

Meeting Notes

Sage-Grouse Mitigation and Minimization Plan

Montana Fish, Wildlife and Parks, Montana Department of Environmental Quality, and TransCanada Representatives

October 13, 2010

Attendees:

Tom Ring (MDEQ)
Craig Jones (MDEQ)
Greg Hallsten (MDEQ)
T.O. Smith (MFWP)
Alan Leitz (TCPL)
Michael Schmaltz (TCPL)
Steve Craycroft (TCPL)
John Buchanan (UPI)
Jonathan Minton (Trow)
Bill Mitchem (Trow)
Pat Farmer (Westech)
John Beaver (Westech)
Greg Poremba (Entrix)

Discussion:

Tom Ring reviewed a letter MFWP had provided to MDEQ as a response to “An Approach for Implementing Mitigation Measures to Minimize the Effect of Construction and Operation of the Keystone XL Pipeline Project on Greater Sage-Grouse” (Plan) that had been prepared by Westech and submitted to MDEQ and MFWP for review. Note this Plan was also reviewed by BLM prior to this meeting. To date BLM has not provided comment on the Plan although a meeting was held in Billings between BLM and Keystone representatives to discuss the Plan on September 9, 2010.

Key points from the MFWP letter, and summarized by Tom Ring, are as follow:

1. MFWP requests that Keystone list leks by proximity to the project to demonstrate that leks are outside the ROW and that Keystone contact MFWP and BLM if any new leks are located within 3 miles of the project.
DISCUSSION: None.
2. MFWP recommends a minimum “hump” or “roach” over the trench.
DISCUSSION: There was general discussion that older pipelines often left large roaches over the trench while more recent pipelines do not. The actual size of the roach can depend on soil conditions. Pat Farmer noted that the slight elevation of a roach compared to adjacent areas should not affect sage-grouse. Several Keystone representatives noted that post-construction grade would be matched to adjacent topography. There was not a commitment to a specific procedure or height on a roach.

3. MFWP recommended off-site mitigation to restore, enhance, and preserve sagebrush habitats in the vicinity of valves and pump stations that are located in sagebrush habitat. PS-10 and PS-15 were specifically discussed and MFWP and MDEQ recommended reducing noise levels around these stations to ambient conditions as quickly as possible.

DISCUSSION: Substantial discussion occurred around this point, particularly in regards to reducing noise. Keystone noted that PS-15 has been moved from Montana into South Dakota. The sage-grouse leks around PS-10 are several miles away from the site and the leks that are within 4 miles are on the other side of ridges that will buffer sound. Further, these leks (744, 1805, 1430, 1428, and 1725) were noted as leks where the proposed mitigation in the Plan “could be reduced due to the level of lek importance or other habitat characteristics” in the MFWP letter. Consequently, requiring additional sound mitigation is inconsistent with the letter. Keystone did not commit to any course of action but agreed to consider the issue. Keystone agreed to determine the amount of daily/weekly activity at each pump station and provide that information to DEQ and MFWP.

4. MFWP recommended that Keystone set aside mitigation funds to offset impacts of cheatgrass (a non-native annual grass) on landowners.

DISCUSSION: Keystone representatives responded that controlling cheatgrass on rights-of-way is very difficult and has been done with limited success on other projects. John Beaver noted that the majority of the route does not occur within areas that are infested with cheatgrass and that is unlikely cheatgrass will be a problem post-construction. Tom Ring recommended that the issue be further addressed in the EIS and suggested that Greg Poremba discuss the topic with Joe Weigand of FWP and an appropriate BLM biologist. John Beaver offered to provide Greg with monitoring data from pipelines and powerlines in the Great Basin where the effect of cheatgrass on right-of-way reclamation has been monitored and to contrast this with the type of environment Keystone XL crosses to demonstrate that cheatgrass on the Keystone right-of-way is not a likely problem. Tom Ring also noted that DEQ does not have the legal authority to require control of cheatgrass, this has been relegated to individual county weed boards in Montana. Additionally, cheat grass is not listed as a noxious weed in Montana.

5. MFWP recommended that pipeline inspection flights be limited to afternoon hours between March 1 and June 15.

DISCUSSION: Tom Ring edited this recommendation to state “where reasonably possible” since the inspection flights are a federal requirement and weather conditions may require flying in the morning.

6. MFWP recommended funding to support a MFWP monitor when construction was within 3 miles of an active lek and that this monitor would coordinate with MFWP and BLM to insure that “an advocate for the resource is actually present during construction”.

DISCUSSION: There was general discussion around this point as to who the monitor would report to, if the monitor would be an MFWP or DEQ employee or contractor, and

if that person could be the same as the DEQ State Inspector. DEQ and MFWP recommended one monitor per spread. The way the protocol is written, monitoring would occur at active leks where construction is within 3 miles of the lek between March 1 and June 15. If the number of male sage-grouse at the lek declined for 3 consecutive days due to project impacts, construction would be halted. If the number of males declined for other reasons, e.g. agriculture, the presence of predators, etc. construction could proceed. The problem with an agency monitor is that they would essentially have stop-work authority. MFWP clearly would like greater coordination between the Keystone and the agencies on this issue during construction. One option is to describe a specific communication process between the Keystone and the agencies regarding this issue, invite agency help and observation, but not give either MFWP or DEQ sole authority for a stop-work order.

7. Tom Ring then went through those portions of the MFWP letter that reduced the level of mitigation on 11 leks, agreed with the level of mitigation on 6 leks, and requested additional mitigation on 5 leks (see letter for specific lek ID). MFWP also noted that new leks may have been located near the route during 2010 surveys and noted two specific leks (one of which may be more than 4 miles from the project). Tom also summarized the additional mitigation request as: a) greater on-site and/or off-site mitigation for the 5 leks in question; b) greater off-site mitigation to compensate for effects from the pump stations; c) a mitigation fund for future weed control; and d) post-construction monitoring.

DISCUSSION: The project has the potential to gain substantial mileage if MFWP's proposal, or a version of the proposal, is adopted. Conversely, additional mitigation would be required, probably in the form of compensatory funds, to account for impacts around specific leks. T.O. Smith indicated that funds could be established and managed through a non-profit such as The Nature Conservancy. Tom Ring agreed with this option. Also, mitigation could be paid "up-front" or based on monitoring standards and only paid for areas that did not meet some criteria. The monitoring protocols were discussed at length, T.O. recommended bringing a university partner into any study for objectivity. Tom noted that MFWP's study plan was less stringent than what was noted in the DEQ Environmental Specifications and that this study was much less intensive than what would likely be completed for the Mountain States Intertie (MSTI) powerline in southwestern Montana. Tom wants to include language regarding the scope of a study in the FEIS to insure that the work is completed.

Tom also discussed the DEQ Environmental Specifications and T.O. noted that the \$600/acre compensatory mitigation payment for disturbances in sagebrush was based on appraisal work completed by MFWP. (Note: A similar appraisal was completed for the Bison Pipeline and a value of \$200 to \$600 per acre was assessed resulting in a potential cost of \$1.6 to \$4.7 million, ultimately this condition was not accepted by FERC). Tom revised the Environmental Specification to state, "The OWNER shall establish a compensatory mitigation fund to be used by DEQ, BLM and FWP to

enhance and preserve sagebrush communities *in core sage grouse habitat* for greater sage-grouse and other sagebrush-obligate species in eastern Montana. The size of the fund will be based on the acreage of silver sagebrush and big sagebrush habitat disturbed during pipeline construction. For each acre disturbed the OWNER shall contribute \$600 dollars to the fund.” Based on the 3.26.10 footprint, there are 303 acres of core sage-grouse habitat that will be traversed by the project for a potential payment of \$181, 800.

8. Sharp-tailed grouse were discussed and it was noted that Keystone probably could not get access to private lands that weren't associated with the project to complete on-the-ground field surveys.

DISCUSSION: Tom Ring and T.O. Smith both acknowledged that this would be problematic and beyond Keystone's ability. The DEIS was also noted to have a recommendation to avoid ground disturbing activities within 1 mile of active sharp-tailed grouse leks. This condition would result in a reroute which is a more stringent mitigation than what is required for sage-grouse. Tom reworded the condition to state, “Keystone will make a good faith effort to identify sharp tailed grouse leks within 2 miles of the project centerline. Construction within 2 miles of known active sharp tailed grouse leks from March 1 to June 15 is prohibited.” However, T.O. will consult with MFWP biologist and the 2 mile restriction and buffer window maybe reduced or may result in further consultation between Keystone and DEQ and FWP and follow a plan similar to what was developed for sage-grouse. T.O. also noted that MFWP might be able to get to leks on private land and complete monitoring.