



UNITED STATES DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

Tewaukon, Devils Lake, Valley City, Waubay,  
Huron, and Madison Wetland Management Districts

SPECIAL USE PERMIT

Station No. to be Credited Permit No.

62664 - 8-002

Date July 14, 2008

Period of Use (inclusive)

From July 14, 2008  
To November 30, 2009

Permittee Name

TransCanada - Keystone Pipeline

Permittee Address

450 1st St. SW  
Calgary, AB  
Canada T2P 5H1

Purpose (specify in detail privilege requested, or units of products involved)

Authorize the construction, operation, maintenance and decommissioning of the Keystone pipeline through 66 individual easement wetlands on 35 easement tracts. See Description block of this permit for specific easements. Maps of the easement wetlands crossed are an attachment to this permit and are available at individual WMD offices.

Description (specify unit numbers: metes and bounds, or other recognizable designations)

North Dakota - Devils Lake WMD: Nelson County 94x; 383x; 388x, 1; 389x; 394x, 1; 401x; 476x; 572x, 1-3 Valley City WMD: Steele County 16x; 22x, - 1; 91x, 1, 2 Tewaukon WMD: Ransom County 13C; 65x; 81x, 1; 82x; 118x, 1; 120x; 302x; 302x - 1; 311x, 1; 371x; South Dakota - Waubay WMD: Marshall County 402x, 1-3 Huron WMD: Beadle County 18C; 21x; 204x; 209x, 1 Madison WMD: Kingsbury County 41x; 53x; 52x, 1; 189x; 235x; 236x; Miner County 217x, 1-5 McCook County 86x; 120x, 1

Amount of fee

\$0 if not a fixed payment, specify rate and unit of charge:

- Payment Exempt - Justification: Payment will be made upon completion of the Right of Way permit
- Full Payment
- Partial Payment - Balance of payments to be made as follows:

Record of Payments

Special Conditions

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. Disposal of excess excavated material from the construction project will not be placed in easement wetland basins. Any remaining material in the wetland basin after trench backfill operations will be distributed on uplands. (continued)

This permit is issued by the U.S. Fish and Wildlife Service and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations, expressed or implied herein, and to the conditions and requirements appearing on the reverse side.

Permittee Signature TransCanada Keystone Pipeline, LP, by its agent

TC Oil Pipeline Operations Inc.  
*Kelly Jameson*

Issuing Officer Signature and Title

*[Signature]* ASST. REGIONAL MGR  
TEWAUKON NWR

## General Conditions

### 1. Payments

All payments shall be made on or before the due date to the local representative of the U.S. Fish and Wildlife Service (Service) by a postal money order or check made payable to the U.S. Fish and Wildlife Service.

### 2. Use limitations

The permittee's use of the described premises is limited to the purposes herein specified; does not unless provided for in this permit allow the permittee to restrict other authorized entry on to the permittee's area; and permits the Service to carry on whatever activities are necessary for (1) protection and maintenance of the premises and adjacent lands administered by the Service and (2) the management of wildlife and fish using the premises and other Service lands.

### 3. Damages

The United States shall not be responsible for any loss or damage to property including but not limited to growing crops, animals, and machinery; or injury to the permittee, or the permittee's relatives, or to the officers, agents, employees, or any others who are on the premises from instructions or by the sufferance of wildlife or employees or representatives of the Government carrying out their official responsibilities. The permittee agrees to save the United States or any of its agencies harmless from any and all claims for damages or losses that may arise or be incident to the flooding of the premises resulting from any associated Government river and harbor, flood control, reclamation, or Tennessee Valley Authority activity.

### 4. Operating Rules and Laws

The permittee shall keep the premises in a neat and orderly condition at all times, and shall comply with all municipal, county and State laws applicable to the operations under the permit as well as all Federal laws, rules and regulations governing Service lands and the area described in this permit. The permittee shall comply with all instructions applicable to this permit issued by the Service officer in charge. The permittee shall take all reasonable precautions to prevent the escape of fires and to suppress fires and shall render all reasonable assistance in the suppression of fires.

### 5. Responsibility of Permittee

The permittee, by operating on the premises, shall be considered to have accepted these premises with all facilities, fixtures, or improvements in their existing condition as of the date of this permit. At the end of the period specified or upon earlier termination, the permittee shall give up the premises in as good an order and condition as when received except for reasonable wear, tear, or damage occurring without fault or negligence. The permittee will fully repay the Service for any and all damage directly or indirectly resulting from negligence or failure on his/her part, or the part of anyone of the permittee's associates.

### 6. Revocation Policy

This permit may be revoked by a Service Regional Director without notice for noncompliance with the terms hereof or for violation of general and/or specific laws or regulations governing Service lands or for nonuse.

### 7. Compliance

Failure of the Service to insist upon a strict compliance with any of this permit's terms, conditions, and requirements shall not constitute a waiver or be considered as a giving up of the Service's right to thereafter enforce any of the permit's terms, conditions, or requirements.

### 8. Termination Policy

At the termination of this permit the permittee shall immediately give up possession to the Service representative, reserving, however, the rights specified in paragraph 9. If the permittee fails to do so, the permittee will pay the Government, as liquidated damages, an amount double the rate specified in this permit for the entire time possession is withheld. Upon yielding possession, the permittee will still be allowed to reenter as needed to remove his/her property as stated in paragraph 9. The acceptance of any fee for liquidated damages or any other act of administration relating to the continued tenancy is not to be considered as an affirmation of the permittees action nor shall it operate as a waiver of the Government's right to terminate or cancel the permit for the breach of any specified condition or requirement.

### 9. Removal of Permittee's Property

Upon the expiration or termination of this permit, if all rental charges and/or damage claims due to the Government have been paid, the permittee may, within a reasonable period as stated in the permit or as determined by the Service officer in charge but not to exceed 60 days, remove all structures, machinery, and/or other equipment, etc., from the premises for which the permittee is responsible. Within this period the permittee must also remove any other of the permittee's property including his/her acknowledged share of products or crops grown, cut, harvested, stored, or stacked on the premises. Upon failure to remove any of the above items within the aforesaid period, they shall become the property of the United States.

### 10. Transfer of Privileges

This permit is not transferable, and no privileges herein mentioned may be sublet or made available to any person or interest not mentioned in this permit. No interest hereunder may accrue through lien or be transferred to a third party without the approval of a Service Regional Director and the permit shall not be used for speculative purposes.

### 11. Conditions of Permit not Fulfilled

If the permittee fails to fulfill any of the conditions and requirements set forth herein, all money paid under this permit shall be retained by the Government to be used to satisfy as much of the permittee's obligation as possible.

### 12. Officials Barred from Participating

No Members of Congress or Resident Commissioner shall participate in any part of this contract or to any benefit that may arise from it, but this provision

## Privacy Act Statement - Special Use Permit

**NOTICE: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, please be advised that:**

1. The issuance of a permit and collection of fees on lands of the National Wildlife Refuge System is authorized by the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd - 668ee), and the Refuge Recreation Act, (16 U.S.C. 460k-3); implemented by regulations in 50 CFR 25-36.
2. Information collected in issuing a permit may be used to evaluate and conclude the eligibility of, or merely document, permit applicants.
3. Routine use disclosures may also be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) from the record of the individual in response to an inquiry from a Congressional office made at the request of that individual; (4) to provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal Claim against the debtor, or to consumer reporting agencies to prepare a commercial credit report for use by the Department (48FR 54716; December 6, 1983).
4. Any information requested is required to receive this permit. Failure to answer questions may jeopardize the eligibility of individuals to receive permits.

4. A pre-construction topographic survey on portions of easement wetlands within the temporary construction ROW is required. If wetlands are found to be improperly restored after construction, the permittee will be required to resurvey the portions of the wetlands in question and restore them to pre-construction elevations. Restored surface tolerances for impacted wetland basins shall be within +/- 0.1 feet of pre-construction profiles.

The Service will have personnel on site to work with Keystone project personnel during the final reclamation phase of pipeline construction.

Within one year from the completion of construction reclamation the Service will notify Keystone of any additional fill removal needs or trench settling in wetlands where material may have to be added.

5. Silt barriers will be installed on all easement wetland basins (wet or dry) within the temporary construction ROW. Additionally, easement wetlands immediately outside the temporary construction ROW that have the high likelihood of sedimentation due to topography, ground cover and distance to construction activity will require silt barriers. Locations for silt barriers will be made jointly by Keystone project personnel and Service personnel.

6. 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).

7. Spill/leak response and clean up in easement wetlands will follow Keystone's Spill Pollution Prevention and Countermeasure Plan

8. No infrastructure including pumping stations or other support machinery or buildings will be placed in easement wetlands.

9. TransCanada will be required 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. The permit measures agreed to that ensure easement wetlands will not be drained, leveled or filled (reference measures by number) during installation and construction will be in effect during any maintenance or de-commissioning effort for this pipeline.

11. Additional stipulations may be added or included to address specific concerns with individual projects or requests.