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May 23, 2011

Tom Kirschenmann
Chief of Terrestrial Resources
South Dakota Dept. Game, Fish and Parks

Foss Building
523 E. Capitol
Pierre, South Dakota 57501

Re: Keystone XL pipeline construction near priority sage-grouse leks.

Dear Mr. Kirschenmann:

The Keystone XL project team (Keystone) would like to take this opportunity to thank your staff for meeting with Keystone Representatives on January 19, 2011 in Rapid City regarding the upcoming Keystone XL pipeline. The intention with this letter is to summarize responses to questions that were raised in the meeting and provide your agency with additional information regarding the Project and measures Keystone is proposing to minimize impacts to greater sage-grouse (sage-grouse).

The outline of Keystone's meeting with South Dakota Department of Game, Fish and Parks (SDGFP) was determined by the letter received from Silka Kempema, Wildlife Biologist with SDGFP, on January 18, 2011. Primary topics of the meeting included: 1) the distinction between "historic" and "priority" leks; 2) the location and potential effect of Pump Station 16 (PS-16) on an active sage-grouse lek (Lek 8); 3) the location of pipe yards with respect to historic lek sites; 4) the dates of seasonal construction timing restrictions around active leks; 5) the size of seasonal construction restriction buffers around active leks; and 6) reclamation in sage-grouse habitat. We would like to summarize our understanding of these topics and provide further information as necessary.

Topic 1: Distinction between "historic" and "priority" sage-grouse leks.

Keystone understands that SDGFP has prioritized sage-grouse leks for survey and study based on those leks that support the greatest number of sage-grouse and where the most data are available. Jonathan Minton provided a table during the meeting detailing how Keystone has edited the sage grouse lek data provided by SDGFP to reduce duplicate locations of the same leks. The table included the identification numbers of all leks IDs combined into a single location. The revised shapefile has been provided to USFWS – South Dakota and Jonathan Minton offered to provide it to SDGFP.

In the course of the meeting it was described how Keystone completed aerial surveys in 2010 of all sage-grouse lek sites, both historic and priority, which were provided by SDGFP to Keystone. This includes survey of lek sites that are associated with ancillary facilities, such as pipe yards, that are not necessarily along our proposed right-of-way. The results of the 2010 survey, and the 2009 survey that

was completed in a more limited area, have been provided to SDGFP. Keystone repeated aerial surveys for sage-grouse in 2011 and coordinated our survey efforts with SDGFP surveys with Loren Dahl (SDGFP). The results of these surveys will be available to SDGFP by September 2011.

SDGFP staff questioned if Keystone would implement measures to minimize the effect of pipeline construction on sage-grouse wherever sage-grouse were located during survey efforts, not simply around priority leks. It is Keystone's preference to implement minimization measures around lek sites where birds are present in the year of construction rather than simply around a priority lek site if birds are not using the lek site in the year of construction.

Topic 2: The location and potential effect of Pump Station 16 (PS-16) on an active sage-grouse lek (Lek 8/Squaw Creek lek)

Substantial discussion was devoted to this topic during the meeting. Keystone noted that the current proposed location of PS-16 has been moved away from Lek 8 as far as possible given engineering and land acquisition constraints. Prior to relocation, PS-16 was within 0.25 miles of Lek 8. The new proposed PS-16 location is 1.2 miles to the west of Lek 8 on the other side of a low ridge that prevents visibility of PS-16 from Lek 8. This location is as far as PS-16 can be moved from the original engineered location given pipeline hydraulic and land acquisition constraints.

SDGFP staff were concerned that noise from PS-16 could negatively affect sage-grouse. Keystone appreciates this concern and has completed noise modeling for PS-16 and other pump stations. Data from this modeling indicate that noise from PS-16 at Lek 8 would be about 39 dBA, the equivalent of typical library sounds. These data are included as Appendix D of the "An Approach for Implementing Mitigation Measures to Minimize the Effects of Construction and Operation of the Keystone XL Pipeline Project on Greater Sage-Grouse in South Dakota" (Plan). Keystone has reviewed the scientific literature and does not believe that there is evidence to suggest that this level of noise will negatively affect sage-grouse.

SDGFP staff were concerned that transmission powerlines and poles could negatively affect sage-grouse. Keystone stated that it does not have authority over the siting or construction of transmission lines that will service the pipeline's pump stations. However, Keystone has informed the various power providers that they will need to contact SDGFP and other state and federal wildlife agencies to discuss electrical transmission facilities.

SDGFP staff questioned the amount of traffic and personnel that will work at PS-16. Keystone responded that pump stations are unmanned but are visited approximately once per week for maintenance and inspection. Access to PS-16 is via a public, county road, and a short access road from the public road to the pump station.

Topic 3: The location of pipe yards with respect to historic lek sites

SDGFP had expressed concern about the location of pipe yards PY-10 and PY-12 relative to sage-grouse leks. Keystone provided maps of the new pipe yard locations. PY-12 has been moved away from active sage-grouse leks to a site in Butte County. The current site of PY-12 is also near an active sage-grouse lek (termed KXL 195). This lek is approximately 0.8 miles north of the historic Hoover lek. However, both the lek and PY-12 are adjacent to Highway 79. Further, PY-12 is over one mile from the lek and not visible from the lek. Keystone does not believe that PY-12 will negatively impact sage-grouse at, or around, this lek. PY-10 has been moved to the opposite side of the road from where it had been, this site is within two miles of two historic sage-grouse leks, however, no birds were seen at either of these leks during 2011 surveys. Keystone has provided figures of the new pipe yards in Appendix E of the Plan.

Topics 4 and 5: The size and dates of seasonal construction restrictions

SDGFP staff expressed interest in the meeting and in the January 18th letter of expanding the size and dates of seasonal construction restrictions (i.e. buffers), based on review of some scientific research, from four to five miles, and from March 1 through June 15, to March 1 through July 15. Keystone does not agree that there is a biological basis for expanding either the size or dates of buffers around active leks.

Keystone has completed substantial project planning with regards to minimizing impacts from the project on sage-grouse. These efforts are described in the plan that accompanies this letter entitled, "An Approach for Implementing Mitigation Measures to Minimize the Effects of Construction and Operation of the Keystone XL Pipeline Project on Greater Sage-Grouse in South Dakota" (Plan). Keystone's Plan analyzes potential effects of the project on individual leks and includes an analysis of topography, suitable habitat, visibility of the project from a lek, and distance of the project to a lek. Keystone presented a very similar Plan to the Montana Department of Environmental Quality (MDEQ), Montana Department of Fish, Wildlife and Parks (MFWP), Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service – Montana (USFWS-MT). Keystone received a favorable response from the agencies regarding this Plan and it is Keystone's understanding that the primary tenants of the Plan, a three-mile buffer modified to account for topography and habitat, and a one-time pass-through of equipment to move equipment through a buffer, have been supported and will be incorporated into project permitting in Montana through MDEQ Environmental Specifications for the project. Keystone is pleased to provide a similar Plan to SDGFP that is focused on sage-grouse leks in South Dakota and look forward to your review and response.

Topic 6: Reclamation in sage-grouse habitat

SDGFP staff expressed concern regarding reclamation in sage-grouse habitat, primarily sagebrush habitat, in both the meeting and the January 18th letter. Keystone has designed reclamation procedures, particularly in sagebrush and native rangeland. These procedures are based on pedestrian surveys by qualified botanists and wildlife professionals, as well as a review of the proposed procedures by state NRCS offices in Montana, South Dakota, and Nebraska. Keystone has incorporated NRCS input into the design of Construction/Reclamation Units that outline construction and reclamation procedures that are relevant to particular habitats and reclamation goals. A variety of measures, from establishing a firm seed bed to seeding high rates of sagebrush accompanied with low rates of grass seed, are outlined in the sagebrush Construction/Reclamation unit. A copy of the Sagebrush Construction/Reclamation Unit was distributed at the meeting and is also included in the attached plan.

Keystone looks forward to further discussion with your staff regarding our project. Should you have further questions please contact Stephen Craycroft at 713-693-6467 (stephen_craycroft@transcanada.com). Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Marr', with a large, stylized flourish at the end.

*Stephen Marr, Manager - Phase 4, Steele City
Keystone Oil Pipeline*