

Appendix G

Western Prairie Fringed Orchid

Habitat Conservation Trust

AGREEMENT

Habitat Conservation Trust

Western Prairie Fringed Orchid Habitat

Keystone XL Pipeline

U.S. Fish and Wildlife Service, U.S. Department of State, TransCanada Keystone Pipeline, LP

PURPOSE

This Agreement (Agreement) is entered into by and between the U.S. Fish and Wildlife Service (USFWS), the U.S. Department of State (DOS), and TransCanada Keystone Pipeline, LP (Keystone). The purpose of this Agreement is to establish responsibilities of the three parties for compensatory mitigation to offset loss of habitat for the federally threatened western prairie fringed orchid (WPFO) resulting from construction and operation of the proposed Keystone XL Project pipeline (Project) in the states of South Dakota and Nebraska consistent with the USFWS's Biological Opinion, dated May 15, 2013.

Keystone agrees to provide compensation for impacts to the western prairie fringed orchid through a Habitat Conservation Trust (Trust) in areas where the species is likely to be found including: southwest of Highway 18 in Tripp County, South Dakota and Keya Paha, Holt, Rock, Antelope, and Boone counties in Nebraska. Compensation will be based on total acres impacted where suitable western prairie fringed orchid habitat is present, regardless of presence/absence survey results. Compensation will be calculated based on total acres impacted (currently unknown) multiplied by 31 percent, the probability of encountering a western prairie fringed orchid in suitable habitat during the course of habitat survey work (NGPC 2013). Habitat surveys will be used to evaluate western prairie fringed orchid habitat. The resultant acreage will be designated as WPFO potentially occupied habitat. A 3:1 habitat mitigation ratio would be applied to the WPFO potentially occupied habitat to offset temporal loss of habitat between the time construction begins and the time orchid habitat is fully restored. The resultant mitigation total acres would be multiplied by the value of an acre of land.

Funds will be placed with a nongovernmental organization (NGO) experienced and familiar with managing conservation trust funds or another mutually agreeable NGO. The Trust will be used by the NGO to acquire lands and easements from willing sellers, and to develop conservation plans and agreements with landowners for protecting and enhancing WPFO habitat in Nebraska and South Dakota. Additionally, up to 10 percent of the Trust funds may be used for appropriate research which would contribute to the recovery of the WPFO. Habitat projects and land or easement acquisitions for the benefit of the WPFO will be approved for funding by the nongovernmental entity in coordination with the South Dakota and Nebraska USFWS offices. There will be no time limit on when the funds can be expended after the fund is established. To help ensure a continuous source of funds are available, 10 percent of the funds will go to a permanent endowment, also managed by the NGO, for the long-term benefit and management of endangered and other at risk species in

coordination with the South Dakota and Nebraska USFWS offices and the Nebraska Game and Parks Commission.

PAYMENT TERMS & SCHEDULE

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

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

Table 1. Compensatory Mitigation for WPFO Habitat Impacts Resulting from Construction of the proposed Keystone XL Project.

Permanent WPFO Habitat Impacts

State	Acres	Value (\$)
South Dakota	X	Z3(X(.31))
Nebraska	X	Z3(X(.31))

Total

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:
Sandra Barnett
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 by all 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: WPFO Habitat Conservation Trust Calculations

Table A1. Conservation measures to ameliorate impacts to WPFO habitat resulting from construction of the Keystone XL pipeline in South Dakota. Data used to develop this table is from DOS (2012) and based on habitat surveys conducted in summer 2013.

Permanent Impacts (South Dakota)

WPFO Suitable Habitat Acres Impacted	Probability of Encounter	Acres likely Encountered	Modifier	Weighted Acres	Land Value/Acre (\$)	Amount (\$)
X	31%	X(.31)	3	3(X(.31))	Z	Z3(X(.31))

Table A2. Conservation measures to ameliorate impacts to WPFO habitat resulting from construction of the Keystone XL pipeline in Nebraska. Data used to develop this table is from DOS (2012) and based on habitat surveys conducted in summer 2013.

Permanent Impacts (Nebraska)

WPFO Suitable Habitat Acres Impacted	Probability of Encounter	Acres likely Encountered	Modifier	Weighted Acres	Land Value/Acre (\$)	Amount (\$)
X	31%	X(.31)	3	3(X(.31))	Z	Z3(X(.31))