

Appendix C

Monitoring Program

Compliance Monitoring Program for the American Burying Beetle

Keystone XL Pipeline

The U.S. Department of State (DOS) will retain a third-party contractor to develop and implement an American burying beetle (ABB) monitoring program or ABB monitoring would be included as a possible wider project level monitoring program for the proposed Project to assure that the provisions of the USFWS's Keystone XL Pipeline Biological Opinion under section 7 of the Endangered Species Act (ESA) (16 U.S.C. § 1536(a) (2)) are met through monitoring and habitat reclamation activities. This monitoring program would be approved and overseen by DOS in consultation with USFWS. TransCanada Keystone Pipeline, LP (Keystone) would fund the monitoring program prior to construction of the proposed Keystone XL pipeline (Project) in the states of South Dakota and Nebraska.

Monitoring will not replace the environmental quality control plan or the actions that Keystone would put in place, but is in addition to those tasks and will serve as a quality control monitor on behalf of DOS. The monitoring program would include, but is not limited to, a combination of site visits and aerial surveillance to provide a reasonable level of confidence that avoidance, minimization, and mitigation measures are being followed during construction of the Project. Monitoring would include, but is not limited to, implementation of conservation measures and reasonable and prudent measures and associated term and conditions as identified in the BO, including ensuring that construction impacts match permitted footprint, and habitat restoration for the ABB. Monitoring will not include surveys for the ABB that are recommended to be conducted to monitor incidental take expected during the course of Project construction.

This monitoring program will identify the number of acres disturbed by the Project in the states of South Dakota and Nebraska, and the number of acres restored as described in Appendix D.

The third party contractor will monitor the project for four (4) years commencing on the date of construction of the proposed Project in the states of South Dakota and Nebraska. With concurrence of the DOS and the USFWS, the monitoring program may be continued for another four (4) years in the event of failure of habitat reclamation or delays in construction of the Project and/or reclamation activities.

The third-party contractor would undertake the following:

1. By October 1 of each year submit an annual monitoring plan for the following fiscal year in a letter to the DOS. This plan would include the anticipated work effort and schedule, subject to the variability of weather, construction season, etc.
2. Maintain monitoring logs, photographs, and documents and provide DOS a summarized monthly report during construction and a biannual report in the years after construction. At the end of this Agreement, all original files and documents will be provided to DOS with copies retained by USFWS.

3. Contact the DOS designated point of contact when listed conservation measures and Reasonable and Prudent Measures and Terms and Conditions set forth in the USFWS's Biological Opinion are not being met and work with DOS to remedy the situation(s).
4. Be available to DOS for meetings or phone calls concerning the proposed Project, as the agencies deem appropriate.
5. Have designated inspector(s) attend safety training or meet other requirements Keystone may have for inspector(s) to access construction job sites.
6. Recognize and support that DOS, in consultation with USFWS, will have final determination of appropriate remedies for any failures by Keystone to comply with the requirements of the USFWS Biological Opinion, exclusive of the Migratory Bird Treaty Act.