shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses or loss of value to a paleontological resource damaged by construction or other activities. | Keystone will compensate the owners for damages or losses that result from construction and operation of the proposed transmission facility and cannot be fully remedied by repair or replacement. |
| 46 | In the event that a person's well is contaminated as a result of construction or pipeline operation, Keystone shall pay all costs associated with finding and providing a permanent water supply that is at least of similar quality and quantity; and any other related damages, including but not limited to any consequences, medical or otherwise, related to water contamination. | Keystone will pay all costs associated with finding and providing a permanent water supply that is at least of similar quality and quantity and any other related damages related to water contamination in the event that a well is contaminated as a result of construction or pipeline operation. |
| 47 | Any damage that occurs as a result of soil disturbance on a persons' property shall be paid for by Keystone | Keystone will compensate for damage that occurs as a result of soil disturbance on a persons' property caused by construction and operation of the Project. |
| 48 | No person will be held responsible for a pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the pipeline | Keystone will not hold any person responsible for a pipeline leak that occurs as a result of normal farming practices. |
| 49 | Keystone shall pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damage, claim or action resulting from Keystone's use of the easement, including any resulting from any release of regulated substances or from abandonment of the facility, except to the extent such loss, damage claim or action results from the gross negligence or willful misconduct of the landowner or its agents. | Keystone will pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damage, claim or action resulting from Keystone's use of the easement, including any resulting from any release of regulated substances or from abandonment of the facility, except to the extent such loss, damage claim or action results from the gross negligence or willful misconduct of the landowner or its agents. |
| 50 | The Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage or the consequences of Keystone's failure to abide by the conditions of this permit or otherwise having standing to obtain enforcement of the conditions of this Order and Permit. | The Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage or the consequences of Keystone's failure to abide by the conditions of this permit or otherwise having standing to obtain enforcement of the conditions of this Order and Permit. |