

Programmatic Agreement

Among

The U.S. Department of State,
U.S. Army Corps of Engineers,
U.S. Department of Agriculture, Farm Service Agency,
U.S. Department of Agriculture, Natural Resources Conservation Service,
U.S. Department of Agriculture, Rural Utilities Service,
U.S. Fish and Wildlife Service,
Advisory Council on Historic Preservation,
Illinois State Historic Preservation Officer,
Kansas State Historic Preservation Officer,
Missouri State Historic Preservation Officer,
Nebraska State Historic Preservation Officer,
North Dakota State Historic Preservation Officer,
Oklahoma State Historic Preservation Officer, and
South Dakota State Historic Preservation Officer
Regarding the TransCanada Keystone Pipeline Project

WHEREAS, the U.S. Department of State (DOS) receives and considers applications for permits for cross border oil pipelines pursuant to the authority delegated by the President of the United States under Executive Order (EO) 13337 (69 Federal Register 25299); and

WHEREAS, on April 19, 2006, the DOS received an application for a Presidential Permit from TransCanada Keystone Pipeline, LP (TransCanada) for the TransCanada Keystone Pipeline Project (Keystone Project); and

WHEREAS, DOS has determined that issuance of a Presidential Permit for the Keystone Project triggers review under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f, as amended) and its implementing regulations, "Protection of Historic Properties," (36 CFR Part 800); and

WHEREAS, the Keystone Project undertaking consists of construction of approximately 1,371.4 miles of crude oil pipeline in the United States (1,078 miles of mainline pipeline plus 293.5 miles of the Cushing Extension), associated aboveground facilities (such as pump stations and transmission facilities and substations), and ancillary facilities (such as lateral pipeline, temporary workplace areas and pipe storage and contractor yards); and

WHEREAS, on October 25, 2006, the Advisory Council on Historic Preservation (ACHP) entered consultation finding that criteria 3 and 4 of Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of the regulations (36 CFR Part 800) implementing Section 106 of NHPA, had the potential to be met; and

WHEREAS, the Rural Utilities Service (RUS) has determined that the financial assistance it may provide to rural electric cooperatives and other entities for construction or modification of electrical transmission facilities (including transmission lines and substations) to power some

Keystone Project pump stations, under USDA Rural Development's Utilities Programs, makes such construction or modification an undertaking that requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the United States Army Corps of Engineers (USACE) has determined that the approval for the Keystone Project to cross USACE administered lands (30 U.S.C. § 185) and to place structures in, under or over navigable waters of the United States, as defined under 33 CFR 329, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and a permit for the placement of dredge or fill material in waters of the United States as part of the Keystone Project in accordance with Section 404 of the Clean Water Act (33 U.S.C. § 344; see 33 CFR 323), requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the Natural Resources Conservation Service (NRCS) has determined that subordination of its rights to a 2.3 acre portion of a single Wetlands Reserve Program (WRP) (16 U.S.C. § 3837 et seq) easement in the State of Missouri to TransCanada for the purposes of installation and maintenance of the Keystone Project pipeline requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the NRCS has determined that such subordination of the 2.3 acre portion of the WRP easement in the State of Missouri (by modification of the Warranty Easement Deed, under the authority of 16 U.S.C. § 3837e) may only occur after issuance of the Final Environmental Impact Statement (EIS) by DOS (issued January 11, 2008) and 30 days after publication of a Record of Decision (ROD, in process); and

WHEREAS, the Farm Service Agency (FSA) has determined that approval for the Keystone Project to cross private lands it manages through individual farm participation programs, like the Conservation Reserve Program and the Farmable Wetlands Program, requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) has determined that approval for the Keystone Project to cross federal lands it administers and private lands it manages through federal easements, pursuant to the National Wildlife Refuge Systems Administration Act (16 U.S.C. 668dd(c)), requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the RUS, USACE, NRCS, FSA, and USFWS have designated the DOS as the lead federal agency for purposes of Section 106 of the NHPA in accordance with 36 CFR § 800.2(a)(2); and

WHEREAS, the Western Area Power Administration (WAPA) remains individually responsible for compliance with Section 106 of NHPA and 36 CFR Part 800 for the modification and construction of substations to power the Keystone Project; and

WHEREAS, the proposed Keystone Project pipeline alignment crosses North Dakota, South Dakota, Kansas, Nebraska, Illinois, Missouri and Oklahoma; and

WHEREAS, the Keystone Project area of potential effects (APE) includes: (1) in North Dakota

– a 300 foot wide corridor, centered on centerline; (2) in South Dakota – 300 foot wide corridor, centered on centerline; (3) in Nebraska – 300 foot wide corridor centered on centerline and in collocated areas 60 foot wide corridor on collocated side and 240 wide corridor on non-collocated side; (4) in Kansas – 200 foot wide corridor centered on centerline and 300 foot wide corridor for Cushing Extension corridor; (5) in Missouri – 200 foot wide corridor centered on centerline for the Rockies Express Pipeline Project (REX); (6) in Illinois – 200 foot wide corridor for areas with collocated pipeline (40 foot corridor on collocated side and 160 foot wide corridor on non-collocated side and 300 foot wide corridor centered on centerline in greenfield areas; (7) in Oklahoma – 300 foot wide corridor centered on centerline; and (8) project related access roads, transmission facilities and corridors, temporary work spaces or construction areas, pipeline reroutes, and appurtenant facilities; and

WHEREAS, the DOS has determined that the construction of the Keystone Project may have an adverse effect on properties listed in or eligible for listing in the National Register of Historic Places (NRHP), and has consulted with the North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Missouri, and Illinois State Historic Preservation Officers (SHPOs), and the ACHP, pursuant to 36 CFR Part 800; and

WHEREAS, in accordance with 36 CFR §§ 800.4(b)(2) and 800.5(a)(3), the DOS has elected to phase identification and evaluation of historic properties, and application of the criteria of adverse effect, respectively, because access to those areas identified in Attachment A has been restricted by property owners' refusal to grant TransCanada permission to enter their private property; and

WHEREAS, pursuant to 36 CFR § 800.14(b), the DOS has elected to execute this Programmatic Agreement (PA) for the Keystone Project because effects on historic properties cannot be fully determined prior to the issuance of a permit for the undertaking; and

WHEREAS, the DOS will incorporate this PA into its decisional process on any Presidential permit that it may issue for the Keystone Project and will include in any permit it issues on the Keystone Project a condition that TransCanada will abide by its commitments in this PA; and

WHEREAS, TransCanada, which will construct the Keystone Project pipeline, has participated in consultation, has been invited by DOS under 36 C.F.R. §§ 800.2(c)(4) and 800.6(c)(2) to sign this agreement as an invited signatory and intends to sign this agreement as an invited signatory; and

WHEREAS, the rural electric cooperatives and other entities which may apply to RUS for financial assistance to construct or modify transmission facilities did not participate in consultation to develop this PA; and

WHEREAS, DOS invited the Indian tribes listed in Attachment B to participate in consultation; and

WHEREAS, the Absentee-Shawnee Tribe of Indians of Oklahoma, Blackfeet Tribe, Cheyenne-Arapaho Tribe of Oklahoma, Flandreau Santee Sioux Tribe, Forest County Potawatomi

Community of Wisconsin Potawatomi Indians, Fort Peck Tribes, Gun Lake Potawatomi, Ho-Chunk Nation of Wisconsin, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Kaw Nation, Kickapoo Tribe of Kansas, Lower Sioux Indian Community, MHA Nation (Three Affiliated Tribes), Mille Lacs Band of Ojibwe, Oglala Sioux Tribe, Osage Nation, Pawnee Nation of Oklahoma, Ponca Tribe of Oklahoma, Ponca Tribe of Nebraska, Rosebud Sioux Tribe, Sac & Fox Nation, Santee Sioux Tribe of Nebraska, Shakopee Mdewakanton Sioux (Upper Sioux Pezihutazizi Kap), Sisseton-Wahpeton Oyate Sioux, Sisseton Wahpeton Oyate/Wahpekute, Spirit Lake Tribe, Standing Rock Sioux Tribe, Tonkawa Tribe, United Keetoowah Band of Cherokee Indians, Upper Sioux-Pezihutazizi Kapi, and Yankton Sioux have participated in consultation and have been invited to concur in this PA, in accord with 36 C.F.R. §§ 800.2(c)(2) and 800.6(c)(3);

NOW, THEREFORE, the DOS, RUS, USACE, NRCS, FSA, USFWS, ACHP and the North Dakota, South Dakota, Kansas, Nebraska, Illinois, Missouri and Oklahoma SHPOs agree that the following stipulations will be implemented in order to take into account the effect of the undertaking on historic properties and to satisfy all responsibilities under Section 106 of the NHPA.

STIPULATIONS

The DOS, RUS, USACE, NRCS, FSA, and USFWS, as appropriate, will ensure that the following measures are carried out.

I. STANDARDS

- A. Identification and evaluation studies and treatment measures required under the terms of this PA will be carried out by or under the direct supervision of a professional(s) who meets, at a minimum, the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* (48 FR 44716, September 29, 1983).
- B. In developing scopes of work for identification and evaluation studies, and treatment measures required under the terms of this PA, TransCanada and RUS applicants will take into account the following guidance:
 1. the ACHP's guidance on conducting archaeology under Section 106 (2007);
 2. the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007);
 3. applicable SHPO guidance;
 4. the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983);
 5. the "*Treatment of Archaeological Properties*" (ACHP 1983);
 6. the *Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects*" (Federal Energy Regulatory Commission, Office of Energy Projects, December 2002);
 7. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403); and
 8. Section 404 of the Clean Water Act (33 U.S.C. § 344).

II. CONFIDENTIALITY

DOS, RUS, and USACE will safeguard information about historic properties of religious and cultural significance to Indian tribes, including location information, or information provided by Indian tribes to assist in the identification of such properties, to the extent allowed by Section 304 of NHPA [16 U.S.C. 470w3] and other applicable laws.

III. USACE RESPONSIBILITIES

- A. The USACE will ensure that the requirements of this PA have been met for that part of the APE under its jurisdiction, pursuant to Section 10 and Section 404 permitting authority.
- B. The USACE will comply with Section 106 and its implementing regulations (36 CFR Part 800) for the issuance of permits for those actions under its jurisdiction.

IV. KEYSTONE PROJECT – CONSTRUCTION OR MODIFICATION OF ELECTRICAL TRANSMISSION FACILITIES

- A. Prior to granting approval of financial assistance to construct or modify electrical transmission facilities by rural electric cooperatives or other entities, RUS will complete the requirements of 36 CFR §§ 800.3 through 800.7.
- B. In implementing Stipulation IV.A, RUS may authorize an applicant to initiate Section 106 consultation in accordance with 36 CFR § 800.2(c)(4). In doing so, RUS may not delegate its responsibility to conduct government-to-government consultation with Indian tribes to an applicant. An applicant may consult with an Indian tribe only if RUS and that tribe agree, in writing, to conduct consultation in that manner.
- C. RUS will ensure that the terms of Stipulation VI.B and Attachment D are incorporated into construction contracts to ensure that its applicants and construction contractors meet their responsibility for notification of any unanticipated discoveries.

V. KEYSTONE PROJECT – PIPELINE CONSTRUCTION

- A. The DOS has and will continue to offer consulting parties with an opportunity to provide their views on the identification and evaluation of historic properties, including historic properties of religious and cultural significance to Indian tribes, and the treatment of affected historic properties, in connection with the construction of the Keystone Pipeline Project.
- B. DOS remains responsible for conducting government-to-government consultation with Indian tribes, unless the tribe agrees, in writing, to consult directly with TransCanada.

C. Identification of Historic Properties

1. In consultation with the SHPOs and other consulting parties, the DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties within the APE for each construction spread prior to the initiation of construction of that spread, in accordance with 36 CFR § 800.4(a), (b) and (c). On federal lands, the scope of the identification effort will be determined by the appropriate federal land managing agency.
2. In the event identification of historic properties cannot be completed before the start of construction, TransCanada will develop and submit a plan to DOS for review and approval pursuant to Stipulation V.E that describes the measures it will implement to complete the identification and evaluation of historic properties before such properties are adversely affected by vegetation clearing and construction activities related to that spread.
3. For the APE in the North Dakota and South Dakota spreads, DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, in accordance with 36 CFR § 800.4(a), (b) and (c), before initiating construction activities, including vegetative clearing to comply with the Migratory Bird Treaty Act, on or about March 1, 2008.
 - a. For those portions of the APE affected by construction of the North and South Dakota spreads, the DOS will complete the identification of historic properties to which Indian tribes attach religious and cultural significance. In the identification and evaluation of such historic properties, the DOS will rely on information submitted by Indian tribes to DOS by February 15, 2008.
 - b. In the event identification of historic properties cannot be completed for these two (2) spreads prior to March 1, 2008, TransCanada will develop and submit a plan to DOS for review and approval pursuant to Stipulation V.E that describes the measures it will implement to complete the identification and evaluation of historic properties before such properties are adversely affected by vegetation clearing and construction activities related to that spread.

D. Treatment of Historic Properties

1. Whenever feasible, avoidance of adverse effects to historic properties will be the preferred treatment. In consultation with the DOS, SHPOs, and other consulting parties, TransCanada may elect to consider and implement avoidance measures prior to completing the evaluation of historic properties.
2. When historic properties are identified in the APE pursuant to Stipulation IV.C, DOS will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) in consultation with the SHPO and other consulting parties. If DOS finds that historic

properties might be adversely affected by pipeline construction, DOS will consult with the SHPO and other consulting parties to determine prudent and feasible ways to avoid adverse effects.

- a. Once DOS approves avoidance measures, TransCanada will implement those measures.
 - b. TransCanada will notify DOS if it finds that the implementation of such measures is not prudent and feasible. DOS will consider proposed alternatives to the avoidance measures in accordance with the terms of Stipulation V.C through H.
3. If DOS determines that the adverse effect cannot be avoided, DOS will consult with the SHPO and other consulting parties to determine those measures to be implemented by TransCanada to minimize and mitigate adverse effects on affected historic properties identified in the construction spread APE.
 4. TransCanada will draft a comprehensive Treatment Plan that describes the measures identified by DOS to minimize and mitigate the adverse effect of pipeline construction activities on historic properties, the manner in which these measures will be carried out and a schedule for their implementation.
 - a. When mitigation consists of or includes data recovery, the Treatment Plan also will identify the specific research questions to be addressed by data recovery with an explanation of their relevance, the archaeological methods to be used, and provisions for public interpretation and education, subject to Stipulation II restrictions, if any.
 - b. TransCanada will submit the draft Treatment Plan to the DOS, ACHP, SHPO and other consulting parties for a fifteen (15) day review. TransCanada shall address timely comments and recommendations submitted by consulting parties in preparation of the Final Treatment Plan.
 - c. When it has addressed all of the comments and recommendations, TransCanada will submit the Final Treatment Plan to DOS for review and approval.
 5. TransCanada will make a reasonable and good faith effort to complete implementation of the Final Treatment Plan approved by DOS prior to beginning construction of any spread. If it is not possible to meet this schedule, TransCanada will develop a plan in accordance with Stipulation V.E that establishes how appropriate treatment will be determined and implemented during construction of the respective spread.

E. Coordination of Construction and Historic Preservation Activities

1. The DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, and the mitigation of adverse effects to them in

accordance with Stipulations V.C and V.D prior to the initiation of vegetative clearing and construction on the Keystone spreads, including the North Dakota and South Dakota spreads.

2. If these DOS activities cannot be completed prior to the start of vegetative clearing and construction of these spreads, TransCanada shall develop and provide to DOS a detailed plan describing how the requirements of Stipulations V.C and V.D – identification, evaluation and treatment - will be completed in coordination with vegetative clearing and construction activities in such a way that historic properties will not be adversely affected prior to the implementation of any mitigation measures.
 - a. The Coordination Plan will include those measures developed by TransCanada pursuant to Stipulations V.C and V.D to complete the identification and evaluation of historic properties, and, as appropriate, mitigation of adverse effects to them during and coordinated with vegetation clearing and construction activities. In addition, the plan will include a schedule for all proposed activities and recommended measures for the protection of unanticipated discoveries in accordance with Attachments C and D, as appropriate.
 - b. TransCanada will submit the draft Coordination Plan for such spreads, including the North and South Dakota spreads, to the DOS, ACHP, SHPO and other consulting parties for fifteen (15) day review. TransCanada shall address timely comments and recommendations submitted by consulting parties in preparation of the Final Coordination Plan. When it has addressed all of the comments and recommendations, TransCanada will submit the Final Coordination Plan to DOS for review and approval.
3. TransCanada will complete implementation of the Final Coordination Plan approved by DOS during construction of the North and South Dakota spreads.

F. Construction Monitoring

1. In consultation with the SHPOs and Indian tribes, TransCanada will monitor construction in selected areas of the APE of each spread as a supplement to identification efforts. Any historic properties identified by TransCanada will be treated in accordance with Stipulation VI.A and C.
2. Construction monitoring will be performed by a professional who meets the qualification standards archaeology established in Stipulation I.A.
3. TransCanada shall consider information provided by Indian tribes in completing the identification of historic properties before construction begins and in preparing a construction monitoring plan provided for under Stipulation V.F.4. TransCanada shall provide Indian tribes an opportunity to participate as monitors during project construction.

4. TransCanada will submit a draft plan for construction monitoring for each spread to the DOS, ACHP, SHPO and other consulting parties for fifteen (15) day review. TransCanada shall address timely comments and recommendations submitted by consulting parties in preparation of the Final Monitoring Plan. TransCanada will submit the Final Monitoring Plan to DOS for review and approval.
5. TransCanada will implement the Final Monitoring Plan for each spread that has been approved by DOS.

G. Construction

1. Environmental Inspector (EI): Prior to initiating vegetative clearing or construction, TransCanada will employ an EI whose responsibilities will include ensuring compliance with the terms of this PA. In meeting this responsibility, the EI will rely on the technical expertise of professionals who meet the standards established in Stipulation I.A.
 - a. The EI will monitor construction activities on-site and prepare a daily log reporting to TransCanada on activities performed to implement the terms of this PA, as appropriate. TransCanada will make the daily log available to the DOS and other consulting parties upon request.
 - b. TransCanada will ensure through the construction contract that the EI will possess the authority to stop construction in the event of an inadvertent discovery in accordance with Stipulation VI.A and Attachment C.
2. Training: TransCanada will ensure that if the EI does not meet the professional qualification standards established in Stipulation I.A, the EI receives appropriate training in historic preservation from a professional who meets the standards established in Stipulation I.A in order to perform the requirements of this PA. TransCanada also will provide an appropriate level of training in historic preservation conducted by a professional who meets the standards established in Stipulation I.A to all construction personnel (including new, added, replaced workers) so that PA requirements are understood and unanticipated discoveries quickly identified. TransCanada will offer this training prior to initiating vegetative clearing or construction activities on a spread, and conduct periodic refresher training during construction of the spread.
3. The DOS will ensure that Indian tribes are afforded a reasonable opportunity to provide information about historic properties of religious and cultural significance to them during pipeline construction.
4. Construction Contract: TransCanada will incorporate the terms of Stipulation VI.A and Attachment C into construction contracts to ensure that its EI and construction contractors meet their responsibility for notification of the unanticipated discoveries.

H. Scheduling

The DOS may authorize the start of vegetative clearing and construction for an individual spread when the plans prepared in accordance with Stipulations V.D.4, V.E and V.F as appropriate for that spread, have been submitted by TransCanada and approved by DOS in accordance with the terms of this PA.

- I. Before concluding pipeline construction, TransCanada will distribute to the SHPOs descriptive information about identified archaeological sites in GIS format.

VI. UNANTICIPATED DISCOVERIES DURING CONSTRUCTION OF THE KEYSTONE PROJECT

A. Pipeline Construction

1. "Applicable federal agency" is the federal agency with jurisdiction for the land on which construction is occurring or, in the absence of such an agency, DOS, USACE, or RUS as appropriate.
2. If previously unidentified historic properties are discovered unexpectedly as pipeline construction activities are carried out within the 110-foot-wide construction corridor, the construction contractor will immediately halt all construction activity within a one-hundred (100) foot radius of the discovery, notify TransCanada's EI of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the EI shall:
 - a. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
 - b. clearly mark the area of the discovery;
 - c. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
 - d. notify the applicable federal agency, the SHPO, the ACHP and other consulting parties, including Indian tribes, of the discovery.
3. The applicable federal agency will have seven (7) calendar days following notification provided in accordance with Stipulation VI.A.2 to determine the National Register eligibility of the discovery after considering the timely filed views of the SHPO, TransCanada and other consulting parties. The applicable federal agency may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).
4. For properties determined eligible pursuant to Stipulation VI.A.3, the applicable federal agency will notify the SHPO, ACHP and other consulting parties of those actions that it proposes to resolve adverse effects.

- a. Consulting parties will have forty-eight (48) hours to provide their views on the proposed actions.
 - b. The applicable federal agency will ensure that the timely filed recommendations of consulting parties are taken into account prior to granting approval of the measures that TransCanada will implement to resolve adverse effects.
 - c. TransCanada will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. Dispute Resolution: The applicable federal agency will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding resolution of adverse effects. The applicable federal agency will use the contact information provided in Attachment C or D in order to notify the ACHP. Within seven (7) days of receipt of such a written request, the ACHP will provide the applicable federal agency with recommendations on resolving the dispute. The applicable federal agency will take into account any timely filed recommendations provided by the ACHP in making a final decision about how to proceed.

B. Construction or Modification of Electrical Transmission Facilities

1. If previously unidentified historic properties are discovered unexpectedly during construction or modification of transmission facilities the construction contractor will immediately halt all construction activity within a one-hundred (100) foot radius of the discovery, notify the RUS applicant of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the RUS applicant shall:
 - a. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
 - b. clearly mark the area of the discovery;
 - c. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
 - d. notify RUS and the SHPO of the discovery.
2. Upon receipt of such notification RUS will immediately notify the SHPO and other consulting parties, including Indian tribes of the discovery.
3. RUS will have seven (7) calendar days following notification provided in accordance with Stipulation VI.B.1 to determine the National Register eligibility of the discovery in consultation with the SHPO, the applicant and other consulting parties. The RUS may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).
4. For properties determined eligible pursuant to Stipulation VI.B.3 RUS will notify the SHPO and other consulting parties of those actions that it proposes to resolve adverse effects. Consulting parties will provide their views on the proposed actions within forty-eight (48) hours. RUS will ensure that the timely filed recommendations of the

SHPO and other consulting parties are taken into account prior to granting approval of those actions that the applicant will implement to resolve adverse effects. Once RUS approval has been granted, its applicant will carry out the approved measures prior to resuming construction activities in the location of the discovery.

5. Dispute Resolution: RUS will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding the resolution of adverse effects. The applicable federal agency will use the contact information provided in Attachment D in order to notify the ACHP. Within seven (7) days of receipt of such a written request, the ACHP will provide RUS with its recommendations for resolving the dispute. RUS will take into account any recommendations provided by the ACHP in making a final decision about how to proceed.
6. Reporting: Within six (6) months of the resumption of construction within the location of the discovery, RUS will submit a final report to the SHPO and other consulting parties describing implementation of the actions taken in accordance with Stipulation VI.B and, as appropriate, the analysis and interpretation of recovered information.

C. Unanticipated Discovery of Human Burials and Remains, and Funerary Objects

1. When Native American human remains or funerary objects or objects of cultural patrimony are unexpectedly discovered during construction of the Keystone Project on federal or tribal lands within the APE, TransCanada or a RUS applicant, as appropriate, will notify immediately the federal agency responsible for compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001 et. seq.] and its implementing regulations, 43 C.F.R. Part 10.
2. Non-Native American human burials and remains, and funerary objects discovered on federal lands within the APE will be treated by the federal agency having jurisdiction of the remains in accordance with applicable federal law, taking into account the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).
3. DOS and RUS will treat human burials and remains discovered on non-federal land in accordance with the provisions of Attachments C and D, respectively, and any applicable laws. In those instances where the USACE has jurisdiction under Section 10 or 404 permitting authority for non-federal lands in the APE, the USACE will ensure that TransCanada complies with the provisions of Attachment C acting in the place of the DOS. In determining appropriate actions to be carried out, DOS, USACE and RUS will be guided by the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007)

VII. CURATION

- A. Federal agencies will curate any artifacts, materials or records resulting from archaeological identification and mitigation conducted on federal lands under their jurisdiction in accordance with 36 CFR Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections.*"
- B. TransCanada and RUS applicants will return all artifacts recovered from private lands to the respective landowner after analysis is complete, unless applicable state law requires otherwise. TransCanada and RUS applicants will encourage and assist landowners in donating any returned artifacts to a local curation facility identified by the respective SHPO.
- C. Federal agencies will determine the disposition of human burials, human remains and funerary objects in accordance with applicable federal and state law.

VIII. REPORTING

- A. Within one year of completion of pipeline construction of a spread, TransCanada will submit a comprehensive draft report to DOS describing the results and findings of the implementation of the actions and plans specified in Stipulations V.C through G, VI.A, including Attachment C.
- B. TransCanada will submit a draft comprehensive report for each spread to the DOS, SHPO(s) and other consulting parties for thirty (30) day review and comment. TransCanada shall address timely comments and recommendations submitted by consulting parties in preparation of the Final Comprehensive Report for that spread. TransCanada will submit the final report to DOS for review and approval.

IX. MONITORING IMPLEMENTATION OF THE PA

Each quarter following the execution of this PA until it expires or is terminated, the DOS with the assistance of RUS, USACE, NRCS, FSA and USFWS will provide the consulting parties to this PA a progress report summarizing the work carried out pursuant to its terms. Such report will include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the efforts to carry out the terms of this PA. DOS will maintain and update a list of the current contact for the consulting parties to be distributed each quarterly report.

X. DISPUTE RESOLUTION

- A. "Appropriate federal agency" refers to the DOS, RUS or the federal land managing agency, as applicable.

- B. Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the appropriate federal agency will consult with such party to resolve the objection. If the appropriate federal agency determines that such objection cannot be resolved, the appropriate federal agency will:
1. Forward all documentation relevant to the dispute, including the applicable federal agency's proposed resolution, to the ACHP. The ACHP will provide the appropriate federal agency with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the appropriate federal agency will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The appropriate federal agency will then proceed according to its final decision.
 2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the applicable federal agency may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the appropriate federal agency will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. The appropriate federal agency's responsibility is to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remaining unchanged.

XI. DURATION

This PA will be null and void if all of its stipulations have not been carried out within four (4) years from the date of its execution. At such time, and prior to work continuing on the Keystone Project, the DOS, RUS, USACE, NRCS, FSA, and USFWS will either (a) execute a Memorandum of Agreement (MOA) or PA pursuant to 36 CFR §§ 800.6 or 800.14(b), respectively, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR. § 800.7. Prior to such time, the DOS may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation X. The DOS, RUS, USACE, NRCS, FSA, and USFWS will notify the signatories and concurring parties as to the course of action they will pursue.

XII. AMENDMENT

Any signatory party to this PA may propose in writing to the other signatory parties that it be amended. The signatory parties will consult in an effort to reach agreement on an amendment. Any amendment will be effective on the date it is signed by all of the signatories and filed with the ACHP.

XIII. TERMINATION

- A. If any signatory to this PA determines that its terms will not or cannot be carried out, that party will immediately consult with the other parties to attempt to develop an amendment per Stipulation XII. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

- B. Once the PA is terminated, and prior to work continuing on the undertaking, the DOS, RUS, USACE, NRCS, FSA, and USFWS must either (a) execute, as appropriate, an MOA or PA pursuant to 36 CFR §§ 800.6 or 800.14(b), respectively, or (b) request, take into account, and respond to the comments of the ACHP in accordance with 36 CFR § 800.7. The DOS, RUS, USACE, NRCS, FSA, and USFWS will notify the signatories and concurring parties as to the course of action it will pursue.

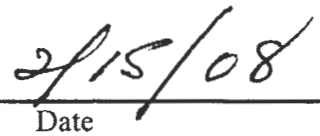
XIV. SCOPE OF THE PA

This Agreement is limited in scope to actions that will facilitate the construction of the Keystone Project and related facilities, and is entered into solely for that purpose.

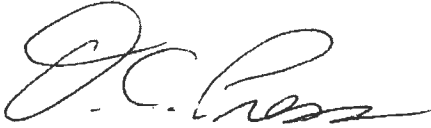
EXECUTION of this PA by the DOS, ACHP, RUS, USACE, NRCS, FSA, USFWS, the North Dakota SHPO, South Dakota SHPO, Kansas SHPO, Nebraska SHPO, Illinois SHPO, Missouri SHPO and Oklahoma SHPO, and implementation of its terms evidence that the DOS, RUS, USACE, NRCS, FSA, USFWS have taken into account the effects of the Keystone Project on historic properties and afforded the ACHP an opportunity to comment.



John D. Negroponte
Deputy Secretary of State
United States Department of State



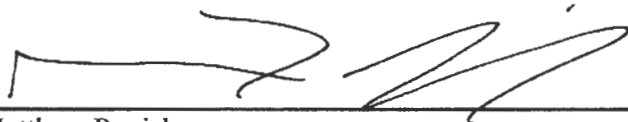
Date



David C. Press
Colonel, Corps of Engineers
District Commander

14 Feb 2008

Date



Date 2/13/2008

Matthew Ponish
National Environmental Compliance Manager
United States Department of Agriculture
Farm Service Agency

Roger A. Hansen

2/19/08
Date

Mr. Roger A. Hansen
State Conservationist, Missouri
Natural Resources Conservation Service
United States Department of Agriculture

Mark S. Plank

2/14/08

Mr. Mark S. Plank
Federal Preservation Officer
United States Department of Agriculture
Rural Development, Utilities Programs
(Rural Utilities Service)

Date

Rick A Coleman

2/19/08

Rick Coleman

Date

Assistant Regional Director

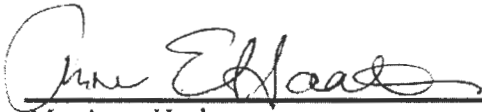
United States Fish and Wildlife Service

John M. Fowler

2/20/08

Mr. John M. Fowler
Executive Director
Advisory Council on Historic Preservation

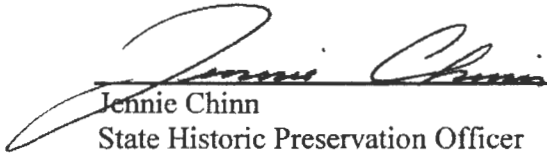
Date



Ms. Anne Haaker
Deputy State Historic Preservation Officer
Illinois

2-15-08

Date


Jennie Chinn
State Historic Preservation Officer
Kansas

2-18-08

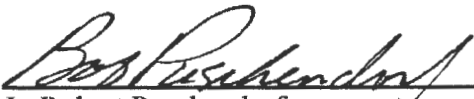
Date

Doyle Childers

2-14-08

Mr. Doyle Childers
State Historic Preservation Officer
Director,
Missouri Department of Natural Resources

Date



L. Robert Puschendorf
Deputy State Historic Preservation Officer
Nebraska

2/14/08

Date

Merlan E. Paaverud, Jr.

2-14-08

Mr. Merlan E. Paaverud, Jr.
State Historic Preservation Officer
North Dakota

Date

Bob Blackburn

2-13-08

Dr. Bob L. Blackburn
State Historic Preservation Officer
Oklahoma

Date

Jay D. Vogt
Mr. Jay D. Vogt
State Historic Preservation Officer
South Dakota

02-14-2008
Date

David Montemurro

Feb 13, 2008

David Montemurro
TransCanada Keystone Pipeline, L.P.
(invited signatory)

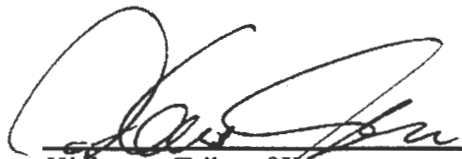
Date

Wm. Quake L

2/13/08

Ho-Chunk Nation of Wisconsin
(concurring party)

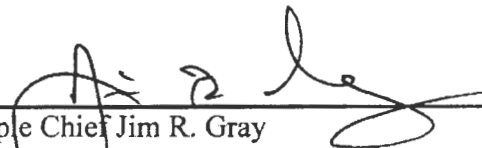
Date



Kickapoo Tribe of Kansas
(concurring party)

2-19-08

Date



Principle Chief Jim R. Gray
Osage Nation
(concurring party)

2-22-08
Date

ATTACHMENT A

Tables showing properties for which TransCanada had been denied access to conduct identification and evaluation studies:

Table 1: Areas Not Surveyed Along Mainline Route					
State	County	From Milepost	To Milepost	Status	Miles
North Dakota	Pembina	17.25	17.47	Required - No Access	0.22
North Dakota	Walsh	33.28	33.42	Required - No Access	0.14
North Dakota	Walsh	48.63	49.42	Required - No Access	0.79
North Dakota	Nelson	56.79	57.05	Required - No Access	0.26
North Dakota	Barnes	139.75	140.27	Required - No Access	0.52
North Dakota	Barnes	164.62	166.18	Required - No Access	1.56
North Dakota	Barnes	167.33	167.84	Required - No Access	0.51
North Dakota	Ransom	180.89	181.16	Required - No Access	0.27
North Dakota	Sargent	196.58	197.00	Required - No Access	0.42
North Dakota	Sargent	200.20	200.53	Required - No Access	0.33
North Dakota	Sargent	203.12	203.62	Required - No Access	0.50
North Dakota	Sargent	205.12	205.67	Required - No Access	0.55
South Dakota	Marshall	228.66	229.74	Required - No Access	1.08
South Dakota	Day	256.15	256.68	Required - No Access	0.53
South Dakota	Kingsbury	339.18	339.31	Required - No Access	0.13
South Dakota	McCook	389.00	391.00	Required - SHPO Request	2.00
South Dakota	Hutchinson	407.18	407.74	Required - Reroute	0.56
Nebraska	Cedar	440.00	440.15	Required - No Access	0.15
Nebraska	Cedar	441.87	441.91	Required - No Access	0.05
Nebraska	Cedar	447.04	447.66	Required - No Access	0.61
Nebraska	Wayne	479.63	479.94	Required - No Access	0.31
Nebraska	Wayne	480.45	480.93	Required - No Access	0.49
Nebraska	Stanton	495.18	495.43	Required - No Access	0.25
Nebraska	Stanton	496.19	498.69	Required - No Access	2.50
Nebraska	Stanton	510.65	510.69	Required - No Access	0.04
Nebraska	Colfax	522.17	522.26	Required - No Access	0.09
Nebraska	Colfax	535.90	536.41	Required - No Access	0.51
Nebraska	Colfax	542.68	543.17	Required - No Access	0.49
Nebraska	Butler	544.61	545.24	Required - No Access	0.64
Nebraska	Butler	550.55	550.87	Required - No Access	0.31
Nebraska	Butler	563.65	564.14	Required - No Access	0.50
Nebraska	Butler	566.75	567.22	Required - No Access	0.47
Nebraska	Seward	575.86	575.91	Required - No Access	0.05
Nebraska	Seward	589.17	589.93	Required - No Access	0.75
Nebraska	Seward	593.01	593.28	Required - No Access	0.27
Nebraska	Saline	599.57	599.72	Required - No Access	0.14
Nebraska	Saline	603.40	604.27	Required - No Access	0.87
Nebraska	Saline	605.50	607.74	Required - No Access	2.24
Nebraska	Saline	608.74	609.74	Required - No Access	1.00
Nebraska	Saline	611.20	611.25	Required - No Access	0.04

Table 1: Areas Not Surveyed Along Mainline Route

State	County	From Milepost	To Milepost	Status	Miles
Nebraska	Jefferson	618.45	618.94	Required - No Access	0.49
Nebraska	Jefferson	621.58	621.98	Required - No Access	0.40
Nebraska	Jefferson	626.19	626.60	Required - No Access	0.41
Nebraska	Jefferson	639.29	639.82	Required - No Access	0.53
Kansas	No survey areas				
Missouri	Montgomery	956.28	956.73	Required - No Access	0.45
Missouri	Lincoln	957.00	959.86	Required - No Access	2.86
Missouri	Lincoln	962.19	962.24	Required - No Access	0.05
Missouri	Lincoln	962.64	962.70	Required - No Access	0.06
Missouri	Lincoln	964.20	964.49	Required - No Access	0.29
Missouri	Lincoln	964.62	964.74	Required - No Access	0.12
Missouri	Lincoln	965.05	965.46	Required - No Access	0.41
Missouri	Lincoln	970.85	971.02	Required - No Access	0.17
Missouri	Lincoln	974.25	975.91	Required - No Access	1.66
Missouri	Lincoln	979.90	980.97	Required - No Access	1.07
Missouri	Lincoln	981.61	982.30	Required - No Access	0.69
Missouri	Lincoln	982.51	984.87	Required - No Access	2.36
Missouri	St. Charles	986.59	987.14	Required - No Access	0.55
Missouri	St. Charles	1000.71	1001.69	Required - No Access	0.97
Missouri	St. Charles	1002.65	1002.91	Required - No Access	0.26
Missouri	St. Charles	1003.98	1004.47	Required - No Access	0.49
Missouri	St. Charles	1005.20	1005.27	Required - No Access	0.07
Missouri	St. Charles	1007.11	1007.30	Required - No Access	0.19
Missouri	St. Charles	1015.60	1015.85	Required - No Access	0.25
Missouri	St. Charles	1018.16	1024.68	Required - No Access	6.52
Illinois	Madison	1028.23	1028.56	Required - No Access	0.33
Illinois	Madison	1029.41	1031.54	Required - No Access	2.13
Illinois	Madison	1031.54	1032.37	Required - No Access	0.83
Illinois	Madison	1034.09	1034.98	Required - No Access	0.89
Illinois	Madison	1035.86	1036.54	Required - No Access	0.68
Illinois	Madison	1036.72	1038.16	Required - No Access	1.44
Illinois	Madison	1042.29	1042.57	Required - No Access	0.28
Illinois	Madison	1047.38	1047.42	Required - No Access	0.05
Illinois	Madison	1048.76	1048.80	Required - No Access	0.04
Illinois	Madison	1049.31	1049.43	Required - No Access	0.12
Illinois	Madison	1050.07	1050.19	Required - No Access	0.12
Illinois	Bond	1059.69	1059.76	Required - No Access	0.07
Illinois	Bond	1067.82	1068.06	Required - No Access	0.24
Illinois	Bond	1069.59	1069.85	Required - No Access	0.26
Illinois	Fayette	1076.69	1076.90	Required - No Access	0.21
Illinois	Fayette	1077.29	1077.54	Required - No Access	0.25
Illinois	Marion	1081.69	1081.80	Required - No Access	0.10

Table 2: Areas Not Surveyed along Cushing Extension

State	County	From Milepost	To Milepost	Status	Miles
Nebraska	Jefferson	0.00	0.34	Required - No Access	0.34
Kansas	Washington	9.10	9.74	Required - No Access	0.64
Kansas	Clay	42.83	43.83	Required - No Access	1.00
Kansas	Clay	50.05	50.60	Required - No Access	0.55
Kansas	Clay	51.58	51.91	Required - No Access	0.33
Kansas	Clay	52.16	52.56	Required - No Access	0.40
Kansas	Clay	53.37	53.44	Required - No Access	0.07
Kansas	Clay	53.61	54.71	Required - No Access	1.10
Kansas	Dickinson	68.28	68.79	Required - No Access	0.51
Kansas	Dickinson	72.03	72.56	Required - No Access	0.52
Kansas	Dickinson	76.15	76.68	Required - No Access	0.53
Kansas	Dickinson	85.99	86.32	Required - No Access	0.33
Kansas	Dickinson	93.51	94.00	Required - No Access	0.49
Kansas	Dickinson	98.23	98.53	Required - No Access	0.30
Kansas	Marion	109.04	109.28	Required - No Access	0.24
Kansas	Marion	112.23	113.74	Required - No Access	1.51
Kansas	Marion	114.84	115.10	Required - No Access	0.26
Kansas	Marion	116.06	116.60	Required - No Access	0.53
Kansas	Marion	117.00	118.10	Required - No Access	1.10
Kansas	Butler	136.88	137.39	Required - No Access	0.52
Kansas	Butler	141.92	142.90	Required - No Access	0.98
Kansas	Butler	155.91	156.35	Required - No Access	0.44
Kansas	Butler	158.14	158.36	Required - No Access	0.22
Kansas	Butler	159.41	159.92	Required - No Access	0.51
Kansas	Butler	161.81	161.87	Required - No Access	0.07
Kansas	Butler	162.43	163.69	Required - No Access	1.26
Kansas	Butler	168.08	168.71	Required - No Access	0.64
Kansas	Cowley	180.75	181.41	Required - No Access	0.67
Kansas	Cowley	185.01	186.03	Required - No Access	1.02
Kansas	Cowley	186.37	186.67	Required - No Access	0.30
Kansas	Cowley	187.55	188.05	Required - No Access	0.51
Kansas	Cowley	188.57	190.57	Required - No Access	2.01
Kansas	Cowley	191.58	192.22	Required - No Access	0.64
Kansas	Cowley	204.54	207.01	Required - No Access	2.47
Kansas	Cowley	208.41	209.39	Required - No Access	0.98
Kansas	Cowley	211.20	211.52	Required - No Access	0.32
Oklahoma	Kay	213.57	214.34	Required - No Access	0.77
Oklahoma	Kay	215.84	216.38	Required - No Access	0.54
Oklahoma	Kay	217.34	218.35	Required - No Access	1.01
Oklahoma	Kay	223.10	223.35	Required - No Access	0.25
Oklahoma	Kay	226.36	226.87	Required - No Access	0.51
Oklahoma	Kay	228.38	228.87	Required - No Access	0.49
Oklahoma	Kay	233.63	234.56	Required - No Access	0.93
Oklahoma	Kay	237.70	237.75	Required - No Access	0.06
Oklahoma	Kay	238.88	239.43	Required - No Access	0.54

Table 2: Areas Not Surveyed along Cushing Extension					
State	County	From Milepost	To Milepost	Status	Miles
Oklahoma	Kay	239.93	240.43	Required - No Access	0.50
Oklahoma	Kay	240.70	241.10	Required - No Access	0.40
Oklahoma	Noble	246.72	254.39	Required - No Access	7.67
Oklahoma	Noble	259.09	259.88	Required - No Access	0.79
Oklahoma	Noble	260.32	260.96	Required - No Access	0.64
Oklahoma	Noble	263.01	264.07	Required - No Access	1.07
Oklahoma	Noble	266.09	266.62	Required - No Access	0.52
Oklahoma	Payne	269.35	269.90	Required - No Access	0.55
Oklahoma	Payne	271.32	271.84	Required - No Access	0.52
Oklahoma	Payne	275.11	275.49	Required - No Access	0.37
Oklahoma	Payne	279.95	280.21	Required - No Access	0.26
Oklahoma	Payne	280.46	281.30	Required - No Access	0.84
Oklahoma	Payne	288.48	288.91	Required - No Access	0.43
Oklahoma	Payne	292.64	292.90	Required - No Access	0.26
Oklahoma	Payne	293.43	293.63	Required - No Access	0.20
Oklahoma	Payne	295.14	295.99	Required - No Access	0.85

ATTACHMENT B

List of Indian Tribes Invited by the Department of State to Participate in Consultation:

The Absentee-Shawnee Tribe of Indians of Oklahoma, Blackfeet Nation, Caddo Nation of Oklahoma, Cherokee Nation, Cheyenne River Sioux Tribe, Cheyenne-Arapaho Tribe of Oklahoma, Chickasaw Nation of Oklahoma, Chippewa-Cree Indians, Choctaw Nation of Oklahoma, Citizen Potawatomi Nation, Comanche Nation, Confederated Salish and Kootenai Tribes of the Flathead Indian Nation, Crow Creek Sioux Tribe, Delaware Nation, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Eastern Shoshone Tribe, Flandreau Santee Sioux Tribe, the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Fort Peck Tribes, Gros Ventre and Assiniboine Tribe of Fort Belknap, Gun Lake Potawatomi, Hannahville Indian Community of Michigan, Ho-Chunk Nation of Wisconsin, Huron Potawatomi Nation, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Jena Band of Choctaw Indians, Jicarilla Apache Tribe, Kaw Tribe of Oklahoma, Kialegee Tribal Town of the Creek Nation of Oklahoma, Kickapoo Traditional Tribe of Texas, Kickapoo Tribe in Kansas, Kickapoo Tribe of Oklahoma, Kiowa Indian Tribe of Oklahoma, Lower Bruhle Sioux Tribe, Lower Sioux Indian Community, Miami Tribe of Oklahoma, Mille Lacs Band of Ojibwe, Modoc Tribe of Oklahoma, Muscogee Creek Nation, Northern Arapaho Tribe, Northern Cheyenne Tribe, Northern Ute Tribe, Oglala Sioux Tribe, Omaha Tribe of Nebraska, Osage Nation, Otoe-Missouri Tribe, Ottawa Tribe of Oklahoma, Pawnee Nation of Oklahoma, Peoria Indian Tribe of Oklahoma, Poarch Band of Creek Indians, Pokagon Band of Potawatomi Indians of Michigan, Ponca Tribe of Indians of Oklahoma, Ponca Tribe of Nebraska, Prairie Band of Potawatomi Indians, Prairie Island Indian Community, Quapaw Tribe, Red Lake Band of Chippewa Indians of Minnesota, Rosebud Sioux Tribe, Sac and Fox Nation of Oklahoma, Sac and Fox of the Missouri in Kansas and Nebraska, Sac and Fox Tribe of the Mississippi in Iowa, Santee Sioux Tribe of Nebraska, Shakopee Mdewakanton Sioux (Upper Sioux Pezihutazizi Kap), Shawnee Tribe, Soboba Tribe, Sisseton-Wahpeton Oyate Sioux, Sisseton Wahpeton Oyate/ Wahpekute, Southern Ute Indian Tribe, Spirit Lake Tribe, Standing Rock Sioux Tribe, Stockbridge-Munsee Tribe, Three Affiliated Tribes, Tonkawa Tribe, Trenton Indian Service Area, Turtle Mountain Band of Chippewa, United Keetoowah Band of Cherokee Indians, Upper Sioux-Pezihutazizi Kapi, Ute Mountain Tribe, White Earth Band of Minnesota Chippewa, Wichita and Affiliated Tribes, Winnebago Tribe, Wyandotte Nation and Yankton Sioux.

ATTACHMENT C

STATE-BY-STATE PLANS FOR THE UNANTICIPATED DISCOVERY OF HUMAN REMAINS OR BURIALS ON NON-FEDERAL LANDS DURING CONSTRUCTION OF THE KEYSTONE PROJECT PIPELINE

I. For construction of the Keystone Project pipeline in Illinois, TransCanada will implement the following measures:

1. When an unmarked human burial or unregistered grave is encountered during construction activities, TransCanada will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act).
2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The Environmental Inspector will notify the county coroner, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO) and other consulting parties, including Indian tribes, within forty-eight (48) hours of the discovery.
5. Within seventy-two (72) hours after notification the county coroner will determine jurisdiction. If the coroner refers the matter to the SHPO, the SHPO will determine the treatment, including mitigation and disposition of the unmarked human burial or unregistered grave in accordance with Title 17, Chapter VI, Section 4170. TransCanada will implement the treatment and disposition measures deemed appropriate by the SHPO.
6. TransCanada will resume construction activities in the area of the discovery upon receipt of written authorization from either the county coroner or the Illinois SHPO, whomever has jurisdiction under state law.

II. For construction of the Keystone Project pipeline in Kansas, TransCanada will implement the following measures:

1. When unmarked human burial sites or human skeletal remains are encountered during construction activities, TransCanada will comply with Kansas' Unmarked Burial Sites Preservation Act (KSA 75-2741 to 75-2754) and its implementing regulations (KAR 126-1-1 through 126-1-2).

2. Upon encountering unmarked human burial sites or human skeletal remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will
 - o ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - o implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - o notify the appropriate county sheriff's office, the chairperson of the Unmarked Burial Sites Preservation Board (Kansas State Archaeologist), the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO) and other consulting parties, including Indian tribes, of the discovery.
4. If TransCanada determines that disturbance to the unmarked burial site or human remains cannot be avoided, TransCanada will consult with the DOS, the SHPO and other consulting parties to develop a detailed work plan for treatment of the burial site or human remains that includes provisions for the removal, treatment and disposition of human remains. In accordance with state law, TransCanada will submit this work plan to the Unmarked Burial Sites Preservation Board as part of its request for a permit under KAR 126-1-2.
5. TransCanada will resume construction activities in the area of the discovery once implementation of the measures authorized under the permit has been completed.

III. For construction of the Keystone Project pipeline in Missouri, TransCanada will implement the following measures:

1. When an unmarked human burial or skeletal remains are encountered during construction activities, TransCanada will comply with Missouri Rev. Stat. § 194.400, et seq. (Unmarked Human Burial Law).
2. Upon encountering unmarked human burials or skeletal remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will
 - o ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - o implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and

- notify the local law enforcement officer, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO) and other consulting parties, including Indian tribes, of the discovery.
4. The investigation by the local law enforcement officer will establish jurisdiction over the remains. TransCanada's Environmental Inspector will notify the SHPO when local law enforcement determines that the SHPO has jurisdiction. Within seven (7) days of receipt of such notification, the SHPO will determine the treatment to be implemented by TransCanada in accordance with Missouri Rev. Stat. § 194.400, et seq. The disposition of the human remains will be determined based on Missouri Rev. Stat. § 194.408 and § 194.409. TransCanada will assist the SHPO in implementing the provisions of state law.
 5. If an inadvertent discovery occurs on the 2.3 acre portion of the NRCS WRP easement (subordinated to DOS for purposes of installation of the pipeline), the landowner, applicant and DOS also agree to notify NRCS and review the discovery and consult with the SHPO and concerned tribes (including the Osage Tribal Historic Preservation Officer) in accordance with procedures set forth in 36 CFR Part 800 and NRCS' National Cultural Resources Procedures Handbook (Directive 190-VI-NCRPH, First Edition, August 2001, and policy in the NRCS General Manual Chapter) (Directive 420 Part 401), thereby ensuring both appropriate treatment or mitigation of adverse effects and disposition of all cultural resources study records and material remains in a repository that is consistent with the standards established in 36 CFR Part 79.
 6. TransCanada will resume construction activities in the area of the discovery upon receipt of written authorization from either local law enforcement or the Missouri SHPO, whomever has jurisdiction under state law.

IV. For construction of the Keystone Project pipeline in Nebraska (Cushing Extension, TransCanada will implement the following measures:

1. When unmarked human skeletal remains or burial goods are discovered during construction activities, TransCanada will comply with Nebraska Rev. Stat. § 12-1201 through § 12-1212, et seq. and § 28-1301.
2. Upon encountering unmarked human skeletal remains or burial goods during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. TransCanada will notify the local law enforcement officer in the county, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO), and other consulting parties, including Indian tribes, within forty-eight (48) hours of the discovery.

5. If local law enforcement determines that the remains are not associated with a crime, TransCanada will determine if it is prudent and feasible to avoid disturbing the remains. If TransCanada determines that disturbance cannot be avoided, TransCanada will conduct the removal, treatment and disposition of the human burial or remains under the direction of the Nebraska State Historical Society.
6. TransCanada will resume construction activities in the area of the discovery when the human skeletal remains or burial goods have been accepted by the Nebraska State Historical Society for the purposes of disposition.

V. For construction of the Keystone Project pipeline in North Dakota, TransCanada will implement the following measures:

1. When unmarked human burials or human remains are discovered during construction activities, TransCanada will comply with North Dakota Century Code §23-06-27 and administrative rules North Dakota Administrative Code Chapter 40-02-03.
2. Upon encountering unmarked human burials or human remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will
 - ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the completion of requirements under state law; and
 - notify the local law enforcement agency, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO)/State Historical Society of North Dakota (SHSND), other consulting parties, including Indian tribes, and the State Department of Health of the discovery.
4. If local law enforcement determines that the remains are not associated with a crime, TransCanada will determine if it is prudent and feasible to avoid disturbing the remains. If TransCanada determines that disturbance cannot be avoided, TransCanada will remove and reinter the human remains in accordance with rules adopted by the SHPO/SHSND and the State Health Department.
5. TransCanada will resume construction activities in the area of the discovery once implementation of the measures required by the SHPO/SHSND and State Health Department have been completed.

VI. For construction of the Keystone Project pipeline in Oklahoma (Cushing Extension, TransCanada will implement the following measures:

1. When a burial ground, human remains or burial furniture is discovered during construction activities, TransCanada will comply with Okla. Stat. Ann. 21 §1161-1168.7 (Oklahoma Burial Law).
2. Upon encountering a burial ground, human remains or burial furniture during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will
 - ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the completion of requirements under state law; and
 - notify the appropriate law enforcement officer in the county in which the remains have been discovered, the Chief Medical Examiner, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO) and other consulting parties, including Indian tribes and the landowner, of the discovery.
4. Upon learning that remains are not associated with a crime, TransCanada has fifteen (15) days within which to notify the SHPO and the Oklahoma State Archaeologist. If TransCanada determines that disturbance cannot be avoided, TransCanada will treat the burial site or human remains in accordance with procedures established by the SHPO and Oklahoma State Archaeologist.
5. TransCanada will resume construction activities in the area of the discovery upon completion of the measures authorized by the SHPO and Oklahoma state archaeologist.

VII. For construction of the Keystone Project pipeline in South Dakota, TransCanada will implement the following measures:

1. When a unmarked human burial or human remains is discovered during construction activities, TransCanada will comply with South Dakota State Law Chapter 34-27.
2. Upon encountering an unmarked human burial or human remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.

4. The Environmental Inspector will notify the local law enforcement agency, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO), the South Dakota State Archaeologist and other consulting parties, including Indian tribes, within forty-eight (48) hours of the discovery.
5. If local law enforcement determines that the remains are not associated with a crime, TransCanada will determine if it is prudent and feasible to avoid disturbing the remains. If TransCanada determines that disturbance cannot be avoided, TransCanada will consult with the South Dakota state archaeologist and other consulting parties, including Indian tribes, to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. TransCanada will implement the plan for removal, treatment and disposition of the burial or remains as authorized by the South Dakota state archaeologist.
6. TransCanada may resume construction activities in the area of the discovery upon completion of the plan authorized by the state archaeologist.

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Forest County Potawatomi
Fort Peck
Fort Sill Apache
Ho-Chunk of Wisconsin
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Kaw Nation
Kickapoo of Kansas
Kickapoo of Oklahoma
Lower Sioux
MHA Nation
Miami Tribe of Oklahoma
Mille Lacs Band of Ojibwe
Muscogee Creek
Northern Arapaho
Northern Cheyenne
Oglala Sioux
Osage Tribe
Pawnee Nation
Pokagon Band of Potawatomi
Ponca of Oklahoma
Ponca Tribe of Nebraska
Rosebud Sioux
Sac and Fox of Nebraska and Kansas
Sac and Fox of Oklahoma
Santee Sioux of Nebraska
Sisseton-Wahpeton Oyate
Sisseton-Wahpeton Oyate/ Wahpekute
Spirit Lake Nation
Standing Rock Sioux
Tonkawa Tribe
United Keetoowah Band of Cherokee
Yankton Sioux

ATTACHMENT D

STATE-BY-STATE PLANS FOR THE UNANTICIPATED DISCOVERY OF HUMAN REMAINS OR BURIALS ON NON-FEDERAL LANDS DURING CONSTRUCTION OR MODIFICATION OF KEYSTONE PROJECT TRANSMISSION FACILITIES ASSISTED BY THE RURAL UTILITIES SERVICE

I. For construction or modification of Keystone Project electrical transmission facilities in Illinois, Rural Utilities Service (RUS) and its applicants will implement the following measures:

1. When an unmarked human burial or unregistered grave is encountered during construction activities, the RUS applicant will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act).
2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify the RUS applicant. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the RUS applicant will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The RUS applicant will notify the county coroner, RUS and the Illinois State Historic Preservation Office (SHPO) within forty-eight (48) hours of the discovery. Immediately upon receipt of such notification, RUS will notify the Advisory Council on Historic Preservation (ACHP), and other consulting parties, including Indian tribes, of the discovery.
5. Within seventy-two (72) hours after notification the county coroner will determine jurisdiction. If the coroner refers the matter to the SHPO, the SHPO will determine the treatment, including mitigation, and disposition of the unmarked human burial or unregistered grave in accordance with Title 17, Chapter VI, Section 4170. The RUS applicant will implement the treatment and disposition measures deemed appropriate by the SHPO.
6. The RUS applicant may resume construction activities in the area of the discovery upon receipt of written authorization from either the county coroner or the Illinois SHPO, whomever has jurisdiction under state law.

II. For construction or modification of Keystone Project electrical transmission facilities in Kansas, RUS and its applicants will implement the following measures:

1. When an unmarked human burial site or human skeletal remains is encountered during construction activities, the RUS applicant will comply with the Kansas Unmarked Burial Sites Preservation Act (KSA 75-2741 to 75-2754) and its implementing regulations (KAR 126-1-1 through 126-1-2).
2. Upon encountering unmarked human burial sites or human skeletal remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify the RUS applicant. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the RUS applicant will
 - ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - notify the appropriate county sheriff's office, the chairperson of the Unmarked Burial Sites Preservation Board (Kansas state archaeologist), RUS and the SHPO of the discovery.
4. Immediately upon receipt to the notification, RUS will notify the ACHP and other consulting parties, including Indian tribes, of the discovery.
5. If RUS determines that disturbance to the unmarked burial site or human remains cannot be avoided, RUS will consult with the applicant, the SHPO and other consulting parties to develop a detailed work plan for treatment of the burial site or human remains that includes provisions for the removal, treatment and disposition of human remains. In accordance with state law, RUS will submit this work plan to the Unmarked Burial Sites Preservation Board as part of its request for a permit under KAR 126-1-2.
6. The RUS applicant may resume construction activities in the area of the discovery once the permit requirements have been fulfilled.

III. For construction or modification of Keystone Project electrical transmission facilities in Missouri, RUS and its applicants will implement the following measures:

1. If an unmarked human burial or skeletal remains are encountered during construction activities, the RUS applicant will comply with Missouri Rev. Stat. §194.400, et seq. (Unmarked Human Burial Law).
2. Upon encountering an unmarked human burial or skeletal remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the RUS applicant will

- ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - notify the local law enforcement officer, RUS and the SHPO of the discovery.
4. Immediately upon receipt of such notification, RUS will notify the ACHP and other consulting parties, including Indian tribes, of the discovery.
 5. The investigation by a local law enforcement officer will establish jurisdiction over the remains. The RUS applicant will notify RUS and the SHPO if local law enforcement determines that the SHPO has jurisdiction. Within seven (7) days of receipt of such notification, the SHPO will determine the treatment to be implemented by the RUS applicant in accordance with Missouri Rev. Stat. § 194.400, et seq. The disposition of the human remains will be determined based on Missouri Rev. Stat. § 194.408 and § 194.409. The RUS applicant will assist the SHPO in implementing the provisions of state law.
 6. The RUS applicant may resume construction activities in the area of the discovery upon receipt of written authorization from either local law enforcement or the Missouri SHPO, whomever has jurisdiction under state law.

IV. For construction or modification of Keystone Project electrical transmission facilities in Nebraska (Cushing Extension), RUS and its applicants will implement the following measures:

1. When unmarked human skeletal remains or burial goods are discovered during construction activities, the RUS applicant will comply with Nebraska Rev. Stat. § 12-1201 through § 12-1212, et seq. and § 28-1301.
2. Upon encountering unmarked human skeletal remains or burial goods during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify the RUS applicant. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the RUS applicant will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The RUS applicant will notify the local law enforcement officer in the county, RUS and the SHPO, as soon as possible but within 48 hours of the discovery.
5. Immediately upon receipt of such notification, RUS will notify the ACHP and other consulting parties, including Indian tribes, of the discovery.

6. If local law enforcement determines that the remains are not associated with a crime, RUS will determine if it is prudent and feasible to avoid disturbing the remains. If RUS determines that disturbance cannot be avoided, the RUS applicant will conduct the removal, treatment and disposition of the human burial or remains under the direction of the Nebraska State Historical Society.
7. The RUS applicant may resume construction activities in the area of the discovery when the human skeletal remains or burial goods have been accepted by the Nebraska State Historical Society for the purposes of disposition.

V. For construction or modification of Keystone Project electrical transmission facilities in North Dakota, RUS and its applicants will implement the following measures:

1. If an unmarked human burial or human remains is discovered during construction activities, an RUS applicant will comply with North Dakota Century Code §23-06-27 and administrative rules North Dakota Administrative Code Chapter 40-02-03.
2. Upon encountering unmarked human burials or human remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify the RUS applicant. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the RUS applicant will
 - o ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - o implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the completion of requirements under state law; and
 - o notify the local law enforcement agency, RUS, the SHPO/State Historical Society of North Dakota (SHSND) and the State Department of Health of the discovery.
4. Immediately upon receipt of such notification, RUS will notify the ACHP and other consulting parties, including Indian tribes, of the discovery.
5. If local law enforcement determines that the remains are not associated with a crime, RUS will determine if it is prudent and feasible to avoid disturbing the remains. If RUS determines that disturbance cannot be avoided, its applicant will remove and reinter the human remains in accordance with rules adopted by the SHPO/SHSND and the State Health Department.
6. The RUS applicant may resume construction activities in the area of the discovery once implementation of the measures required by the SHPO/SHSND and State Health Department have been completed.

VI. For construction or modification of Keystone Project electrical transmission facilities in Oklahoma (Cushing Extension), RUS and its applicants will implement the following measures:

1. When a burial ground, human remains or burial furniture is discovered during construction activities, the RUS applicant will comply with Okla. Stat. Ann. 21 §1161-1168.7 (Oklahoma Burial Law).
2. Upon encountering a burial ground, human remains or burial furniture during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify the RUS applicant. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will
 - o ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - o implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the completion of requirements under state law; and
 - o notify the appropriate law enforcement officer in the county in which the remains have been discovered, the Chief Medical Examiner, RUS, the SHPO, the Oklahoma Archaeological Survey's (OAS) State Archaeologist and the landowner, of the discovery.
4. Immediately upon receipt of such notification, RUS will notify the ACHP and other consulting parties, including Indian tribes, of the discovery.
5. RUS will notify the SHPO and the OAS State Archaeologist of the law enforcement officer's determination that the remains are not associated with a crime within fifteen (15) days. If RUS determines that disturbance cannot be avoided, its applicant will treat the burial site or human remains in accordance with procedures established by the SHPO and OAS State Archaeologist.
6. The RUS applicant may resume construction activities in the area of the discovery upon completion of the measures authorized by the SHPO and OAS State archaeologist.

VII. For construction or modification of Keystone Project electrical transmission facilities in South Dakota, RUS and its applicants will implement the following measures:

1. When an unmarked human burial or human remains is discovered during construction activities, the RUS applicant will comply with South Dakota State Law Chapter 34-27.
2. Upon encountering an unmarked human burial or human remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify the RUS applicant. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the RUS applicant will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.

4. The RUS applicant will notify the local law enforcement agency, RUS, the SHPO, and the South Dakota State Archaeologist as soon as possible, but within forty-eight (48) hours of the discovery.
5. Immediately upon receipt of such notification RUS will notify the ACHP and other consulting parties, including Indian tribes, of the discovery.
6. If local law enforcement determines that the remains are not associated with a crime, RUS will determine if it is prudent and feasible to avoid disturbing the remains. If RUS determines that disturbance cannot be avoided, the agency will consult with its applicant, the South Dakota State Archaeologist and other consulting parties, including Indian tribes, as appropriate, to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. The RUS applicant will implement the plan for removal, treatment and disposition of the burial or remains as authorized by the South Dakota State Archaeologist.
7. The RUS applicant may resume construction activities in the area of the discovery upon completion of the plan authorized by the South Dakota State Archaeologist.

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