

Department of Interior

United States Fish and Wildlife Service

Record of Decision for a Right of Way Permit through North Dakota and South Dakota
Easement Wetlands

United States Department of State

Final Environmental Impact Statement
and
Record of Decision and National Interest Determination

For the

Keystone Oil Pipeline Project

Cooperating Agency

U.S. Fish and Wildlife Service

March 24, 2008

U. S. Fish and Wildlife Service Record of Decision for a Right of Way Permit for Keystone Pipeline through North Dakota and South Dakota Easement Wetlands

I. Introduction

TransCanada Keystone Pipeline, L.P. (Keystone) has been approved for a U.S. Department of State (DOS) Presidential Permit at the border of the United States for the construction, connection, operation, and maintenance of a pipeline and associated facilities for importation of crude oil from Canada. As approved, the pipeline route runs from the Canadian border through eastern North and South Dakota in counties where the Service has a landscape level habitat conservation program consisting of the following National Wildlife Refuge System (NWRS) units: National Wildlife Refuges, Waterfowl Production Areas (WPAs), grassland easements, wetland easements and Farmers Home Administration easements. The pipeline is proposed in counties where these units are managed from the following Fish and Wildlife Service (Service) administrative offices: Devils Lake Wetland Management District (WMD), Valley City WMD, and Tewaukon NWR Complex in ND and Waubay NWR Complex, Huron WMD, Lake Andes NWR Complex and Madison WMD in SD.

As documented in the DOS Final Environmental Impact Statement for the Keystone Oil Pipeline Project (FEIS), the DOS Record of Decision and National Interest Determination and accompanying Service Environmental Action Memorandum and Environmental Action Statement, Service National Wildlife Refuge System (NWRS) Managers (Managers) worked with Keystone project personnel early in the planning process to route the pipeline around all NWRS lands. All fee title and all grassland easement lands were avoided. Given the linear nature of the pipeline through the eastern portion of the Dakotas where the Service has an extensive landscape level easement interest, the pipeline could not be routed around all easement wetlands.

II. Need for Service Action

The Service has purchased a partial surface interest with wetland easements, which prohibits the draining, filling, leveling or burning of described wetlands. As a partial surface interest owner the Service could elect to:

1. Allow Keystone to determine the place and manner of easement wetland crossings and not participate in the pipeline planning process.
2. Attempt to require Keystone to route the pipeline around all easement wetlands.
3. Work with Keystone to limit the number of wetland crossings and develop criteria regarding the manner in which they are crossed.

It is the responsibility of Service Managers to manage wetland activities that could drain, fill, level or burn easement wetlands. It is unlikely that the Service would prevail in an effort to route the pipeline around every easement wetlands in the eastern Dakotas. Historically, the Service has worked with utility companies to avoid developments in easement wetlands. If avoiding easement wetlands isn't feasible Service Managers have worked with companies to minimize impacts and permitted certain utility development using a Right of Way Permit. A Right of Way Permit (ROW) for a 30 inch natural gas pipeline through North Dakota easement wetlands was issued in 1996 (Alliance). The wetlands crossed by the Alliance pipeline pond water post project as they had before the pipeline installation. Given these circumstances the Service elected to work with Keystone to issue a ROW permit and develop criteria regarding the manner in which easement wetlands will be crossed by the pipeline.

III. Purpose of the Service Action

The Service will utilize a Right of Way Permit (ROW) to describe and authorize the construction, operation, maintenance and de-commissioning of the Keystone pipeline through individual easement wetlands. The wetland easements purchased by the Service prohibit the draining, filling, leveling or burning of described wetlands, therefore the conditions of the Service ROW permit will only address these aspects of the pipeline project.

The purpose of the ROW permit and any preliminary permit is to describe the location of the pipeline through individual easement wetlands and the measures that will be taken by Keystone to ensure that construction, operation, maintenance and de-commissioning of the pipeline will only temporarily drain or fill easement wetlands. It will also describe measures that Keystone will take to restore easement wetlands if the Service determines that pipeline construction, operation, maintenance and de-commissioning drains or partially drains them. If wetland hydrology cannot be adequately restored and an easement wetland(s) is drained by this project, permit conditions will require Keystone to acquire replacement wetland habitat that will be protected by a Service easement.

Permit conditions follow:

1. Issuance of a permit does not preclude the requirements for obtaining necessary permits and/or approvals from other County, State, or Federal Agencies and from local landowners.
2. The permit is issued subject to the revocation and appeals procedure contained in Title 50, Part 25 of the Code of Federal Regulations.
3. The permit measures agreed to ensure easement wetlands will not be drained, leveled or filled during installation and construction and will be in effect during any construction, operation, maintenance or de-commissioning effort for this pipeline.

4. Disposal of excess excavated material from the construction project will not be allowed in easement wetland basins. Any remaining material in the wetland basin after trench backfill operations will be distributed on uplands.
5. Post-construction survey will ensure that wetland basin profiles will be restored to within 1 inch of pre-construction profiles.
6. Spill/leak response and clean up in easement wetlands will be adopted from the Dept. of State permit(s) and NEPA documents.
7. Keystone personnel have agreed to follow wetland construction procedures for all easement wetland crossings (see Keystone Pipeline Project, Waterbody Crossing, TransCanada Keystone Pipeline Project Environmental Report, April 4, 2006).
8. No infrastructure including pumping stations or other support machinery or buildings will be placed in easement wetlands.
9. Special Use Permit and ROW stipulations will require TransCanada to utilize non permeable materials to restore water retention capability in wetlands if it is determined that construction reduced any easement wetland(s) ponding capability. If these measures do not restore ponding capability TransCanada will be required to locate a similar wetland (s), that can be placed under Service easement to exchange for the affected (drained or partially drained) wetland.
10. Additional stipulations may be added or included to address specific concerns with individual projects or requests.

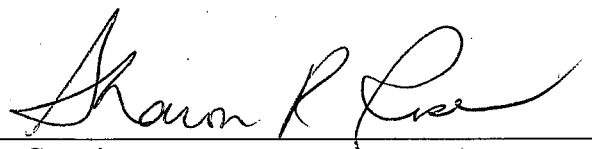
IV. Decision

Based on the analysis described in the DOS FEIS for the Keystone Oil Pipeline Project, the DOS Record of Decision and National Interest Determination, and accompanying Service Environmental Action Memorandum and Environmental Action Statement the Fish and Wildlife service has elected to issue TransCanada Keystone Pipeline, L.P. a ROW through described easement wetlands. This ROD describes the rationale for the decision, the alternatives considered in reaching this decision, and identifies those measures (permit conditions) that have been, and will be taken to minimize environmental harm from the decision to issue a ROW in accordance with 40 CFR 1502.2.

The U.S. Fish and Wildlife Service received no public comments during the 30 day period following the publication of a Notice of Availability in the Federal Register Notice on June 6, 2008, advising the public that the Service was a cooperating agency with the DOS Final EIS on the Keystone Oil Pipeline Project, had adopted the DOS Final EIS, and was considering a right-of-way application submitted by the TransCanada Keystone Pipeline, LP.

Signatures:

Approval:



Steve Guertin
Regional Director

Acting

7/11/08
Date

UNITED STATES FISH AND WILDLIFE SERVICE

ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and determined that the action of (describe action):

Check One:

☐ is a categorical exclusion as provided by 51 6 DM 2, Appendix I and 516 DM 6, Appendix 1. No further NEPA documentation will therefore be made.

☒ is found not to have significant environmental effects as determined by the ~~attached environmental assessment and finding of no significant impact~~ Dept. of State Environmental Impact Statement for the Keystone Pipeline and Fish and Wildlife Service Record of Decision for (below).

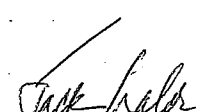
☐ is found to have significant effects and, therefore, further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

☐ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policy, regulations, or procedures.

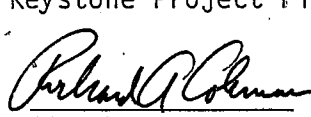
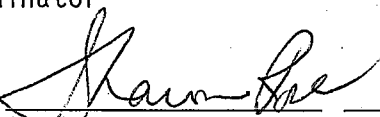
☐ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents (list):

Signature Approval:

 3/25/2008  7/11/08
(1) Originator Date (2) WO/RO Environmental Coordinator Date

Keystone Project Field Coordinator

 7/11/08  7/11/08
(3) AD/ARD Date (4) Director/Regional Director Date
Acting

a Right of Way Permit for Keystone Pipeline through ND and SD easement wetlands