

1.9 PERMITS, APPROVALS, AND REGULATORY REQUIREMENTS

The cooperating agencies and the assisting federal, tribal, state, and local agencies with jurisdiction over various aspects of the proposed Project participated in the Supplemental Environmental Impact Statement (Supplemental EIS) process by providing direct input to the U.S. Department of State (Department) or through the review and comment process (see Sections 1.5.2, Cooperating Agencies; 1.5.3, Assisting Agencies and Other State Agencies; and 1.6, Tribal and SHPO Consultation). The Department has initiated Section 106 consultation consistent with the National Historic Preservation Act of 1986 (NHPA) for the current Supplemental EIS process for the proposed Project. As the lead federal agency for the proposed Project, the Department is continuing throughout the Supplemental EIS process to engage in consultation with identified consulting parties, including federal agencies, state agencies, State Historic Preservation Offices (SHPOs), the Advisory Council on Historic Preservation, and interested federally recognized Indian tribes (70 Federal Register 71194) in the vicinity of the proposed Project. Federal agencies may conduct any additional consultation as appropriate to demonstrate compliance with Section 106 of NHPA for activities that are within their control and responsibility.

If approved, the proposed Project would be constructed in accordance with the regulatory requirements in 49 Code of Federal Regulations (CFR) 195 and also in accordance with the Project-specific Special Conditions developed by Pipeline Hazardous Material Safety Administration (PHMSA) and agreed to by TransCanada Keystone Pipeline, LP (Keystone). These special conditions are described in Sections 2.1.7, Pipeline System Design and Construction Procedures, and 4.13.6.1, PHMSA Special Conditions, and are presented in Appendix B, Potential Releases and Pipeline Safety.

Table 1.9-1 lists the major permits, licenses, approvals, authorizations, and consultation requirements for the proposed Project that would be required by federal, state, and local agencies prior to implementation of the proposed Project.

Table 1.9-1 Permits, Licenses, Approvals, and Consultation Requirements for the Proposed Project^a

Agency	Permit or Consultation/Authority	Agency Action
Federal		
U.S. Department of State	Presidential Permit, Executive Order 13337 of April 30, 2004 (69 Federal Register 25299, et seq.)	The Department is responsible for issuance of Presidential Permits for certain cross-border facilities. In addition, the Department is the lead agency for the review consistent with the National Environmental Policy Act (NEPA), the NHPA Section 106 consultation process, and the Endangered Species Act (ESA) Section 7 consultation process for the proposed Project. As the lead agency, the Department directs the preparation of the Supplemental EIS for the proposed Project consistent with NEPA, directs the Section 106 tribal

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		consultation process consistent with the NHPA (16 United States Code [USC] § 470 et seq.), and initiates both informal and formal consultation with the U.S. Fish and Wildlife Service under Section 7 of the ESA (ESA 16 USC § 1536) to determine the likelihood of effects on listed species.
U.S. Department of Interior (USDOI)—Bureau of Land Management	<p>Right-of-way (ROW) grant(s) and Temporary Use Permit pursuant to Section 28 of the Mineral Leasing Act (MLA) of 1920 (30 USC 185)</p> <p>Archeological Resources Protection Act Permit</p> <p>Notice to Proceed</p> <p>Section 106 of NHPA</p>	<p>Considers approval of ROW grant and temporary use permits for the portions of the proposed Project that would encroach on public lands.</p> <p>Considers issuance of cultural resource use permit to survey, excavate, or remove cultural resources on federal lands.</p> <p>Following issuance of a ROW grant and approval of the proposed Project’s Plan of Development, considers the issuance of a Notice to Proceed with Project development and mitigation activities for federal lands.</p> <p>Responsible for compliance with Section 106 of NHPA and consultation with interested Tribal agencies for activities that are within their control and responsibility.</p>
USDOI—U.S. Fish and Wildlife Service	ESA Section 7 Consultation, Biological Opinion	Considers lead agency findings of an impact of federally listed or proposed species; provide Biological Opinion if the proposed Project is likely to adversely affect federally listed or proposed species or their habitats.
USDO)—National Park Service	Management of National Historic Trail crossings	Consults with SHPOs under Section 106 of the NHPA.
U.S. Department of Interior (USDOI)—U.S. Bureau of Reclamation	<p>ROW Grant and Temporary Use Permit under Section 28 of the MLA</p> <p>Section 106 of NHPA</p>	<p>Determines if ROW grant issued under MLA by the Bureau of Land Management is in compliance with U.S. Bureau of Reclamation standards.</p> <p>Responsible for compliance with Section 106 of NHPA and consultation with interested Tribal agencies for activities that are within their control and responsibility.</p>

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U.S. Army Corps of Engineers	Section 404, Clean Water Act (CWA)	If individual Section 404 permitting is required, considers issuance of Section 404 CWA permits for the placement of dredge or fill material in Waters of the United States, including wetlands.
	Section 10 Permit (Rivers and Harbors Act of 1899)	Considers issuance of Section 10 permits for pipeline crossings of navigable waters.
	Section 106 of NHPA	Responsible for compliance with Section 106 of NHPA and consultation with interested Tribal agencies for activities that are within their control and responsibility
Federal Highway Administration	Crossing Permit	Considers issuance of permits for the crossing of federally funded highways
U.S. Department of Transportation, PHMSA, Office of Pipeline Safety	49 CFR Part 195—Transportation of Hazardous Liquids by Pipeline	Reviews design, construction, operations, maintenance, and emergency operations plan (termed Emergency Response Plan in this Final Supplemental EIS), inspection of pipeline projects, including Integrity Management Programs and identifying high consequence areas prior to installation.
	49 CFR Part 194—Response Plans for Onshore Pipelines	Reviews Response Plans (termed Pipeline Spill Response Plan in this Final Supplemental EIS) prior to initiation of operation and within 2 years of startup approves the Pipeline Spill Response Plan.
U.S. Environmental Protection Agency, Headquarters and Regions 7 and 8	Section 401, CWA, Water Quality Certification	Considers approval of water use and crossing permits for non-jurisdictional waters (implemented through each state’s Water Quality Certification Program).
	Section 402, CWA, National Pollutant Discharge Elimination System (NPDES)	Reviews and issues NPDES permit for the discharge of hydrostatic test water (implemented through each state’s Water Quality Certification Program, where required).
	Section 404, CWA (dredged and fill material)	Reviews and comments on U.S. Army Corps of Engineers Section 404 CWA permit applications for dredged and fill material.
	Section 309, Clean Air Act	Review and comment in writing on compliance with CEQ’s Regulations for Implementing the Procedural Provisions of NEPA.

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	Sections 3001 through 3019 of Resource Conservation and Recovery Act	Establishes criteria governing management of hazardous waste.
U.S. Department of Agriculture (USDA)—Natural Resources Conservation Service	Section 106 of NHPA	Responsible for compliance with Section 106 of NHPA and consultation with interested Tribal agencies for activities that are within their control and responsibility.
	Wetland Reserve Program, Emergency Watershed Protection Program (Floodplain Easements), Healthy Forests Reserve Program, Grassland Reserve Program, and Farmland Protection Policy Act	Ensures integrity and functions of easements are preserved with limited authority to modify Wetland Reserve Program easements.
USDA—Farm Service Agency	Section 106 of NHPA	Responsible for compliance with Section 106 of NHPA and consultation with interested Tribal agencies for activities that are within their control and responsibility.
	Conservation Reserve Program, Conservation Reserve Enhancement Program, Grassland Reserve Program, and Farmable Wetlands Program notifications	Notifies local Farm Service Agency office that conservation lands will be disturbed by pipeline construction.
USDA—Rural Utilities Service	Section 106 of NHPA	Responsible for compliance with Section 106 of NHPA and consultation with interested Tribal agencies for activities that are within their control and responsibility.
	Administers the USDA’s Rural Development Utilities Programs	Responsible for NEPA compliance for facilities proposed by the cooperatives to provide electric utilities.
U.S. Department of Energy—Western Area Power Administration	Section 106 of NHPA	Responsible for compliance with Section 106 of NHPA and consultation with interested tribal agencies for activities that are within their control and responsibility.
	Energy network balancing authority	Perform joint system engineering studies to determine effects that additional facilities or services might have on system reliability and stability.
Advisory Council on Historic Preservation	Consultation	Advises federal agencies during the Section 106 of NHPA consultation process; signatory to the Programmatic Agreement.
U.S. Department of Justice—Bureau of Alcohol, Tobacco, and Firearms	Treasury Department Order No. 120-1 (former No. 221), effective 1 July 1972	Considers issuance of permit to purchase, store, and use explosives should blasting be required

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Montana		
Montana SHPO—Montana Historical Society ^c	Consultation under Section 106 of NHPA	Reviews and comments on activities potentially affecting cultural resources.
Montana Department of Environmental Quality (MDEQ)	Certificate of Compliance under the state Major Facilities Siting Act (MFSA)	Considers issuance of a certificate of compliance under MFSA for construction and operation. A MFSA Certificate was issued in March 2012.
MDEQ—Permitting and Compliance Division—Water Protection Bureau	Montana Ground Water Pollution Control System and Nondegradation Review (three levels of water protection based on water classification, i.e., outstanding resource waters etc.), Standard 318 (Permitting conditions for Pipeline Crossings at Watercourses—short term turbidity)	Considers issuance of permit for stream and wetland crossings; provides Section 401CWA certification consults for Section 404CWA process.
	Montana Pollutant Discharge Elimination System	Considers issuance of permit for hydrostatic test water discharge into surface water, trench dewatering, and stormwater discharge.
MDEQ—Permitting and Compliance Division—Waste and Underground Tank Management Bureau	Septic Tank, Cesspool, and Privy Cleaner New License Application Form (for work camps)	Reviews and licenses Cesspool, Septic Tank and Privy Cleaners, inspects disposal sites for septic tank, grease trap and sump wastes.
MDEQ—Permitting and Compliance Division—Air Resources Bureau	Air Quality Permit Application for Portable Sources; Air Quality Permit Application for Stationary Sources	Considers issuance of air quality permit(s) for work camps dependent on source of power such as portable diesel generator or use of non-electrical equipment is used during construction or operation of the pipeline (i.e., diesel powered pumps during hydrostatic testing).
MDEQ—Permitting and Compliance Division—Public Water Supply Bureau	Water and Wastewater Operator Certification (for work camps)	Reviews and licenses operators of certain public drinking water and wastewater treatment facilities; issues approval to construct, alter or extend public water or sewer systems (including hauling, storage and distribution of water).
Montana Department of Natural Resources and Conservation (DNRC)—Water Resources Division (General)	Water Appropriation Permit (Beneficial Water use Permit) and/or Water Wells Drilling/ Alteration	Considers issuance of permit for water use for hydrostatic testing or waters for dust control.
Montana DNRC State Board of Land	Management of timber, surface, and mineral resources for the benefit of the common schools and the other endowed institutions in Montana	Considers approval of permanent easements across state land.
Montana DNRC State Board of Land and, Real Estate Management Division	Administers all activities on lands classified as "Other" and all secondary activities on lands classified as grazing, agriculture, or timber	Considers issuance of license to use state land.

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Montana DNRC Trust Land Management Division	Navigable Rivers/Land use License/Easement	Consults on and considers issuance of permit for projects in, on, over, and under navigable waters.
Montana DNRC, Conservation Districts	Natural Streambed and Land Preservation Act (also known as the 310 Law)	Consider issuance of permits for construction in perennial streams, rivers, or designated reservoirs on private land.
Montana Fish, Wildlife and Parks	Natural Streambed and Land Preservation Act (also known as the 310 Law)	Provide technical oversight to DNRC Conservation Districts in review of applications for 310 permits.
Department of Transportation—Glendive District	State and Highway Crossing Permit for pipeline and access roads that encroach state highway ROW, with traffic control based on the Manual on Uniform Traffic Control Devices	Considers issuance of permits for crossings of state highways.
Department of Transportation—Helena Motor Carrier Services Division Office	Oversize/Overweight Load Permits, where required	Considers issuance of permit for oversize/overweight loads on state maintained roadways.
Montana Public Service Commission	Grant Common Carrier Status	Considers whether or not an applicant qualifies as a common carrier under Montana Code Annotated 69-13-101; if a common carrier, the commission would supervise and regulate operations under Montana Code Annotated Title 69 allowing Keystone to cross state highways and state streams.
County Road Departments	Crossing Permits	Considers issuance of permits for crossing of state highways.
County Floodplain Departments	County Floodplain permitting	Considers issuance of permits and review of work in floodplains.
County and Local Authorities	Pump Station Zoning Approvals, where required	Reviews under county approval process.
	Special or Conditional Use Permits, where required	Reviews under county approval process (Note: These permits are not required after a Certificate of Compliance under MFSA is issued)
County Weed Control Boards	Approval of reclamation plan	Considers approval of a reclamation/weed control plan (Note: These approvals still required after Certificate of Compliance under MFSA is issued).
South Dakota^b		
South Dakota Historical Society ^c	Consultation under Section 106 of NHPA	Reviews and comments on activities potentially affecting cultural resources.
South Dakota Public Utilities Commission	Energy Conversion and Transmission Facilities Act	Considers issuance of permit for a pipeline and appurtenant facilities, a Public Utilities Commission Certificate was issued in March 2010.

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Department of Environment and Natural Resources, Surface Water Quality Program	Section 401, CWA, Water Quality Certification	Considers issuance of permit for stream and wetland crossings; consult for Section 404CWA process.
	Hydrostatic Testing/Dewatering and Temporary Water Use Permit (SDG070000)	Considers issuance of General Permit regulating hydrostatic test water discharge, construction dewatering to waters of the state, and Temporary Water use Permit.
	South Dakota Codified Law 34A-18 (oil spill response plans).	Review and consider approving crude oil pipeline spill response plans.
Department of Game, Fish, and Parks	Consultation	Consults regarding natural resources.
Department of Transportation	Crossing Permits	Considers issuance of permits for crossing of state highways.
County Road Departments	Crossing Permits	Considers issuance of permits for crossing of county roads.
County and Local Authorities	Pump Station Zoning Approvals, where required	Reviews under county approval process.
	Special or Conditional Use Permits, where required	Reviews under county approval process.
Nebraska		
Nebraska SHPO ^c	Consultation under Section 106 of NHPA	Reviews and comments on activities potentially affecting cultural resources.
Department of Environmental Quality	Section 401, CWA, Water Quality Certification	Considers issuance of permit for stream and wetland crossings; consult for Section 404 CWA process.
	Excavation Dewatering and Hydrostatic Testing Permit Form NEG6720000 Dewatering Form NEG6721000 Relocation	Considers issuance of permit regulating hydrostatic test water discharge and construction dewatering to waters of the state.
	Environmental Evaluation under Legislative Bill 4 and Legislative Bill 1161	Analyzes the environmental, economic, social, and other impacts associated with the Nebraska Reroute
	Title 117—Nebraska Surface Water Quality Standards	Applies water quality criteria to protect downstream beneficial uses.
	NPDES Construction Stormwater Permit NER110000	Considers issuance of a permit for projects that disturb more than 1 acre of land.
	Onsite Wastewater Permit or Wastewater Construction Permit (Title 124 if under 1,000 gallons per day; Title 123 if larger than 1,000 gallons per day)	Considers issuance of permit for a new wastewater treatment system.

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	Agricultural Chemical Secondary Containment Program (Title 198)	Requires that a Professional Engineer registered in Nebraska certify that facilities comply with Title 198.
	Solid or Hazardous Waste (Title 128 and Title 132)	Considers disclosure of waste products, containerization, and transportation to an appropriate disposal facility.
Department of Natural Resources	Water Appropriations—Groundwater and Surface Water	Considers issuance of permit to use Public Waters (for hydrostatic test water or dust control).
	Permit to Appropriate Surface Water	Considers issuance of permit to use surface water (for hydrostatic test water or dust control).
	Interbasin Transfer of Surface Water	Considers issuance of permit for diversion of water in one river basin and the transportation of such water to another river basin for storage or for a beneficial use.
	Interbasin Transfer of Water <i>Addendum</i> to Application for a Permit to Appropriate Water	Considers adverse impacts and beneficial uses of the proposed interbasin transfers.
	Petition for Leave to File an Application to Appropriate Water within a Moratorium or Stay Area (Variance Petition)	Considers issuance of permit to use surface waters where no new surface waters are being appropriated.
Game and Parks Commission	Consultation	Consults regarding natural resources and impacts on state-listed threatened or endangered species.
	Crossing Permit	Considers issuance of a permit to cross State-owned lands, such as the Cowboy Recreation and Nature Trail.
Board of Educational Lands and Funds	Notification and easement	Notify Board of Educational Lands and Funds that state-owned lands will be crossed.
Lower Niobrara Natural Resource District (NRD)	Ground Water Well Permit	Considers issuance of a permit for a well that pumps more than 50 gallons of water per minute.
Upper Elkhorn NRD	Ground Water Well Permit	Considers issuance of a permit for a well that pumps more than 50 gallons of water per minute.
	Request for Variance	Considers issuance of permit to use groundwater where water rights are limited for new development.
Lower Loup NRD	Well Construction Permit	Considers issuance of a permit for a well that pumps more than 50 gallons of water per minute.

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Upper Big Blue NRD	Authorization to Transfer Ground Water	Considers issuance of authorization to use groundwater.
Central Platte NRD	Request for Variance	Considers issuance of permit to use ground water where water rights are fully appropriated.
Department of Transportation	Crossing Permits	Considers issuance of permits for crossing of state highways.
County Road Departments	Crossing Permits	Considers issuance of permits for crossing of county roads.
County and Local Authorities	Pump Station Zoning Approvals, where required	Reviews under county approval process.
	Special or Conditional Use Permits, where required	Reviews under county approval process.
Kansas		
Department of Health and Environment, Bureau of Water	Hydrostatic Testing Permit (if applicable)	For pump station piping, may be below permitting thresholds.
	Water Withdrawal Permit (if applicable)	For pump station piping, may be below permitting thresholds.
Department of Wildlife and Parks	Non-game and Endangered Species Action Permit (if applicable)	Review of new pump station locations.
SHPO ^c	Historical Resources Review (if applicable)	Reviews of new pump station locations.
County and Local Authorities	Pump Station Zoning Approvals, where required	Reviews under county approval process.

^a All permits are considered attainable and consistent with existing land use plans based on consultation with the relevant agencies listed in the table.

^b Permits associated with construction camps are described in Section 2.1.5.4, Construction Camps.

^c The SHPO has the opportunity to review federal agency decisions under Section 106 of the NHPA, but it is not a legal obligation.

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