

# ***FINAL DRAFT***

Programmatic Agreement

Among

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

**WHEREAS**, DOS has determined that issuance of a Presidential Permit for the Keystone Project is an undertaking that requires 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 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 generation and transmission facilities, under USDA Rural Development's Utilities Programs, constitutes 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), constitutes an undertaking that 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 private lands crossed by the Keystone Project, but held under a federal easement pursuant to the Wetlands Reserve Program (16 U.S.C. § 3837 et seq), to TransCanada for the purposes of installation and maintenance of the Keystone Project pipeline constitutes an undertaking that requires review under Section 106 of NHPA and 36 CFR Part 800; and

**WHEREAS**, the Farm Service Agency (FSA) has determined that approval for the Keystone Project to cross private lands it manages through federal easements under the Conservation Reserve Enhancement Program and the Farmable Wetlands Program constitutes an undertaking that 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)), constitutes an undertaking that 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 in accordance with 36 CFR § 800.2(a)(2); and

**WHEREAS**, the Western Area Power Authority (WAPA) remains individually responsible for compliance with Section 106 of NHPA and 36 CFR Part 800 for the modification and construction of its substations; and

**WHEREAS**, the proposed Keystone Project pipeline alignment crosses North and 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 project centerline; (2) in South Dakota – 300 foot wide corridor, centered on project centerline; (3) in Nebraska – 300 foot wide corridor centered on project 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 project 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 project centerline; and (8) project 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 a 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**, this PA will be incorporated by reference into the Presidential Permit that DOS may issue for the Keystone Project; and

**WHEREAS**, TransCanada, which will construct the Keystone Project pipeline, has participated in consultation and has been invited by DOS to sign this agreement; and

**WHEREAS**, the rural electric cooperatives and other entities which may apply to RUS for financial assistance to construct or modify generation and 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 Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Fort Peck Tribes, Gun Lake Potawatomi, Ho-Chunk Nation of Wisconsin, Iowa Tribe of Oklahoma, Lower Sioux Indian Community, Mille Lacs Band of Ojibwe, Oglala Sioux Tribe, Osage Nation, Pawnee Nation of Oklahoma, Rosebud Sioux Tribe, Santee Sioux Tribe of Nebraska, Shakopee Mdewakanton Sioux (Upper Sioux Pezihutazizi Kap), Sisseton-Wahpeton Oyate Sioux, Sisseton-Wahpeton Oyate Wahpekutz, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes, United Keetoowah Band of Cherokee Indians, Upper Sioux-Pezihutazizi Kapi, Sac & Fox, Ponca Tribe, Blackfeet Tribe, Absentee-Shawnee Tribe of Indians of Oklahoma, Flandreau Santee Sioux Tribe, Tonkawa Tribe, Kickapoo Tribe of Kansas, and Yankton Sioux have participated in consultation and have been invited to concur in this PA;

**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 shall 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 shall 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); and
6. the *Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects*" (Federal Energy Regulatory Commission, Office of Energy Projects, December 2002).

**II. CONFIDENTIALITY** - To the extent legally allowable, DOS and RUS will keep information about historic properties of religious and cultural significance to Indian tribes, including location information, or provided by Indian tribes to assist in the identification of such properties confidential and subject to protective measures imposed by the tribe.

### **III. KEYSTONE PROJECT - CONSTRUCTION OR MODIFICATION OF ELECTRICAL GENERATION AND TRANSMISSION FACILITIES**

A. Prior to granting approval of financial assistance to construct or modify electrical generation and transmission facilities by rural electric cooperatives or other entities, RUS will complete the requirements of Stipulation III in accordance with the terms of this PA.

#### **B. Treatment of Historic Properties**

1. RUS will identify and evaluate historic properties in accordance with 36 CFR §§ 800.3 and 800.4 in the Keystone Project APE.
2. If RUS identifies historic properties in the APE, then it will apply the criteria of adverse effect in accordance with 36 CFR 800.5(a) in consultation with the SHPO and other consulting parties.
3. If it finds that historic properties might be adversely affected by an applicant's proposed activities, RUS will consult with the SHPO and other consulting parties to determine prudent and feasible ways to avoid adverse effects. In the event that historic properties may be adversely affected RUS will participate directly in consultation if it has not already done so.
4. If it determines that adverse effects cannot be avoided, RUS will consult with the SHPO and other consulting parties in an effort to reach agreement on measures to be implemented by the applicant to minimize and mitigate adverse effect.
  - a. If agreement can be reached RUS will draft a treatment plan that describes the agreed upon measures, how these measures will be carried out and an implementation schedule.
  - b. When the agreed upon mitigation is or includes data recovery, the treatment plan will also identify the specific research questions to be addressed by data recovery with an explanation of their relevance, archaeological methods to be used and provisions for public interpretation and education, subject to Stipulation II restrictions.
  - c. RUS will submit the draft Treatment Plan to the ACHP, SHPO and other consulting parties for thirty (30) day review. RUS will address comments and recommendations from consulting parties provided within the allotted schedule as in preparation of the final Treatment Plan.

d. The RUS applicant will implement the final Treatment Plan prior to beginning construction or modification of the federally assisted electrical transmission and generation facilities.

5. RUS will resolve disputes arising on the scope of the identification effort or treatment measures in accordance with Stipulation IX.

C. In implementing Stipulation III.B, RUS may authorize an applicant to initiate Section 106 consultation in accordance with 36 CFR § 800.2(c)(4), RUS. 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.

D. Consulting parties for the implementation of Stipulation III.B will include, but are not limited to, the parties identified in the Preamble to this PA. RUS is responsible for identifying and inviting additional parties to participate in consultation pursuant to 36 CFR § 800.2 (c)(2) – (5). RUS will include the ACHP among the consulting parties.

E. The DOS may share information regarding the identification and evaluation of historic properties within the Keystone Project APE with RUS.

F. In order to minimize the likelihood for intentional adverse effects, RUS will inform potential applicants (rural electric cooperatives and other entities) in writing, as early as possible, about their role in assisting RUS meet its responsibilities under the terms of this PA.

G. RUS will incorporate the terms of Stipulation V.B and Attachment D into construction contracts to ensure that applicants and their contractors meet their responsibility for addressing unanticipated discoveries.

#### **IV. KEYSTONE PROJECT – PIPELINE CONSTRUCTION**

A. The DOS has and will continue to provide consulting parties with an opportunity to provide their views on the identification and evaluation of historic properties, including properties of religious and cultural significance to Indian tribes, and the treatment of affected historic properties.

B. DOS remains responsible for conducting 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 shall identify and evaluate historic properties within the APE for pipeline construction 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.

a. Areas within the APE that have not been surveyed for historic properties based on property owner access restrictions or the incomplete design of project access roads, transmission corridors, additional temporary work spaces or construction areas, pipeline reroutes, and appurtenant facilities will be investigated to ascertain the presence of any historic properties. Historic property determinations of eligibility and effect will occur prior to construction by the Applicant using the same methodology as the previous survey work.

## 2. Completion of Identification for the Two (2) Dakota Spreads

a. For those portions of the APE in North and South Dakota for which access has been denied, the DOS shall complete the identification and evaluation of historic properties in accordance with 36 CFR § 800.4, preferably before pipeline construction begins on or about April 1, 2008.

b. For those portions of the APE affected by construction of these 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 shall rely on information provided and studies conducted by Indian tribes submitted to DOS by March 1, 2008.

c. In the event identification cannot be completed for these two (2) spreads prior to April 1, 2008, TransCanada shall coordinate construction activities so that the identification of historic properties is completed before construction activities disturbs the portion of the spread being investigated.

## D. Treatment of Historic Properties

1. DOS and TransCanada agree that, whenever feasible, avoidance of adverse effects to historic properties is the preferred treatment.

2. If DOS identifies historic properties in the APE under Stipulation IV.C, then it will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) in consultation with the SHPO and other consulting parties.

3. If it 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. Once avoidance have been approved by DOS, TransCanada must obtain written approval from the DOS for any change.

4. If it determines that adverse effects cannot be avoided, DOS will consult with the SHPO and other consulting parties in an effort to reach agreement on measures to be implemented by TransCanada to minimize and mitigate adverse effects for all affected historic properties identified in a construction spread.

a. If agreement can be reached TransCanada will draft a comprehensive Treatment Plan that describes the agreed upon measures to address the adverse effect of pipeline construction activities, how these measures will be carried out and an implementation schedule. When the agreed upon mitigation is 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, archaeological methods to be used and provisions for public interpretation and education, subject to Stipulation II restrictions.

b. TransCanada will submit the draft Treatment Plan to the DOS, ACHP, SHPO and other consulting parties for thirty (30) day review. DOS will ensure that TransCanada addresses comments and recommendations from consulting parties provided within the allotted schedule in preparation of the final Treatment Plan. If a SHPO or an interested Tribe does not comment within thirty (30) days, the DOS will assume concurrence.

5. TransCanada will complete implementation of the final Treatment Plan approved by DOS prior to beginning construction of any spread, unless the DOS, SHPO and ACHP agree that implementation of a Treatment Plan may continue during construction. TransCanada will submit a detailed plan describing how treatment and construction will be coordinated to DOS, SHPO and ACHP for thirty (30) day review. When the DOS, ACHP and SHPO agree, TransCanada will implement the plan. If the parties cannot agree, DOS will resolve the dispute in accordance with Stipulation IX.

6. Two (2) Dakota Spreads: Treatment Plan will include procedures for DOS and TransCanada to identify measures to avoid, minimize and mitigate adverse effects to historic properties identified after construction of the spread has begun but before any disturbance from construction has occurred.  
Developed in consultation

#### E. Construction monitoring

1. TransCanada will ensure that monitoring of construction activities will be performed by professionals meeting the qualification standards archaeology in Stipulation I.A.

2. TransCanada will conduct monitoring in selected areas of the APE as a supplement to identification efforts. Historic properties identified by TransCanada will be treated in accordance with Stipulation V.A.

3. TransCanada will submit the plan for construction monitoring for each spread to the DOS, ACHP, SHPO and other consulting parties for thirty (30) day review. DOS will ensure that TransCanada addresses comments and recommendations from consulting parties provided within the allotted schedule in preparation of the final Monitoring Plan.



If a consulting party fails to comment within thirty (30) days, the DOS will assume concurrence.

4. TransCanada will implement the final Monitoring Plan developed for each spread that has been approved by DOS. Construction of a spread may not begin until the Monitoring Plan has been approved.

#### F. Construction Activities

1. Environmental Inspector (EI): Prior to initiating construction of the Keystone Project pipeline, TransCanada will employ an EI who will be responsible for the managing construction activities at all spreads to ensure that the terms of this PA are met.

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. 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 a post review discovery in accordance with Stipulation V.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 in order to perform the requirements of this PA. TransCanada also will provide an appropriate level of training to all construction personnel (including new, added, replaced workers) so that PA requirements are understood and unanticipated discoveries quickly identified.

3. TransCanada will incorporate the terms of Stipulation V.A and Attachment C into construction contracts to ensure that its EI and construction contractors meet their responsibility for notification of the unanticipated discoveries.

4. Coordination: prior to the beginning of construction of the respective spread Final plan approved by DOS before construction on the Dakota spreads can begin. For those segments of the Project where surveys have been completed, reports provided and approved, and eligible sites avoided, the DOS after consultation with the appropriate SHPO will provide the Applicant with notice to proceed with construction. In addition, construction shall not proceed on any portion of the Project until the applicable surveys (or Treatment Plans approved) have been carried out for that portion. This includes areas not yet surveyed due to denial of access by property owners as well as areas that could be subject to Project changes and realignments. Once those areas become accessible and are identified, the Applicants will conduct the historic property surveys and required reporting.

## **V. UNANTICIPATED DISCOVERIES DURING CONSTRUCTION OF THE KEYSTONE PROJECT**

### **A. Pipeline Construction**

1. “Applicable federal agency” refers to the DOS or the federal agency with jurisdiction for the land on which construction is occurring.
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 notify the Environmental Inspector of the discovery immediately. Within forty-eight (48) hours of receipt of this notification of the discovery, the Environmental Inspector shall:
  - a. inspect the work site to determine the extent of the discovery;
  - b. halt all construction work within 100 feet of the discovery and in the surrounding area where further subsurface remains can reasonably be expected to occur;
  - c. clearly mark the area of the discovery using flagging or fencing; 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 shall have fourteen (14) calendar days following notification provided in accordance with Stipulation ..... to determine the National Register eligibility of the discovery in consultation with 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). The applicable federal agency may extend the review period for one time by another seven (7) calendar days by providing written notice to consulting parties prior to the expiration of the 14-day calendar period.
4. For properties determined eligible pursuant to Stipulation V.A, the applicable federal agency shall notify the SHPO, ACHP and other consulting parties of those actions that it proposes to resolve adverse effects.
  - a. Consulting parties shall have 48 hours to provide their views on the proposed actions.
  - b. The applicable federal agency shall ensure that the 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 shall 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. Within forty-eight (48) hours of receipt of such a request,

the ACHP will provide the applicable federal agency with recommendations on resolving the dispute. The applicable federal agency 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 completion of construction of the spread, TransCanada shall submit a final report to the applicable federal agency, SHPO and other consulting parties describing the actions taken to comply with Stipulation V.A 1 through 4, and, as appropriate, the analysis and interpretation of recovered information.

#### B. Construction or modification of electrical generation or transmission facilities

1. If previously unidentified historic properties are discovered unexpectedly as the construction or modification of generation or transmission facility construction activities are carried out, the construction contractor will notify the RUS applicant of the discovery immediately. 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;
- b. halt all construction work within 100 feet of the discovery and in the surrounding area where further subsurface remains can reasonably be expected to occur;
- c. clearly mark the area of the discovery using flagging or fencing; and
- d. notify the RUS and the SHPO of the discovery.

2. Upon receipt of such notification the RUS immediately will notify the ACHP and other consulting parties, including Indian tribes of the discovery.

3. The RUS will have fourteen (14) calendar days following notification provided in accordance with Stipulation V.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). The RUS may extend the review period for one time by another seven (7) calendar days by providing written notice to consulting parties prior to the expiration of the 14-day calendar period.

4. For properties determined eligible pursuant to Stipulation V.B.3 the RUS shall notify the SHPO, ACHP and other consulting parties of those actions that it proposes to resolve adverse effects. Consulting parties shall provide their views on the proposed actions within forty-eight (48) hours. The RUS shall ensure that the recommendations of 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: The 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. Within forty-eight (48) hours of receipt of such a request, the ACHP will provide the RUS with its recommendations for resolving the dispute. The 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 shall submit a final report to the SHPO and other consulting parties describing implementation of the actions in accordance with Stipulation ....., 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 an RUS applicant, as appropriate, shall 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 shall 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. In determining appropriate actions to be carried out, DOS 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).

## VI. CURATION

Federal agencies shall curate any artifacts, materials or records resulting from archaeological identification and mitigation studies conducted on federal lands under their jurisdiction in accordance with 36 CFR. § 79, "*Curation of Federally-Owned and Administered Archaeological Collections*."

TransCanada and RUS applicants shall return all artifacts recovered from private lands to the respective landowner after analysis is complete. TransCanada and RUS applicants shall encourage landowners to donate any returned artifacts to local curation facilities identified by the SHPO.

Federal agencies shall determine the disposition of human burials, human remains and funerary objects in accordance with applicable federal and state law.

## **VII. TECHNICAL REPORTS**

The Applicant shall provide the DOS, the respective SHPOs, other federal agencies, and any participating Indian Tribes with a management summary for historic properties implemented within 30 days after implementation of the treatment plans.

The Applicant shall submit all reports to DOS, the SHPOs, other federal agencies, and any participating Indian Tribe for review and comment. The Applicants will revise the reports as appropriate. Reports documenting mitigation shall be submitted within one year after the implementation of the treatment plans. The SHPOs and participating Indian Tribes will have 60 days to provide comments on the reports to the DOS.

The Applicants shall submit copies of all final reports to the DOS, the SHPOs, other federal agencies, and participating Tribes who have requested such reports, and other interested parties as identified by the DOS or the SHPOs.

## **VIII. MONITORING AND REPORTING**

A. Each **quarter (every three months)** following the execution of this PA until it expires or is terminated, the DOS unless responsibilities are delegated to another agency or to the applicant) shall provide the signatory and concurring parties to this PA a summary report detailing work carried out pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the DOS's efforts to carry out the terms of this PA.

## **IX. DISPUTE RESOLUTION**

A. "Applicable federal agency" refers to the DOS, RUS or the federal land managing agency.

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 applicable federal agency will consult with such party to resolve the objection. If the applicable federal agency determines that such objection cannot be resolved, the applicable federal agency will:

1. Forward all documentation relevant to the dispute, including the applicable federal agency's proposed resolution, to the ACHP. The ACHP shall provide the applicable 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 applicable federal agency shall 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 applicable 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 applicable federal agency shall 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 applicable 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 remain unchanged.

**X. DURATION** - This PA will be null and void if its stipulations are not 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, (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, the federal agencies may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XI. The DOS shall notify the signatories and concurring parties as to the course of action that will be pursued by each agency.

**XI. AMENDMENT** - Any party to this PA may propose in writing to the other parties that it be amended. The parties shall 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.

## **XII. TERMINATION**

A. If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XI. 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 shall notify the signatories and concurring parties as to the course of action it will pursue.

**XIII. FAILURE TO CARRY OUT THE TERMS OF THE PA** - The PA shall be terminated in the event that any one of the federal agencies fails to carry out its terms. When the PA is terminated, the DOS, RUS, USACE, NRCS, FSA, and USFWS thereafter will comply with the terms of 36 CFR §§ 800.3 through 800.7 for the Keystone Project.

**XIV. SCOPE OF THE PA** - This PA 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, NRCS, FSA, USACE, USFWS, and the SHPOs and implementation of its terms evidence that the DOS, RUS, NRCS, FSA, USACE, USFWS have taken into account the effects of the Keystone Project on historic properties and afforded the ACHP an opportunity to comment.

## **ATTACHMENT A**

Map or table listing properties for which TransCanada had been denied access to conduct identification and evaluation studies. To be completed before the PA is signed.



## **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 Wahpekutz, 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 shall implement the following measures:**

1. When an unmarked human burial or unregistered grave is encountered during construction activities, TransCanada shall comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act).
2. The construction contractor will notify immediately TransCanada's Environmental Inspector upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities.
3. Immediately following receipt of such notification, the Environmental Inspector shall halt construction activities within a 100 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The Environmental Inspector shall 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 shall 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 shall implement the treatment and disposition measures deemed appropriate by the SHPO.
6. TransCanada shall 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 shall implement the following measures:**

1. When unmarked human burial sites or human skeletal remains are encountered during construction activities, TransCanada shall 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. The construction contractor will notify immediately TransCanada's Environmental Inspector upon encountering an unmarked human burial site or human remains during ground disturbing construction activities.
3. Immediately following receipt of such notification, the Environmental Inspector shall
  - halt construction activities within a 100 foot radius from the point of discovery;
  - implement measures 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), the DOS, the ACHP and the 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 shall 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 shall 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 shall 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 shall implement the following measures:**

1. When an unmarked human burial or skeletal remains are encountered during construction activities, TransCanada shall comply with Missouri Rev. Stat. ' 194.400, et seq. (Unmarked Human Burial Law).
2. The construction contractor will notify immediately TransCanada's Environmental Inspector in the event that human burial or skeletal remains are encountered during ground disturbing construction activities.
3. Immediately following receipt of such notification, the Environmental Inspector shall
  - halt construction activities within a 100 foot radius from the point of discovery;
  - implement measures 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 shall notify the SHPO when local law enforcement determines that the SHPO has jurisdiction. Within seven (7) days of receipt of such notification, the SHPO shall determine the treatment to be implemented by TransCanada in accordance with Missouri Rev. Stat. ' 194.400, et seq. The disposition of the human remains shall be determined based on Missouri Rev. Stat. ' 194.408 and ' 194.409. TransCanada shall assist the SHPO in implementing the provisions of state law.
- 5. TransCanada shall 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 shall implement the following measures:**

1. When unmarked human skeletal remains or burial goods are discovered during construction activities, TransCanada shall comply with Nebraska Rev. Stat. ' 12-1201 through ' 12-121294.400, et seq. and § 28-1301.
2. The construction contractor will notify immediately TransCanada's Environmental Inspector in the event that human skeletal remains or burial goods are discovered during ground disturbing construction activities.
3. Immediately following receipt of such notification, the Environmental Inspector shall halt construction activities within a 100 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. TransCanada shall notify the local law enforcement officer in the county, the DOS, the ACHP, the SHPO, and other consulting parties, including Indian tribes, within 48 hours of the discovery.
5. If local law enforcement determines that the remains are not associated with a crime, TransCanada shall determine if it is prudent and feasible to avoid disturbing the remains. If TransCanada determines that disturbance cannot be avoided, TransCanada shall conduct the removal, treatment and disposition of the human burial or remains under the direction of the Nebraska State Historical Society.

6. TransCanada shall 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 shall implement the following measures:**

1. When unmarked human burials or human remains are discovered during construction activities, TransCanada shall comply with North Dakota Century Code §23-06-27 and administrative rules North Dakota Administrative Code Chapter 40-02-03.
2. The construction contractor will notify immediately TransCanada's Environmental Inspector upon the discovery of an unmarked human burial or human remains during ground disturbing construction activities.
3. Immediately following receipt of such notification, the Environmental Inspector shall
  - halt construction activities within a 100 foot radius from the point of discovery;
  - implement measures to protect the discovery from looting and vandalism until the completion of requirements under state law; and
  - notify the local law enforcement agency, the DOS, the ACHP, the 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 shall determine if it is prudent and feasible to avoid disturbing the remains. If TransCanada determines that disturbance cannot be avoided, TransCanada shall remove and reinter the human remains in accordance with rules adopted by the SHPO/SHSND and the State Health Department.
5. TransCanada shall 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 shall implement the following measures:**

1. When a burial ground, human remains or burial furniture is discovered during construction activities, TransCanada shall comply with Okla. Stat. Ann. 21 §1161-1168.7 (Oklahoma Burial Law).

2. The construction contractor will notify immediately TransCanada's Environmental Inspector upon the discovery of an unmarked human burial or human remains during ground disturbing construction activities.
3. Immediately following receipt of such notification, the Environmental Inspector shall
  - halt construction activities within a 100 foot radius from the point of discovery;
  - implement measures 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 DOS, ACHP, the SHPO, the Oklahoma Archaeological Survey's (OAS) State Archaeologist and other consulting parties, including Indian tribes and the landowner, of the discovery.
4. TransCanada shall 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 TransCanada determines that disturbance cannot be avoided, TransCanada shall treat the burial site or human remains in accordance with procedures established by the SHPO and OAS State Archaeologist.
5. TransCanada shall 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 shall implement the following measures:**

1. When an unmarked human burial or human remains is discovered during construction activities, TransCanada shall comply with South Dakota State Law Chapter 34-27.
2. The construction contractor will notify immediately TransCanada's Environmental Inspector upon the discovery of an unmarked human burial or human remains during ground disturbing construction activities.
3. Immediately following receipt of such notification, the Environmental Inspector shall halt construction activities within a 100 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism until the completion of requirements under state law. Human remains and any other items in the immediate vicinity of the discovery are to be left in place and not removed or disturbed by anyone, including construction personnel. The Environmental Inspector shall verify that the discovery has been secured.
4. The Environmental Inspector shall notify the local law enforcement agency, the DOS, ACHP, the 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 shall determine if it is prudent and feasible to avoid disturbing the remains. If TransCanada determines that disturbance cannot be avoided, TransCanada shall 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 shall 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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## **ATTACHMENT D**

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

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

1. When an unmarked human burial or unregistered grave is encountered during construction activities, the RUS applicant shall comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act).
2. The construction contractor will notify immediately the RUS applicant in the event that an unmarked human burial or unregistered grave is encountered during ground disturbing construction activities.
3. Immediately following receipt of such notification, the RUS applicant shall halt construction activities within a 100 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The RUS applicant shall 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 shall 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 shall 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 shall 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 or generation facilities in Kansas, the RUS and its applicants shall implement the following measures:**

1. When an unmarked human burial sites or human skeletal remains is encountered during construction activities, the RUS applicant shall 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. The construction contractor will notify immediately the RUS applicant upon encountering an unmarked human burial site or human remains during ground disturbing construction activities.
3. Immediately following receipt of such notification, the RUS applicant shall
  - halt construction activities within a 100 foot radius from the point of discovery;
  - implement measures 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), the RUS and the SHPO of the discovery.
4. Immediately upon receipt to the notification, RUS shall 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 shall 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 shall 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 or generation facilities in Missouri, RUS and its applicants shall implement the following measures:**

1. If an unmarked human burial or skeletal remains are encountered during construction activities, the RUS applicant shall comply with Missouri Rev. Stat. ' 194.400, et seq. (Unmarked Human Burial Law).
2. The construction contractor will notify immediately the RUS applicant in the event that a human burial or skeletal remains are encountered during ground disturbing construction activities.
3. Immediately following receipt of such notification, the RUS applicant shall
  - halt construction activities within a 100 foot radius from the point of discovery;
  - implement measures 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 RUS and the SHPO of the discovery.
4. Immediately upon receipt of such notification, RUS shall 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 shall notify RUS and the SHPO if when local law enforcement determines that the SHPO has jurisdiction. Within seven (7) days of receipt of such notification, the SHPO

shall 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 shall be determined based on Missouri Rev. Stat. ' 194.408 and ' 194.409. The RUS applicant shall 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 or generation facilities in Nebraska (Cushing Extension), RUS and its applicants shall implement the following measures:**

1. When unmarked human skeletal remains or burial goods are discovered during construction activities, the RUS applicant shall comply with Nebraska Rev. Stat. ' 12-1201 through ' 12-121294.400, et seq. and § 28-1301.
2. The construction contractor will notify immediately the RUS applicant in the event that human skeletal remains or burial goods are discovered during ground disturbing construction activities.
3. Immediately following receipt of such notification, the Environmental Inspector shall halt construction activities within a 100 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The RUS applicant shall 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 shall 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, the RUS shall determine if it is prudent and feasible to avoid disturbing the remains. If RUS determines that disturbance cannot be avoided, RUS applicant shall 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 or generation facilities in North Dakota, RUS and its applicants shall implement the following measures:**

1. If an unmarked human burial or human remains is discovered during construction activities, an RUS applicant shall comply with North Dakota Century Code §23-06-27 and administrative rules North Dakota Administrative Code Chapter 40-02-03.

2. The construction contractor will notify immediately the RUS applicant upon the discovery of an unmarked human burial or human remains during ground disturbing construction activities.
3. Immediately following receipt of such notification, the RUS applicant shall
  - halt construction activities within a 100 foot radius from the point of discovery;
  - implement measures to protect the discovery from looting and vandalism until the completion of requirements under state law; and
  - notify the local law enforcement agency, the 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 shall 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 shall determine if it is prudent and feasible to avoid disturbing the remains. If RUS determines that disturbance cannot be avoided, its applicant shall 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 or generation facilities in Oklahoma (Cushing Extension), RUS and its applicants shall implement the following measures:**

1. When a burial ground, human remains or burial furniture is discovered during construction activities, the RUS applicant shall comply with Okla. Stat. Ann. 21 §1161-1168.7 (Oklahoma Burial Law).
2. The construction contractor will notify immediately the RUS applicant upon the discovery of an unmarked human burial or human remains during ground disturbing construction activities.
3. Immediately following receipt of such notification, the RUS applicant shall
  - halt construction activities within a 100 foot radius from the point of discovery;
  - implement measures 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, 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 shall notify the ACHP and other consulting parties, including Indian tribes, of the discovery.

5. RUS shall 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 shall 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 or generation facilities in South Dakota, RUS and its applicants shall implement the following measures:**

1. When an unmarked human burial or human remains is discovered during construction activities, the RUS applicant shall comply with South Dakota State Law Chapter 34-27.
2. The construction contractor will notify immediately the RUS applicant upon the discovery of an unmarked human burial or human remains during ground disturbing construction activities.
3. Immediately following receipt of such notification, the RUS applicant shall ensure that the construction contractor halts construction activities within a 100 foot radius from the point of discovery and implements measures to protect the discovery from looting and vandalism until the completion of requirements under state law. Human remains and any other items in the immediate vicinity of the discovery are to be left in place and not removed or disturbed by anyone, including construction personnel. The RUS applicant shall verify that the discovery has been secured.
4. The RUS applicant shall notify the local law enforcement agency, the 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 shall determine if it is prudent and feasible to avoid disturbing the remains. If RUS determines that disturbance cannot be avoided, the agency shall 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 shall 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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