

MEMORANDUM OF UNDERSTANDING

Between

U.S. DEPARTMENT OF STATE, and

The NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY,

FOR CONDUCTING AN ENVIRONMENTAL REVIEW

FOR THE KEystone XL PIPELINE PROJECT

This **Memorandum of Understanding (MOU)** is hereby entered into by and between the United States (U.S.) Department of State, hereinafter referred to as the “State Department” and the Nebraska Department of Environmental Quality, hereinafter referred to as the “DEQ.”

I. Background

TransCanada Keystone Pipeline, L.P. (Keystone) proposes to construct, operate, and maintain a crude oil pipeline and ancillary facilities, referred to as the Keystone XL Pipeline Project, hereinafter referred to as the “Project.” The Project would include construction of a new pipeline between a point east of Morgan, Montana southeast to an existing tank farm near Steele City, Nebraska.

Keystone has proposed several potential routes for the Project within Nebraska in order to avoid impacting the sensitive environmental resources in the Sandhills of Nebraska. Those routes will be evaluated by both the State Department and the DEQ.

The participants to this MOU are the State Department and DEQ, collectively referred to as “the Participants.”

Further details about the Project are contained in Keystone’s application to the State Department, filed on May 4, 2012, for a Presidential Permit to cross the U.S./Canada international border and associated environmental documents prepared by the State Department.

The State Department has jurisdiction for authorizing presidential permits for the crossing of the U.S. international border pursuant to Executive Order 11423, 33 Federal Register 11714 (August 16, 1968), as amended, and Executive Order 13337, 69 Federal Register 25229 (April 30, 2004), as amended. The State Department conducts an environmental review consistent with National Environmental Policy Act (NEPA), 42 USCA 4321 et. seq., the National Historical Preservation Act (NHPA), 16 USC 470 et. seq.) and other relevant statutes. DEQ has the authority and general jurisdiction for the administration and enforcement of environmental laws in the State of Nebraska pursuant to Neb. Rev. Stat. 81-1504.

The Nebraska Legislature enacted Legislative Bill 4 (LB 4) in November 2011 and as amended by LB 1161 in April 2012 that authorized the DEQ to collaborate with the State Department on an environmental review for oil pipeline projects within, through or across the State, including the Project, and to enter into a MOU with the State Department that sets forth the responsibilities and schedules that will lead to an effective and timely review of the environmental document under NEPA. DEQ has selected and contracted with HDR Engineering, Inc. (HDR) to assist in preparation of an environmental review and

DEQ will direct and pay for HDR's activities as necessary to comply with LB 4.

Nothing in this MOU alters, extends or supersedes the authorities and responsibilities of either of the Participants beyond that which exists under current laws and regulations on any matter under their respective jurisdictions.

II. Purpose

The purpose of this MOU is to document consensus among the Participants regarding relative roles, responsibilities, and procedures to be followed in conducting an environmental review of the Project. A primary purpose of this MOU is to ensure that the environmental review is thorough, efficient, and adequate and that it satisfies all environmental compliance requirements of the lead and cooperating agencies.

The MOU is meant to provide a framework for cooperation between the State Department and DEQ to work together in preparing and completing in a timely manner, a collaborative environmental analysis of routes within Nebraska that is consistent with NEPA, the NHPA, and all other relevant laws, executive orders, regulations, directives and guidelines.

Specifically, the purposes are to acknowledge and affirm:

- the Participants' joint collaboration on the conduct of an environmental review of potential routes for the Project within, through, or across a portion of the State of Nebraska.
- the DEQ as a cooperating agency in the environmental review process.
- that the State Department has the decision-making authority for the final cross-border permitting decision and primary responsibility for conducting an environmental review consistent with NEPA.
- the commitment of the Participants to seek agreement on key steps in the environmental review in order to avoid unnecessary duplication of effort and to expedite the process to the extent practicable.
- the commitment of the State Department to fully consider the views of the State of Nebraska in conducting its environmental review consistent with NEPA.
- the Participants' cooperation in a multi-stakeholder process in which they will collectively consult with and seek the involvement and participation of other interested persons or entities.

III. Representatives

The Participants will designate a representative and backup representative for purposes of consultation under this MOU. State Department will designate a NEPA coordinator to oversee its independent third-party contractor. The DEQ will have primary authority to direct the activities of its own contractor, HDR in preparing documents consistent with Nebraska's environmental review of the Project. The Participants may change their representative(s) at any time.

IV. Roles and Responsibilities

A. State Department Responsibilities:

1. Serve as the lead agency for preparing the environmental documents consistent with NEPA.
2. Maintain the Administrative Record for the Project, protecting proprietary information and data collected by its independent third-party contractor and its sub-contractors. Any information furnished to the State Department under this MOU is subject to the Freedom of Information Act (5 U.S.C. 552).
3. Coordinate the exchange of information among the Participants and its own independent third-party contractor and subcontractors.
4. Provide DEQ 30 days to review documents produced consistent with the environmental review of the Project.
5. Cooperate in the development of a joint Public Participation Plan with DEQ.
6. Consult with DEQ to ensure information and analysis developed by DEQ's contractor is done consistent with NEPA, NHPA, and other relevant federal law and provide timely review and comments of DEQ-developed work products including communication and public participation plans, scoping summary, and DEQ-prepared documents.
7. Lead any Section 7, Endangered Species Act, consultation with the U.S. Department of the Interior, Fish and Wildlife Service (FWS), Grand Island, regarding the Project. Ensure the studies and surveys for the consultation are conducted in accordance with requirements of the cooperating agencies, and, if required, negotiate any terms and conditions between the FWS and Keystone.
8. Lead any additional consultation consistent with Section 106 of the NHPA with all State Historic Preservation Offices affected by the proposed routes, including Native American consultation, in accordance with the regulations at 36 CFR part 800 for cultural resources on Federal and private lands.
9. Consult with DEQ in formulating responses to any comments received relevant to both the Department's review and DEQ's review under Nebraska Law.

B. DEQ Responsibilities:

1. Serve as a cooperating agency for the State of Nebraska in preparing environmental review documents, including evaluation of environmental, economic, social, and other impacts associated with the proposed routes in Nebraska and compliance with Nebraska law.
2. Establish goals and a schedule for the State Department's concurrence.
3. Maintain any Administrative Records for the Project required by Nebraska law, and provide to the State Department copies of documents and correspondences for inclusion in the Federal Administrative Record of the preparation of the environmental review

documents and Record of Decision. Documents and correspondences not in the possession of the State Department might not be included in the final Administrative Record.

4. Oversee Nebraska's review of the Project in Nebraska.
5. Coordinate the exchange of information relevant to Nebraska's review, in Nebraska, including information and analysis produced by HDR under contract to DEQ, among the Participants.
6. In consultation with the State Department, ensure that HDR conducts and completes necessary field and literature studies, inventories, reports, consultations, and data collection for an analysis of impacts to natural and human resources, consistent with NEPA, NHPA, and other relevant federal laws.
7. Consult with the State Department prior to issuing task orders to HDR in order to ensure that its analysis of the routes in Nebraska are consistent with NEPA, NHPA, and other federal laws.
8. Consult with the State Department in formulating responses to any comments received relevant to both DEQ's review under Nebraska Law and the State Department's review.
9. Cooperate with the State Department in developing a comprehensive mailing list for distribution of information and documents relevant to the project review.

V. Administrative and Legal Provisions

A. Amendments

This MOU may be modified revised, or amended with the written consent of both the Participants.

B. Ceasing Cooperation

Either participant may cease its cooperation under this MOU by providing the other participants with a 30-day written notice of the participant's intent to cease cooperation under the MOU. During the 30-day period, the participants will enter negotiations to resolve the disagreement(s). If the disagreement(s) have not been resolved by the end of the 30-day period, the Participants who wished to cease cooperation under this MOU may do so. In the event negotiations are progressing but are not concluded by the end of the 30-day period, the participant initiating the notice may request that cooperation continue for an additional 30-day period.

C. Exchange of Information

Documents provided pursuant to this agreement may contain proprietary or business confidential information, tribal information, protected endangered species survey data, and/or pre-decisional information. Prior to furnishing documents, the Participants shall identify any proprietary and/or pre-decisional information that should be maintained as non-public. If the Participants are recipients of the documents, subject to the appropriate laws and regulations, they intend to use best efforts not to disclose the information. If DEQ is the intended recipient,

DEQ plans to conduct a review for non-public documents at either DEQ's office in Lincoln or State Department's office in Washington, DC. DEQ plans to identify the information it believes constitutes a trade secret that is entitled to confidentiality under the Nebraska Public Records Act, Neb. Rev. Stat. 84-712 et seq. The State Department acknowledges DEQ's need for timely communication of confidentiality claims, as defined under the Nebraska Public Records Act. Consistent with existing laws and regulations, all Participants intend to share all relevant information with each other and the public. Any information furnished to the State Department under this Memorandum of Understanding may be subject to the Freedom of Information Act (5 USC 552).

D. Third Party Beneficiary Rights

The Participants do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status or any other legally enforceable rights or obligations. The provisions of this MOU are intended only to assist the Participants by providing a framework for cooperation between the Participants to work together in preparing and completing a collaborative environmental analysis of the Keystone XL Pipeline Project that is consistent with NEPA.

E. Administrative Considerations

The terms of this MOU shall not provide a basis for discrimination against any person based on race, creed, color, gender, sexual orientation, or national origin.

F. Legal Rights and Remedies

Nothing in this MOU shall be construed to alter the legal rights and remedies that each Participant would otherwise have. No Participant waives any legal rights or defenses by entering into this MOU or participating in the process contemplated hereby.

G. Immunity

The Participants do not waive any applicable immunities by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

VI. Contingent on Appropriation, Authorizations, or Allotment of Funds

This MOU sets forth the Participants' intent to cooperate in the environmental review of the Project. This MOU does not authorize the transfer of funds between Participants.

This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

Nothing in this MOU authorizes the expenditure of federal agency funds. The expenditure or advance of any money or the performance of any action by the United States under this MOU shall be contingent upon the appropriation or allotment of funds, and upon Congress making the necessary authorizations. No liability shall accrue to the United States in case funds are not appropriated or allocated, or authorizations not made.

VII. Effective Date

This MOU will become effective as soon as signed by both parties.

VIII. Contacts

Department of State

Primary POC:

Genevieve Walker
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Nebraska Department of Environmental Quality

Primary POC: Patrick Rice
Nebraska Department of Environmental Quality
1200 N St., #400
Lincoln, NE 68509-8922

The Participants have signed this Memorandum of Understanding:

U.S. Department of State



George N. Sibley, Director
Office of Environmental Policy

MAY 24, 2012

Date

Nebraska Department of Environmental Quality



Michael J. Linder, Director

May 21 2012

Date