

## **Appendix D**

### **American Burying Beetle Habitat Conservation Trust**

## **AGREEMENT**

### **Habitat Conservation Trust American Burying Beetle 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 temporary and permanent loss of habitat for the federally endangered American burying beetle (ABB) 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 Biological Opinion, dated May 15, 2013.

Keystone agrees to provide compensation for temporary and permanent ABB habitat loss due to Keystone XL pipeline construction and operations in areas where the species is likely to be impacted including: south of Highway 18 in Tripp County in South Dakota and Keya Paha and Holt counties (north and west of Highway 281 or the City of O'Neil) in Nebraska (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. Rating multipliers were developed based on the temporal loss of habitat. Higher quality, prime habitat would reasonably be expected to be more important to ABB than marginal habitat and thus, its loss is reflective by applying a larger habitat multiplier. 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 ABB 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 ABB habitat in Nebraska and South Dakota. Additionally, up to 10 percent of the Trust funds may be used for appropriate research such as research on recolonization of ABB on disturbed sites and other research which would contribute to the recovery of the ABB. Funds will be placed with a nongovernmental organization (NGO) experienced and familiar with managing conservation trust funds or a similar mutually agreeable NGO. Habitat projects and land or easement acquisitions for the benefit of the ABB will be approved for funding by the NGO in coordination with USFWS offices in South Dakota and Nebraska. 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. To help ensure a continuous source of funds are available, 10% 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 Nebraska and South Dakota 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 NCF/nongovernmental organization 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 ABB habitat impacts based on the attached valuation (Attachment A) is summarized in Table 1.

**Table 1. Compensatory Mitigation for ABB Habitat Impacts Resulting from Construction and Operation of the proposed Keystone XL Project.**

<b>Temporary ABB Habitat Impacts</b>			<b>Permanent ABB Habitat Impacts</b>		
<b>State</b>	<b>Acres</b>	<b>Value</b>	<b>Acres</b>	<b>Value</b>	<b>Total</b>
South Dakota	526.28	\$181,684.08	102.51	\$491,112	\$672,796.08
Nebraska	728.28	\$232,017.12	140.25	\$517,482	\$749,499.12
<b>Total</b>	<b>1,254.56</b>	<b>\$413,701.20</b>	<b>242.76</b>	<b>\$1,008,594</b>	<b>\$1,422,295.20</b>

## **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: ABB Habitat Conservation Trust Calculations**

Table A1. Conservation measures to ameliorate impacts to ABB habitat resulting from construction and operation of the Keystone XL pipeline in South Dakota. Project spatial data supplied by Keystone were used by DOS to determine acres of habitat affected (DOS 2012).

**Permanent Impacts<sup>a</sup>**

Habitat Rating	ABB Acres Impacted	Modifier	Weighted Acres	Land Value/Acre (\$)	Amount (\$)
<b>Prime</b>	75.83	3	227.49	1,800	409,482
<b>Good</b>	21.34	2	42.68	1,800	76,824
<b>Fair</b>	0	1	0	1,800	0
<b>Marginal</b>	5.34	0.5	2.67	1,800	4806
<b>Total</b>	102.51				491,112

**Temporary Impacts<sup>b</sup>**

Habitat Rating	ABB Acres Impacted	Modifier	Weighted Acres	Land Value/Acre (\$)	Conservation Amount (\$)
<b>Prime</b>	325.94	3	977.82	1,800	1,760,076
<b>Good</b>	95.80	2	191.60	1,800	344,880
<b>Fair</b>	80.01	1	80.01	1,800	144,018
<b>Marginal</b>	24.53	0.5	12.26	1,800	22,077
<b>Total</b>	526.28				2,271,051

<sup>a</sup> Permanent impacts are caused by the placement of permanent above-ground facilities (i.e., pump stations), and the 22-foot corridor spanning the center of the pipeline ROW affected by heat dissipation from the operating pipeline.

<sup>b</sup> Temporary impacts are caused by temporary construction workspace, and construction of temporary access roads.

Note: Miles are the same for both temporary and permanent impacts as both are calculated using the pipe centerline

Note: 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 (0.08 x 2,271,051). Thus, the total amount contributed would be \$181,684.08.

Table A2. Conservation measures to ameliorate impacts to ABB habitat resulting from construction and operation of the Keystone XL pipeline in Nebraska. Project spatial data supplied by Keystone were used by DOS to determine acres of habitat affected (DOS 2012).

**Permanent Impacts<sup>a</sup>**

Habitat Rating	ABB Acres Impacted	Modifier	Weighted Acres	Land Value/Acre (\$)	Conservation Amount (\$)
Prime	61.47	3	184.41	1,800	331,998
Good	42.46	2	84.92	1,800	152,856
Fair	0	1	0	1,800	0
Marginal	36.32	0.5	18.16	1,800	32,482
<b>Total</b>	140.25				517,482

**Temporary Impacts<sup>b</sup>**

Habitat Rating	ABB Acres Impacted	Modifier	Weighed Acres	Land Value/Acre (\$)	Conservation Amount (\$)
Prime	365.57	3	1,096.71	1,800	1,974,078
Good	226.59	2	453.18	1,800	815,724
Fair	13.44	1	13.44	1,800	24,192
Marginal	122.68	0.5	61.34	1,800	110,412
<b>Total</b>	728.28				2,900,214

<sup>a</sup> Permanent impacts are caused by the placement of permanent above-ground facilities (i.e., pump stations), and the 22-foot corridor spanning the center of the pipeline ROW affected by heat dissipation from the operating pipeline.

<sup>b</sup> Temporary impacts are caused by temporary construction workspace, and construction of temporary access roads.

Note: Miles are the same for both temporary and permanent impacts as both are calculated using the pipe centerline

Note: 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 (0.08 x 2,900,214). Thus, the total amount contributed would be \$232,017.12.