



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
134 Union Blvd  
Lakewood, Colorado 80228



In Reply Refer to:  
FWS/IR05/IR07

August 14, 2020

President Rodney Bordeaux  
Rosebud Sioux Tribe  
P.O. Box 430  
Rosebud, South Dakota 57570

Dear President Bordeaux:

Based on your Tribe's status as a sovereign nation and in keeping with our trust responsibilities, please accept this email as advance notice that the U.S. Fish and Wildlife Service (Service) is publishing a Notice of Availability to request public comment on a Habitat Conservation Plan (HCP) and Draft Environmental Assessment (EA) in response to an Incidental Take Permit application submitted by TransCanada for American burying beetle, a species listed under the Endangered Species Act (ESA), as part of the Keystone XL pipeline project. The Notice of Availability will publish in the Federal Register on August 17, 2020, opening a 30-day public comment period. All comments and information received in response to the Notice of Availability, Habitat Conservation Plan, or draft Environmental Assessment during the comment period will be considered during our review of the permit application.

This action is limited in scope to a segment of the pipeline that would impact American burying beetle. The counties involved in the scope of this action include Antelope, Boyd, Brown, Cherry, Holt, and Keya Paha counties in Nebraska, as well as Tripp County in South Dakota. As part of the proposed HCP, TransCanada has committed to protecting and managing a minimum of 1,034 acres of currently occupied American burying beetle habitat in perpetuity. Management of this land by TransCanada includes removing attractants to the area prior to beginning construction, education for personnel, and after construction relieving soil compaction and re-establishing vegetation.

The American burying beetle is a large, shiny black beetle with hardened protective wing covers adorned by two scalloped shaped orange markings. This nocturnal beetle plays a vital role in the ecosystem by recycling nutrients and reducing pests such as flies by burying and eating carrion. The Service listed this beetle as an endangered species under the ESA in 1989 when it had come close to extinction. A portion of the beetle's range includes areas in Nebraska and South Dakota involved in the construction and operation of the Keystone XL pipeline project.

In accordance with Secretarial Order 3206 and the Service's Native American Policy, we coordinate with Tribes when actions taken under authority of the Act may affect Indian lands,

## INTERIOR REGION 5 MISSOURI BASIN

KANSAS, MONTANA\*, NEBRASKA, NORTH DAKOTA,  
SOUTH DAKOTA

\*PARTIAL

## INTERIOR REGION 7 UPPER COLORADO RIVER BASIN

COLORADO, NEW MEXICO, UTAH, WYOMING

Tribal trust resources, or the exercise of American Indian tribal rights, as defined in the Secretarial Order. As part of this coordination, the Service sent a previous letter on March 10, 2020, inviting your tribe to consult on a government-to-government basis regarding this proposed HCP. For the government-to-government consultation with your Tribe, we will accept comments throughout the process of preparing the draft EA and draft HCP. We will continue this consultation throughout the finalization of the EA and HCP. At your request, my staff and I are available to meet with you to discuss your Tribe's perspective on cultural and spiritual sites and interests in the plan area for the HCP.

We understand that Tribal knowledge is important in assessing potential effects on resources that may be of interest to your Tribe. In keeping with our trust responsibility, we shall protect, to the maximum extent practicable, Tribal information that has been disclosed to or collected by us. However, please be aware that any information kept in our files is subject to public disclosure under specific circumstances (e.g., through a Freedom of Information Act request). Please let us know if there are any other considerations for safeguarding sensitive Tribal information. If the Tribe prefers to maintain certain information exclusively in your files, we would like to explore options for reviewing and referencing that information in our permit decision.

On August 17, 2020, the Notice of Availability, permit application, HCP, and draft EA, and information on how to submit comments will be available at [www.regulations.gov](http://www.regulations.gov) by searching under the docket number FWS-R6-ES-2020-0014. Your participation in reviewing and commenting on this proposal is voluntary, and the level of your participation is at your discretion. We will make every effort to accommodate your needs and input. The Service is willing to meet with you at your convenience to further discuss the details of the critical habitat proposal.

The FWS recognizes that Tribes may have a deep spiritual, historical, and cultural connection to the beetle and appreciates any information you can provide. We look forward to working with you on this project. If you need further information, please contact me at Nicole\_Alt@fws.gov or (303) 236-4213 or Steve Small, the Assistant Regional Director for Ecological Services, at (303) 236-4210. In addition, you may contact our Regional Native American liaison, Melissa Castiano ((303) 236-9898; Melissa\_Castiano@fws.gov), to facilitate input from you or your Tribal agencies.

Sincerely,



Acting Assistant Regional Director