

Appendix D

American Burying Beetle Habitat Conservation Trust

AGREEMENT
Between the U.S. Fish and Wildlife Service,
the U.S. Department of State, and TransCanada Keystone Pipeline, LP
Regarding Establishment of a Conservation Trust for Temporary and Permanent Loss of
American Burying Beetle Habitat along the Proposed Keystone XL Project Pipeline

PURPOSE

This Agreement (hereinafter “Agreement”) is entered into by and between the U.S. Fish and Wildlife Service (hereinafter “USFWS”), the U.S. Department of State (hereinafter “DOS”), and TransCanada Keystone Pipeline, LP (hereinafter “Keystone”). The purpose of this Agreement is to establish responsibilities of the three parties for compensatory mitigation to offset temporary and permanent loss of habitat for to the federally listed endangered American burying beetle resulting from construction and operation of the proposed Keystone XL Project pipeline (hereinafter “Project”) in the states of South Dakota, Nebraska, and Oklahoma consistent with the USFWS Biological Opinion of August 12, 2011.

Keystone agrees to provide compensation for temporary and permanent American burying beetle habitat loss due to Keystone XL pipeline construction and operations in areas where American burying beetles are likely to be impacted including: south of Highway 18 in Tripp County, South Dakota; Keya Paha, Rock, Holt, Garfield, and Wheeler counties in Nebraska; and Hughes, Coal, Atoka, and Bryan counties in Oklahoma (Attachment A). Compensation is based on total acres impacted and has been modified by habitat quality rating multipliers with prime habitat compensation at 3 times the total impact acres, good habitat at 2 times the total impact acres, fair habitat at 1 times the total impact acres, and marginal habitat at 0.5 times the total impact acres. No compensation is required for poor habitat. Temporary habitat impacts are scaled for the period of time anticipated for recovery of vegetation cover at 4 years over the 50 year life of the Project or 8% of total calculated impacts. All compensation is based on habitat ratings and the number of acres affected, and is compliant with verbal agreements between DOS, USFWS and Keystone.

The American Burying Beetle Habitat Conservation Trust (Trust) will be used to acquire lands and easements from willing sellers, and to develop conservation plans and agreements with landowners for protecting and enhancing American burying beetle habitat within its range. Additionally, up to 10 percent of the Trust funds may be used for appropriate research such as re-establishment of ABB on disturbed sites such as the Keystone XL pipeline ROW. The funds will be placed with a third party, nongovernmental entity (to be determined) that is experienced and familiar with managing conservation trust funds. Habitat projects and land or easement acquisitions for the benefit of the American burying beetle will be proposed by the USFWS, states and other interested parties and approved for funding by the nongovernmental entity independent of, but in technical coordination with, the USFWS and states. There will be no time limit on when the funds can be expended, but it is expected that most of the work and opportunities will occur within the first five years after the fund is established. At the discretion of the nongovernmental entity, a small portion of the funds dedicated for Nebraska (less than 10%) may go to a permanent endowment for the long-term benefit and management of endangered species in Nebraska.

PAYMENT TERMS & SCHEDULE

Keystone will establish a conservation trust to be managed by a third party within six months of approval of the Presidential Permit for the proposed Project, consistent with funds transfer and accounting documents as may be required by USFWS as calculated in Attachment A to this Agreement.

Total compensatory mitigation for American burying beetle habitat impacts based on the attached valuation (Attachment A) is summarized in Table 1.

Table 1. Compensatory Mitigation for American Burying Beetle Habitat Impacts Resulting from Construction and Operation of the proposed Keystone XL Project.

State	Temporary ABB Habitat Impacts		Permanent ABB Habitat Impacts		Total
	Acres	Value	Acres	Value	
South Dakota	529.71	\$176,183	95.16	\$456,264	\$632,447
Nebraska	1,458.86	\$565,348	288.55	\$1,412,964	\$1,978,312
Oklahoma	1,533.09	\$355,287	20.32	\$21,204	\$376,491
Total	3,521.66	\$1,096,818	404.03	\$1,890,432	\$2,987,250

INDEPENDENT AUTHORITIES

This agreement in no way diminishes the independent authorities or responsibilities of either the DOS or the USFWS.

DESIGNATED POINTS OF CONTACT

For USFWS:

Michael D. George
Project Leader, Nebraska Ecological Services, U.S. Fish & Wildlife Service, Grand Island, NE

For DOS: [reserved]

For Keystone:

Michael Schmaltz
Environmental Manager
Keystone Pipeline Project
TransCanada Keystone Pipeline, L.P.

EFFECTIVE DATE

This agreement becomes effective upon approval by signature of USFWS, DOS, and Keystone.

MODIFICATION AND/OR TERMINATION

This Agreement may be modified upon agreement of the Parties.

This Agreement may be terminated by either the DOS or the USFWS upon 30 days notification to the other party. If there are any unspent funds from the amount transferred from Keystone to the conservation trust at the time of termination, such funds shall be returned to Keystone within 60 days of the date of termination of the Agreement.

U.S. FISH & WILDLIFE SERVICE

BY: _____ DATE _____

TRANSCANADA KEYSTONE PIPELINE, LP

BY: _____ DATE _____

U.S. DEPARTMENT OF STATE

BY: _____ DATE _____

Attachment A: ABB Habitat Conservation Trust Calculations

Table A1. Conservation measures to ameliorate impacts to American burying beetle habitat resulting from construction and operation of the Keystone XL pipeline in South Dakota. Project spatial data supplied by Keystone (2/22/2011) were used by DOS to determine acres of habitat affected.

A. Permanent Habitat Impacts¹					
Habitat Quality	Acres	Quality Multiplier	Weighted Acres	Value per acre	Conservation Amount
Prime	66.37	3.0	199.11	\$1,800	\$358,398
Good	25.58	2.0	51.16	\$1,800	\$92,088
Fair	3.21	1.0	3.21	\$1,800	\$5,778
Marginal	0.00	0.5	0.00	\$1,800	-
Total	95.16		253.48		\$456,264

B. Temporary Habitat Impacts²							
Habitat Quality	Acres	Quality Multiplier	Weighted Acres	Value per acre	Conservation Amount	8% Temporal Modifier (4 yrs/50 yrs)	Conservation Amount for Temporary Impacts to ABB
<i>ROW, ATWS, Auxilliary Construction Sites, etc.</i>							
Prime	307.94	3.0	923.82	\$1,800	\$1,662,876		
Good	92.90	2.0	185.80	\$1,800	\$334,440		
Fair	94.13	1.0	94.13	\$1,800	\$169,434		
Marginal	30.00	0.5	15.00	\$1,800	\$27,000		
Subtotal	524.97		1218.75		\$2,193,750	0.08	\$175,500
<i>Temporary Access Roads</i>							
Fair	4.74	1.0	4.74	\$1,800	\$8,532	0.08	\$683
Total	529.71		1223.49		\$2,202,282		\$176,183

Total Conservation Amount for South Dakota	
A. Permanent Hab. Loss	\$456,264
B. Temporary Hab. Loss	\$176,183
	\$632,447

¹ Permanent impacts are associated with placement of permanent above-ground facilities (i.e., pump stations) and the 22 foot thermal buffer.

² Temporary impacts are associated with temporary construction workspace and auxiliary construction support sites, and temporary access roads

Table A2. Conservation measures to ameliorate impacts to American burying beetle habitat resulting from construction and operation of the Keystone XL pipeline in Nebraska. Project spatial data supplied by Keystone (2/22/2011) were used by DOS to determine acres of habitat affected.

A. Permanent Habitat Impacts¹					
Habitat Quality	Acres	Quality Multiplier	Weighted Acres	Value per acre	Conservation Amount
Prime	241.76	3.0	725.28	\$1,800	\$1,305,504
Good	16.93	2.0	33.86	\$1,800	\$60,948
Fair	21.82	1.0	21.82	\$1,800	\$39,276
Marginal	8.04	0.5	4.02	\$1,800	\$7,236
Total	288.55		784.98		\$1,412,964

Total Conservation Amount in Nebraska	
A. Permanent Hab. Loss	\$1,412,964
B. Temporary Hab. Loss	\$565,348
	\$1,978,312

B. Temporary Habitat Impacts²							
Habitat Quality	Acres	Quality Multiplier	Weighted Acres	Value per acre	Conservation Amount	8% Temporal Modifier (4 yrs/50 yrs)	Conservation Amount for Temporary Impacts to ABB
<i>ROW, ATWS, Auxilliary Construction Sites, etc.</i>							
Prime	1123.23	3.0	3369.69	\$1,800	\$6,065,442		
Good	163.06	2.0	326.12	\$1,800	\$587,016		
Fair	98.75	1.0	98.75	\$1,800	\$177,750		
Marginal	33.57	0.5	16.79	\$1,800	\$30,213		
Subtotal	1418.61		3811.35		\$6,860,421	0.08	\$548,834
<i>Temporary Access Roads</i>							
Prime	34.18	3.0	102.54	\$1,800	\$184,572.00		
Good	6.07	2.0	12.14	\$1,800	\$21,852.00		
Subtotal	40.25				\$206,424.00	0.08	\$16,514
Total	1458.86						\$565,348

¹ Permanent impacts are associated with placement of permanent above-ground facilities (i.e., pump stations) and the 22 foot thermal buffer.

² Temporary impacts are associated with temporary construction workspace and auxiliary construction support sites, and temporary access roads

Table A3. Conservation measures to ameliorate impacts to American burying beetle habitat resulting from construction and operation of the Keystone XL pipeline in Oklahoma. Project GIS shapefiles supplied by Keystone (2/22/2011) were used by DOS to determine acres of habitat affected.

A. Permanent Habitat Impacts¹							
Habitat Quality	Acres	Quality Multiplier	Weighted Acres	Value per acre	Conservation Amount		
Permanent Access Road							
Fair	3.24	1.0	3.24	\$1,800	\$5,832		
Pump Station							
Marginal	17.08	0.5	8.54	\$1,800	\$15,372		
Total	20.32		11.78		\$21,204		
B. Temporary Habitat Impacts²							
Habitat Quality	Acres	Quality Multiplier	Weighted Acres	Value per acre	Conservation Amount	8%Temporal Modifier (4yrs/50 yrs)	Conservation Amount for Temporary Impacts to ABB
ROW, ATWS, Auxilliary Construction Sites, etc.							
Prime	309.35	3.0	928.05	\$1,800	\$1,670,490		
Good	448.65	2.0	897.30	\$1,800	\$1,615,140		
Fair	284.34	1.0	284.34	\$1,800	\$511,812		
Marginal	435.79	0.5	217.90	\$1,800	\$392,211		
Subtotal	1478.13		2327.59		\$4,189,653	0.08	\$335,172
Temporary Access Roads							
Prime	39.57	3.0	118.71	\$1,800	\$213,678		
Good	7.72	2.0	15.44	\$1,800	\$27,792		
Fair	3.40	1.0	3.40	\$1,800	\$6,120		
Marginal	4.27	0.5	2.14	\$1,800	\$3,843		
Subtotal	54.96		139.69		\$251,433	0.08	\$20,115
Total	1,533.09						\$355,287

Total Conservation Amount in Oklahoma	
A. Permanent Hab. Loss	\$21,204
B. Temporary Hab. Loss	\$355,287
	\$376,491

¹ Permanent impacts are from permanent facilities (i.e., pump stations, permanent access road)

² Temporary impacts are associated with temporary construction workspace and auxiliary construction support sites, and temporary access roads