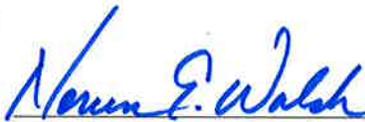


**Finding of No Significant Impact (FONSI) for the
Proposed Habitat Conservation Plan and Incidental Take
Permit**

**Keystone XL Pipeline
South Dakota and Nebraska**

U.S. Fish and Wildlife Service

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Regional Director, Interior Regions 5 & 7
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ACRONYMS AND ABBREVIATIONS

Acronym/Abbreviation	Definition
ABB	American burying beetle (<i>Nicrophorus americanus</i>)
BA	Biological Assessment
Basin Electric	Basin Electric Power Cooperative
CFR	Code of Federal Regulations
EA	Environmental Assessment
ERM	Environmental Resources Management
ERPPD	Elkhorn Rural Public Power District
ESA	Endangered Species Act
FONSI	Finding of No Significant Impact
FSEIS	Final Supplemental Environmental Impact Statement
HCP	Habitat Conservation Plan
ITP	Incidental Take Permit
Keystone	TransCanada Keystone Pipeline, L.P.
NEPA	National Environmental Policy Act
NPPD	Nebraska Public Power District
PS	Pump Station
Rosebud Electric	Rosebud Electric Cooperative Inc.
ROW	right-of-way
Service	U.S. Fish and Wildlife Service
USC	United States Code

1. INTRODUCTION

This Finding of No Significant Impact (FONSI) addresses the issuance of one or more Incidental Take Permits (ITPs) pursuant to the Endangered Species Act (ESA) of 1973, as amended (16 United States Code [USC] 1531–1544) and its regulations pertinent to the incidental take permitting (50 Code of Federal Regulations [CFR] 22.26) related to the Keystone XL Pipeline (the proposed Project) from Tripp County, South Dakota, to Antelope County, Nebraska.

In accordance with the National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 et seq.) and its implementing regulations (40 CFR 1500–1508 [1978]) in effect at the time the Draft Environmental Assessment (EA) was published on August 17, 2020, and the Department of Interior’s regulations for implementing NEPA (43 CFR 46.300–46.325 [1978]), the U.S. Fish and Wildlife Service (Service) has prepared an EA (Attachment 1) analyzing the effects on the natural and human environment of issuing ITPs pursuant to Section 10(a)(1)(B) of the ESA to TransCanada Keystone Pipeline, L.P. (Keystone) and/or the proposed Project’s electric power providers. The ITPs would authorize take of the threatened American burying beetle (*Nicrophorus americanus*) (ABB) by covered activities carried out in conjunction with implementation of the Keystone XL Pipeline Habitat Conservation Plan (HCP).

Keystone proposes to construct, operate, and maintain a 36-inch diameter crude oil pipeline and ancillary facilities, referred to as the Project, from the U.S.–Canada border east of Morgan, Montana, to an existing pipeline in Steele City, Nebraska. In addition to the pipeline, Keystone would construct permanent and temporary construction access roads, temporary facilities (contractor yards, pipe yards, construction camps, and rail sidings), and permanent aboveground facilities (pump stations, delivery facilities, and mainline valves). The pipeline would involve a 110-foot-wide temporary construction right-of-way (ROW) and a 50-foot-wide permanent ROW in Montana, South Dakota, and Nebraska. Electrical power infrastructure, including substations and transmission and distribution lines necessary to provide power to the proposed Project’s pump stations, would be constructed and operated by entities other than Keystone. During operation, Keystone would use the proposed Project to transport up to 830,000 barrels per day of crude oil from the Western Canadian Sedimentary Basin and the Bakken Shale Formation in the United States to the Gulf Coast region.

Construction activities would involve vegetation clearing, excavation and trenching, pipe stringing and assembly, pipe and valve installation, special crossing techniques under some roads and waterbodies, trench backfilling, surface grading and revegetation, and the construction of permanent aboveground facilities. Material storage, heavy traffic, and surface modifications would also occur at temporary facilities. Electrical power infrastructure construction activities would involve clearing and grading substation sites, constructing substations, trimming or felling trees in select areas, installing pole structures, and installing wires.

Project construction and operation activities have the potential to result in incidental take of the threatened ABB in South Dakota and Nebraska. As of November 16, 2020, the ABB is listed as a threatened species under the ESA and is protected by an ESA Section 4(d) rule that prohibits the take of ABB by ground-disturbing activities in South Dakota and Nebraska. Therefore, Keystone has submitted

an HCP to analyze and mitigate potential impacts of the proposed Project and non-federal activities related to the proposed electrical power infrastructure within the range of the ABB.

Keystone's revised HCP dated December 7, 2020, and the attached EA discuss the potential impacts of construction and operation of the proposed pipeline and associated infrastructure within the HCP Plan Area. The Plan Area is defined as all of Tripp County, South Dakota; all of Keya Paha, Boyd, Holt, and Antelope counties in Nebraska; and a portion of Cherry County in Nebraska, in which Keystone proposes to preserve undeveloped lands as mitigation (Figure 1). The Plan Area includes all areas in which the requested permitted take and/or mitigation would occur. The geographic scope of the EA is the same as the HCP Plan Area. Within the Plan Area, the proposed Project would include approximately 176 miles of pipeline and approximately 3,277 acres of pipeline ROW (permanent and temporary) and ancillary facilities. Within the Plan Area, electrical power infrastructure necessary to operate the proposed pipeline's pump stations would be constructed and operated by four other entities (Rosebud Electric Cooperative Inc. [Rosebud Electric], Basin Electric Power Cooperative [Basin Electric], Elkhorn Rural Public Power District [ERPPD], and Nebraska Public Power District [NPPD]). The HCP Permit Area is a subset of the Plan Area and is defined as all locations where the requested permitted take would occur (Figure 1) (see Section 2.2.1 of the EA, Attachment 1). Potential impacts on the ABB resulting from activities involving other federal agencies (i.e., the Western Area Power Administration, which is involved in the power infrastructure associated with PS-21) are covered under the ESA Section 7 Incidental Take Statement (see the 2019 Biological Assessment [BA] Section 3.2.6 and the 2019 Biological Opinion [entire]), not under the ESA Section 10 ITP requests considered in the Final EA.

Keystone, Rosebud Electric, NPPD, and ERPPD have proposed several conservation measures intended to avoid and minimize potential effects on sensitive species and other resources as well as the ABB, including a proposal for mitigation of effects on the ABB, specifically by providing funds to preserve suitable ABB habitat (see Section 2.2.4 of the EA, Attachment 1). The Service, through its decision on the ITP applications and the HCP, has the ability to enforce conservation measures within the Plan Area and for activities included in the HCP.

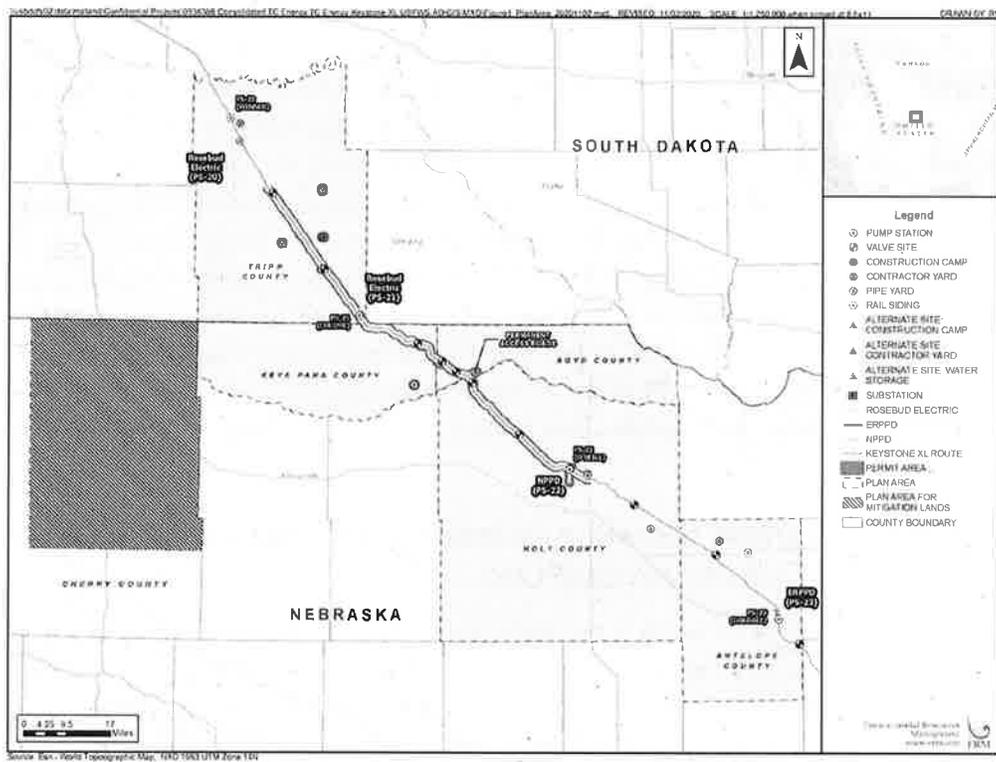


Figure 1. Map of Plan Area and Permit Area

2. ALTERNATIVES CONSIDERED

The NEPA and associated regulations require federal agencies to analyze and publicly disclose the social, economic, and environmental effects associated with major federal actions. This requires federal agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources (42 USC § 4332). The EA analyzed and compared the effects of the “no action” alternative and the proposed action of issuing the requested ITPs and implementation of the HCP. For a complete list of these alternatives and other alternatives that were not evaluated further, see EA Section 2 in Attachment 1.

2.1. NO ACTION ALTERNATIVE

Under the no action alternative, and as described in the EA, the Service would not issue the requested ITPs and the HCP would not be implemented. Keystone, NPPD, and Basin Electric would not construct the proposed Project and associated infrastructure in ABB habitat. According to the HCP, under this alternative Keystone would not construct the Keystone XL Pipeline as it is currently proposed. The HCP states that not constructing the Keystone XL Pipeline in ABB habitat could result in the increased transportation of oil supplies by rail, barge, truck, and/or a different entity proposing a pipeline to move the supplies to market, as previously analyzed in a 2014 Final Supplemental Environmental Impact Statement and a 2019 Final Supplemental Environmental Impact Statement. Because no modification of approximately 1,259 acres of ABB habitat or take of any listed species would occur under this alternative, no mitigation for incidental take of ABB would be needed, and a minimum of approximately 1,082 acres of suitable ABB habitat would not be preserved (i.e., the 1,200-acre mitigation lands proposed by Keystone).

2.2. PROPOSED ACTION: ISSUANCE OF INCIDENTAL TAKE PERMITS BASED ON THE HABITAT CONSERVATION PLAN

The proposed action evaluated by the EA is the issuance of ITPs by the Service that would authorize take of ABB incidental to the “covered activities” described in Section 2.2.2 of the EA, and implementation of the conservation plan in the associated HCP in accordance with the statutory and regulatory requirements of the ESA. A description of the proposed Plan and Permit Areas, covered activities, procedures, conservation measures, and mitigation measures under the proposed action are provided in the HCP and Section 2.2 of the EA.

3. IMPACTS OF HCP IMPLEMENTATION

This FONSI is based on the EA (Attachment 1) that analyzes the potential social, economic, and environmental effects of issuing ITPs and implementing the associated HCP on the ABB. The EA considers a reasonable range of alternatives to the proposed action, discusses the potential environmental impacts of the proposed action, and provides sufficient evidence and analysis for this FONSI. The Service concludes that no environmental effect analyzed in the EA meets the definition of “significant” in context

or intensity, as defined in 40 CFR 1582.27 and described below. Therefore, an Environmental Impact Statement is not required.

3.1. CONTEXT

Per 40 CFR 1582.27, the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

The context of the environmental effects described in this FONSI is informed by the analysis in the EA. The proposed issuance of ITPs would result in indirect consequences arising from a site-specific action that would have little consequence outside of the Plan Area because impacts would generally be contained within the footprint associated with the permit applicant's action. Further, while the indirect consequences resulting from the issuance of ITPs are expected throughout the 50-year duration of the permit applicant's action, the majority of those impacts would occur during the construction phase and are considered to be temporary. The footprint of the proposed activities within the Plan Area would include approximately 3,277 acres of land disturbance related to the pipeline ROW and related facilities, 184.6 acres of electrical power infrastructure ROW and substation site(s), and 1,200 acres of conservation land to be protected in perpetuity as habitat for the ABB. Within this footprint, take of covered species is anticipated in approximately 1,240.8 acres of proposed Project footprint, in approximately 7.8 acres at a substation site, and in an estimated 10 acres¹ associated with pipeline repair excavations during the life of the Project.

3.2. INTENSITY

Per 40 CFR 1582.27, intensity refers to the severity of impact. The ten significance criteria described within the federal regulations at 40 CFR 1508.27 have been considered in evaluating the intensity of the impacts. In addition to the ABB, the main aspects of the environment that could be affected by the activities described in the HCP include geology and soils; air quality; noise and vibration; water resources; vegetation; fish and wildlife; other protected species; land use, recreation, and visual resources; socioeconomics and environmental justice; cultural resources; and greenhouse gases and climate change. Potential impacts on each of these resources are individually addressed in Section 4 of the EA and summarized below.

As discussed throughout the attached EA, the consequences of the proposed action are primarily a subset of the potential direct, indirect, and cumulative impacts associated with the construction and operation of the proposed Project and associated infrastructure, with the additional consequences of preserving mitigation lands as described in EA Section 4.7.4. The impacts arising from the proposed Project and associated infrastructure have been described in detail in the 2014 FSEIS and the 2019 FSEIS.

1) Impacts that may be both beneficial and adverse

¹ The size of each excavation location is nominally estimated to be 0.13 acres for a total of 6.5 acres of excavation over the 50-year period. Keystone conservatively rounded this estimated impact to 10.0 acres to account for varying sizes of excavations and/or number of locations per year.

The nature, intensity and duration of potential impacts of the proposed Keystone XL pipeline system and associated infrastructure were analyzed in detail in a 2014 Final Supplemental Environmental Impact Statement (FSEIS) and a 2019 FSEIS. Beneficial and adverse impacts arising from the proposed action considered in this FONSI are described in detail in the attached EA (Chapter 4). Additionally, Table 1 lists the potential unavoidable adverse impacts of the permit applicant’s action (not including impacts resulting from a potential accidental release of crude oil, which are described separately in Table 2). The proposed issuance of ITPs would not permit or cause accidental releases, and potential impacts arising from an accidental release are not expected to occur and, as such, are not included in Table 1. If an accidental release does occur, the intensity of impacts would be dependent upon the location and size of the release. Adverse impacts that can be minimized or mitigated but not avoided entirely are considered unavoidable. As described in the Chapter 4 of the EA, impacts to most resources would range from negligible to minor and would generally be short term, though some permanent impacts would occur. Minor to moderate impacts to visual resources are expected to occur during construction of the proposed Project, but these would be temporary and are expected to be minor during the operational phase of the proposed Project. Preserving mitigation lands could also lead to minor beneficial impacts on wildlife and fisheries, ABB, and other protected species, as described in EA Section 4.7.4.

Table 1. Unavoidable Adverse Impacts of the Proposed Action in the Plan Area

Resource	Unavoidable Impacts in the Plan Area
Geology and soils	<ul style="list-style-type: none"> • Limitations on future access to mineral and paleontological resources located within the permanent ROW • Increased soil temperatures around the operating pipeline
Air quality	<ul style="list-style-type: none"> • Increased emissions of air pollutants during construction
Noise and vibration	<ul style="list-style-type: none"> • Noise and vibration from construction activities and operating pump stations
Water resources	<ul style="list-style-type: none"> • Alterations to streambeds and banks at pipeline crossing locations • Temporary instream turbidity and sedimentation • Temporary to long-term loss of instream habitat • Temporary reductions in instream flow • Temporary alteration of drainage patterns and/or floodplains • Temporary to permanent alterations of wetlands • Temporary dewatering of excavation sites • Heating of shallow groundwater and wetlands immediately adjacent to the operating pipeline • Temporary disturbance of wetlands • Permanent conversion of less than 1 acre of forested wetland to emergent wetland
Vegetation	<ul style="list-style-type: none"> • Temporary removal of native grasslands, cultivated crops, developed land, pasture, and wetland vegetation communities • Temporary to long-term disruption of riparian habitats • Permanent conversion of forest communities to shrub/scrub and/or herbaceous communities • Permanent vegetation removal at aboveground elements of the proposed Project and associated infrastructure
Wildlife and fisheries	<ul style="list-style-type: none"> • Temporary removal of native habitats • Permanent conversion and fragmentation of native habitats • Indirect and direct mortality of individuals during proposed Project construction • Temporary reduced survival and reproductive success due to habitat avoidance and human disturbance • Temporary water quality impacts during construction

Resource	Unavoidable Impacts in the Plan Area
ABB	<ul style="list-style-type: none"> Permitted take of 552 ABB individuals during construction and operation of the proposed Project and associated infrastructure Temporary and permanent alteration of 1,240.8 acres of potentially suitable ABB habitat due to construction, temporary alteration of 10 acres of potentially suitable habitat due to predicted maintenance of the proposed Project as well as heating effects during operations and permanent conversion of 7.8 acres of ABB potentially suitable habitat at a substation site
Other protected species	<ul style="list-style-type: none"> Increased risk of causing disturbance, displacement, habitat degradation, and potential injury or mortality to other protected species, although these impacts are not certain to occur Long-term to permanent loss of forested roosting and/or foraging habitat for the northern long-eared bat
Land use, recreation, and visual resources	<ul style="list-style-type: none"> Temporary loss of vegetation and agricultural productivity Temporary damage to agricultural features such as drain tiles and fences Temporary visual impacts, noise, and dust Temporary restrictions on access to recreational resources Permanent noise impacts of operating pump stations Permanent visual impacts of pump stations, utility poles and wires, and forest clearing along the permanent ROW Loss of forest and restrictions on future land uses in the permanent ROW
Socioeconomics and environmental justice	<ul style="list-style-type: none"> Temporary increase in demand for housing and public services Temporary increase in traffic
Cultural resources	<ul style="list-style-type: none"> The proposed action is not certain to lead to unavoidable impacts on cultural resources.
Greenhouse gases and climate change	<ul style="list-style-type: none"> Temporary increase in greenhouse gas emissions during construction Permanent increase in direct and indirect greenhouse gas emissions due to operations

ABB = American burying beetle (*Nicrophorus americanus*); ROW = right-of-way

In addition to analyzing the potential impacts on these resources as a result of the proposed action of issuing ITPs, a separate analysis of potential impacts on these resources resulting from a potential accidental release of crude oil in the Plan Area was conducted in the EA. The analysis focused on the potential impacts that could occur along the 176 miles of pipeline within the HCP Plan Area. A complete discussion of these impacts is provided in Section 4 of the EA and summarized in Table 2 below.

Table 2. Potential Effects from a Crude Oil Release in the Plan Area

Geology and Soils	
Direct Effects	Indirect Effects
Contamination of hydric soils	<ul style="list-style-type: none"> Adverse impacts on wetlands (see Water Resources)
Contamination of coarse-textured soils	<ul style="list-style-type: none"> Infiltration to groundwater (see Water Resources)
Contamination of prime farmland soils	<ul style="list-style-type: none"> Reduced soil productivity Restricted farming or grazing (see Land Use)
Air Quality	
Direct Effects	Indirect Effects
Air quality degradation resulting from volatilization of hydrocarbons	<ul style="list-style-type: none"> Temporary adverse effects on human health related to inhalation of hydrocarbons. Temporary adverse effects on birds and mammals related to inhalation of hydrocarbons.
Air quality degradation resulting from accidental or purposeful burning of crude oil	<ul style="list-style-type: none"> Temporary adverse effects on human health related to inhalation of hydrocarbons and particulate matter Temporary adverse effects on birds and mammals related to inhalation of hydrocarbons and particulate matter

	<ul style="list-style-type: none"> • Temporary adverse effects on recreational activities
Noise and Vibration	
Direct Effects	Indirect Effects
Short-term noise impacts; primarily during response, restoration and remediation activities	<ul style="list-style-type: none"> • Disruption to sensitive noise receptors during response, restoration, and remediation activities • Stress, avoidance of feeding, and decreased breeding success of wildlife in proximity to response, restoration, and remediation activities
Water Resources	
Direct Effects	Indirect Effects
Contamination of groundwater by free product and dissolved hydrocarbons	<ul style="list-style-type: none"> • Water quality degradation downgradient of spill site. • Temporary closure of groundwater wells resulting in disruption of municipal water service. • Temporary human health hazards resulting from short-term ingestion or exposure to dissolved hydrocarbons.
Contamination of open waters by free product and dissolved hydrocarbons	<ul style="list-style-type: none"> • Water quality degradation downstream of spill • Adverse impacts on aquatic ecosystem • Water quality degradation to previously impaired waters resulting in more severe impairment • Temporary human health hazards resulting from short-term ingestion or exposure to dissolved hydrocarbons; Degradation of wetland habitat and function
Contamination of wetland soils and damage to wetland vegetation	<ul style="list-style-type: none"> • Stress of vegetation and wildlife and species mortality; Impacts during remediation and restoration from excavation and the removal of contaminated hydric soils
Vegetation^a	
Physical Effects	Chemical Effects
Coating leaves could inhibit gas exchange and respiration	<ul style="list-style-type: none"> • Coating soil could inhibit nutrient uptake • Uptake of dissolved toxic compounds
Fish and Wildlife^a	
Physical Effects	Chemical Effects
Short- or long-term loss of habitat	<ul style="list-style-type: none"> • Toxicological impacts through consuming contaminated food or ingesting product while cleaning feathers or fur • Effects on eggs laid in contaminated water or substrates leading to death or physical abnormalities
Coated fur or skin could lead to loss of insulation or buoyancy, as well as reduced respiration through the skin in amphibians	
Transfer of oil to eggs or young	
Physical abnormalities and poor health caused by direct exposure	
Land Use, Recreation and Visual Resources	
Direct Effect	Indirect Effect
Physical coating of vegetation (see Vegetation)	<ul style="list-style-type: none"> • Contaminated forage for livestock • Loss of commercial crops
Contaminated water (see Water Resources)	<ul style="list-style-type: none"> • Contaminated water for livestock • Contaminated irrigation water • Restricted access for boating, swimming, fishing, etc. • Adverse visual effects from physical coating and contamination
Contamination of prime farmland soils (see Geology and Soils)	<ul style="list-style-type: none"> • Reduced soil productivity
Physical and toxicological effects on fish (see Fish and Wildlife)	<ul style="list-style-type: none"> • Short- or long-term loss of fishing areas or fish consumption restriction

Socioeconomics and Environmental Justice	
Direct Effect	Indirect Effect
Physical covering or contamination of residential or commercial property by crude oil	<ul style="list-style-type: none"> • Evacuation of affected residences and businesses during response and remedial activity • Restricted access or impeded travel to residences, schools, and businesses for the duration of remedial activity • Loss of business revenues and employee salaries during commercial closures • Adverse impact on property value • Noise, nuisance odors, and visual effects
Physical covering or contamination of recreational or economic resource by crude oil	<ul style="list-style-type: none"> • Restricted access to recreational resource area for the duration of remedial activity • Loss of business revenues associated with the resource • Loss of revenues from affected farmland, hunting, or fishing resources • Potential permanent effect on recreational resources from residual contamination or perceived stigma
Destruction of property during physical cleanup, including grading, excavation, and dredging	<ul style="list-style-type: none"> • Accidental or intentional destruction of property during response and remedial efforts • Loss of residential property • Loss of business revenues • Adverse economic impacts for the municipal jurisdiction • Beneficial effects for some businesses (remediation firms, lodging providers, food and service businesses)
Cultural Resources	
Direct Physical Effects	Other Direct Effects
Contamination of historic properties (surface soils and subsurface features/artifacts) from crude oil	<ul style="list-style-type: none"> • Restricted access to historical properties such as limiting use of historic structures and landscapes • Damage to or deterioration of historic properties • Noise, nuisance odors, and visual effects surrounding historic properties
Physical covering of site by crude oil	<ul style="list-style-type: none"> • Restricted access preventing contaminated historic properties from being experienced or properly researched and documented • Inability to use radiocarbon dating
Disturbance to historic properties from physical cleanup, including grading, excavation and dredging, in situ burning and water flushing	<ul style="list-style-type: none"> • Accidental or intentional destruction of historic properties during cleanup efforts
Greenhouse Gases and Climate Change	
Direct Effects	Indirect Effects
Fugitive emissions of greenhouse gases	<ul style="list-style-type: none"> • Greenhouse gas emissions from vehicles and equipment used in spill response and remediation
Greenhouse gas emissions from potential fire caused by spontaneous ignition or explosion during spill incident	<ul style="list-style-type: none"> • Greenhouse gas emissions from fire intentionally ignited for spill containment

a. Section 5.3.7 of the EA contains a discussion of potential effects on federally protected species from a release within the HCP Plan Area.

2) *The degree to which the proposed action affects public health or safety in the Plan Area*

The proposed action of ITP issuance could result in indirect consequences arising from the permit applicant's construction and operation of the proposed Project that affect health and safety through impacts on air quality, water quality, and noise in the Plan Area. Impacts on air quality would include a

short-term, minor increase in air pollutant emissions during construction and a negligible increase in emissions during operations. Construction and operations emissions would not change air quality attainment status or violate air quality standards (EA Section 4.2). Impacts on water quality would include temporary minor impacts on water resources within the Plan Area, including alteration of drainage patterns and/or floodplains, and it also has the potential to result in contamination of groundwater or surface water (EA Section 4.4). Measures to avoid, minimize, and/or mitigate impacts on water resources can be found in the HCP (Section 7.3 and Appendices B and C), the 2019 BA (Chapter 3), the 2019 FSEIS (Chapter 8), and the 2014 FSEIS (Appendices G and I). Effects resulting from noise impacts could include temporary annoyance of persons, temporary disturbance of livestock and wildlife (EA Section 4.6), and minor permanent increases in noise from operating pump stations in the Plan Area. Impacts on persons and livestock would likely be most prominent at and near residences and other built structures and would be most intense during construction activities. With the noise control measures proposed (see the HCP Section 7.3 and Appendix C; the 2019 BA Chapter 3; and the 2014 FSEIS Appendix G), noise and vibration would not exceed limits established by federal, state, and local laws.

3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas

As discussed in the EA (Section 4.11), the cultural resource inventory remains ongoing. Consistent with 40 CFR 1502.22, the Service understands that historic properties or other cultural resources could be present within unsurveyed areas. All areas within the APE would be surveyed for cultural resources before construction begins. Direct contact, possibly including an unanticipated discovery of a previously unknown cultural resource during construction, could have a permanent impact on that resource. Should any unanticipated discoveries of cultural resources be made during construction or operation of the pipeline, the terms of the Unanticipated Discoveries Plan would be followed. During operations of the proposed Project and associated infrastructure, permanent facilities would be unlikely to adversely affect the setting or feeling of historic properties due to the distance separating them; similarly, periodic increases in noise, vibration, and dust created by vehicular traffic conducting operations and maintenance activities would be unlikely to adversely affect historic properties (2019 FSEIS Sections 4.9.3.2 and 6.4.10.2). A total of 1,363 acres of prime farmland is located in the footprint of the proposed Project and associated infrastructure in the Plan Area. Temporary impact to these soils during construction would be highly localized (EA Section 4.1). Additionally, contamination of prime farmland soils as a result of a spill could adversely affect soil productivity and limit use for farming and grazing during remediation activities. Should excavation and removal of contaminated soils be required, permanent loss of prime farmland soils would result (EA Section 5.3.1). Within the Plan Area, a total of up to 31.5 acres of wetlands would be temporarily impacted by construction of the proposed Project. The proposed Project would also result in the permanent conversion of approximately 0.8 acre of forested wetland to emergent wetland (EA Section 4.4.1). No state parks, wild or scenic rivers, or ecologically critical areas would be impacted by construction or operation of the proposed Project and associated infrastructure within the Plan Area.

4) The degree to which the effects on the quality of the human environment are likely to be highly controversial

As a factor for determining within the meaning of 40 CFR 1508.27(b)(4)—whether or not to prepare a detailed EIS—“Controversy does not refer to the existence of opposition to a use” (*Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520 [9th Cir. 1997]). “The term ‘highly controversial’ refers to instances in which ‘a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use’” (*Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216 [D. Or. 1998]). No anticipated effects have been identified that are scientifically controversial.

5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks

As discussed above, there is some uncertainty around the impacts to cultural resources as not all areas have been surveyed to date. However, all areas that could be affected by the proposed Project will be surveyed prior to construction activities. Additionally, if unanticipated discoveries occur, the terms of the Unanticipated Discoveries Plan would be followed, as appropriate. The proposed action is not unique or unusual, and the Service has experience implementing similar actions in this region. The effects to the human environment are analyzed adequately in the EA.

6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration

A complete analysis of the direct, indirect, and cumulative impacts of the proposed action is described in Chapter 4 of the EA (Attachment 1). The NEPA analysis associated with the proposed action would not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. ITPs issued as a result of the proposed action would expire at the end of their terms.

7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts

As stated above, the proposed action represents a subset of the potential direct, indirect, and cumulative impacts associated with the construction and operation of the proposed Project. The impacts arising from the proposed Project have been described in detail in the 2014 FSEIS and the 2019 FSEIS. Both of those analyses determined that cumulative impacts would be less than significant, with the possible exception of greenhouse gases and climate change, and the analysis of the alternatives presented in the EA leads to the same conclusion.

As discussed in EA Section 4.12, approval or denial of the requested ITP would not alter the trajectory of global climate change, and cumulative impacts on this resource would be similar to existing conditions. No changes to the proposed activities or to present and reasonably foreseeable activities are expected to substantially change cumulative impacts beyond what was analyzed in those earlier documents.

8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources

As discussed in EA Section 4.11, the potential impacts of the proposed Project and associated infrastructure on historic properties and other cultural resources were analyzed in detail in the 2014 FSEIS Section 4.11 and the 2019 FSEIS Sections 4.9 and 6.4.10.2, and the potential impacts of the proposed action are a subset of the potential impacts analyzed in those documents. Keystone and several state and federal agencies and other concurring parties have signed a National Historic Preservation Act Section 106 Programmatic Agreement regarding the Keystone XL Pipeline. In 2020, the Service signed onto the 2020 amended Programmatic Agreement (USACE 2020). This Programmatic Agreement requires any location to be surveyed for cultural resources before construction activities related to the proposed Project begin in that area. It also outlines the appropriate consultation procedures to be followed, that effects on historic properties are to be avoided to the greatest extent possible, and that effects are to be minimized and mitigated if complete avoidance is not possible. No loss or destruction of significant scientific, cultural, or historic resources is anticipated as a result of the proposed action.

9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA of 1973

As discussed in the attached EA (Section 4.7), the proposed action would authorize the issuance of an ITP, permitting the temporary and permanent alteration of ABB habitat and likely leading to harm to individual ABBs as a consequence of construction and operation of the proposed Project and associated infrastructure. The proposed action would authorize the take of up to 552 ABB. Of this total, approximately 65.7 ABB would be harmed as a result of the disturbance of approximately 1,240.8 acres of potentially suitable habitat during pipeline construction and up to 10 acres during predicted maintenance, approximately 485.3 ABB would be harmed by heat from the operating pipeline over a 46-year period, and approximately 0.7 ABB would be harmed by construction of the electrical power infrastructure. Measures to reduce impacts to the ABB and other species have been incorporated into the development of the proposed action. The proposed action would also mitigate impacts to the ABB by preserving 1,200 acres of suitable ABB habitat in perpetuity.

Although aquatic species, game species, raptors, and migratory birds occur within the proposed Project boundary, it has been determined that they would not be significantly affected because of the design features incorporated in the proposed Project. The 2014 FSEIS concluded that the proposed Project and associated infrastructure would be not likely to adversely affect any federally listed species other than the ABB. The 2014 FSEIS also provided a discussion of potential impacts on state threatened and endangered species and species of conservation concern as a result of construction and operation of the proposed Project and associated infrastructure. The analyses provided in the 2019 FSEIS, the 2019 BA, and the HCP are consistent with the original determinations provided in the 2014 SEIS. Of the species analyzed in those documents, a total of 14 state and federally protected species have the potential to occur within the Plan Area. A summary of direct, indirect, and cumulative impacts on these species within the Plan Area is provided in EA Section 4.8. In addition to a discussion of the potential impacts on state and federally listed species, those documents also provided a list of species-specific conservation measures to

avoid and minimize impact on these species (see Section 4.7.3 and Tables 8-3 and 8-4 in the 2019 FSEIS; Sections 3.2 and 3.3 in the 2019 BA; and Sections 7.1 and 7.2 in the HCP).

10) Whether the action threatens a violation of federal, state, local, or tribal law or requirement imposed for the protection of the environment

The proposed action would not violate any known federal, state, local, or tribal law or requirement imposed for the protection of the environment. During the public and agency involvement for this EA, federal, state, local, and tribal interests were given the opportunity to participate in the environmental analysis process, with several tribes providing public comments during the public comment period. Section 3.11 of the Final EA describes the government-to-government consultation history with tribal governments. After having made a reasonable and good faith effort to provide a meaningful opportunity for government-to-government consultation, the Service concluded government-to-government consultation efforts with the Rosebud Sioux Tribe on December 16, 2020. The proposed action is consistent with applicable plans, policies, and programs.

4. PUBLIC INVOLVEMENT

4.1. RELEASE OF DRAFT EA AND DRAFT HCP

On August 17, 2020, the Service published the Draft EA and Draft HCP in the Federal Register (85 FR 50043). Public comments were accepted during a 30-day public comment period following publication of the *Federal Register* Notice of Availability. The draft documents were available at www.regulations.gov. The Notice of Availability was distributed to public agencies, tribal governments, and interested and affected local organizations.

4.2. PUBLIC COMMENTS

A total of 14 submissions were received during the public comment period. A total of 124 substantive comments were identified from the 14 submissions and taken into account in assessing potential impacts in the Final EA. Responses to these comments are provided in Appendix C of the Final EA.

4.3. CONCLUSION

Following a comprehensive review and analysis of the HCP and consideration of the findings presented in the EA and summarized above, and the Service's Findings and Recommendations (Service 2020), the Service has selected the proposed action as the preferred alternative because it best meets the agency purpose and need to conserve the ABB and respond to an ITP application, while fulfilling the Service's statutory mission and responsibilities considering economic, environmental, technical, and other factors. This decision is based upon a review of information provided in:

1. Agency and public comments on the Draft EA and Draft HCP;
2. Alternatives considered and their associated environmental consequences disclosed in the Final EA; and
3. The Draft and Final HCP.

Based on this review and evaluation of information contained in the supporting references, the Service determines that the preferred alternative is not a major federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the NEPA. Accordingly, the Service is not required to prepare an Environmental Impact Statement for this action. Furthermore, the Service finds that implementing the preferred alternative, including the associated mitigation measures, would have no significant impact on any of the environmental resources examined in the EA.

5. REFERENCES

- USACE (U.S. Army Corps of Engineers). 2020. *Second Amendment to Programmatic Agreement Amount The U.S. Department of State, National Park Service, 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. Bureau of Reclamation, Western Area Power Administration, Advisory Council on Historic Preservation, Kansas State Historic Preservation Officer, Montana Department of Natural Resources and Conservation, Montana State Historic Preservation Officer, Nebraska State Historic Preservation Officer, and TransCanada Keystone Pipeline, LP, Regarding the Keystone XL Pipeline Project*. 109 pp
- Service (U.S. Fish and Wildlife Service). 2020. *Findings and Recommendations for the Issuance of an Endangered Species Act Section 10(A)(1)(B) Incidental Take Permit for the Keystone XL Pipeline Habitat Conservation Plan*. 20 pp

**ATTACHMENT 1—ENVIRONMENTAL ASSESSMENT:
PROPOSED HABITAT CONSERVATION PLAN AND INCIDENTAL
TAKE PERMIT FOR THE KEYSTONE XL PIPELINE IN SOUTH
DAKOTA AND NEBRASKA**

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