



NATIONAL CONGRESS OF AMERICAN INDIANS

U.S. Department of State
Attn: Genevieve Walker, NEPA Coordinator
2201 C Street NW, Room 2726
Washington, D.C. 20520

April 22, 2013

RE: Comments of the National Congress of American Indians (NCAI) on the Draft Supplemental Environmental Impact Statement for the Proposed Keystone XL Pipeline

Dear Ms. Walker:

The National Congress of American Indians (NCAI) is the oldest, largest, and most representative American Indian and Alaska Native organization in the country. NCAI advocates on behalf of tribal governments and communities, promoting strong tribal-federal government-to-government policies, and promoting a better understanding among the general public regarding American Indian and Alaska Native governments, peoples and rights.

On behalf of NCAI, I respectfully submit these comments in response to the U.S. Department of State Draft Supplemental Environmental Impact Statement (DSEIS) For the KEYSTONE XL PROJECT Applicant for Presidential Permit: TransCanada Keystone Pipeline, LP released on March 1, 2013.

While grateful for the opportunity to submit these comments, it is with great concern that NCAI submits our comments related to the proposed construction of the Keystone XL Pipeline and the DSEIS. NCAI has a number of environmental impact concerns, which are detailed in these comments, and is calling on the U.S. Department of State to adequately address and mitigate these concerns pursuant to requirements established by Executive Order 13175 for consultation with tribal governments. The following are points of concern offered by NCAI:

- 1.) Potential Environmental Impacts to Tribal Natural Resources, Water Quality, and Water Supply Systems;
 - a. Surface Water and Groundwater Impacts Identified by the DSEIS
 - b. Threats to Tribal Water Systems & Water Quality: Major Waterbody Crossings
 - i. Missouri River Crossing - Fort Peck Tribes of Assiniboine and Sioux Tribes (MP - Milepost # 89.6)
 - ii. Cheyenne River Crossing - Cheyenne River Sioux Tribe – MP #430.07
 - c. Threats to Tribal Water Systems: The Mni Wiconi Rural Water System
- 2.) Potential Impacts to Native American Sacred Places;
- 3.) Concerns with Spill Prevention Control and Countermeasure Plan and Emergency Response Plan Sections
- 4.) Consultation With and Opposition by Tribal Governments

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Tlingit

As result of the findings included in our comments, NCAI is calling on the U.S. Department of State, to include in the final version of the SEIS critical information pertaining to tribal nations that is missing in the DSEIS. Noting that further consultation is required and ongoing by the federal government, the U.S. Department of State should engage in further consultation immediately pursuant to Executive Order 13175.

In total, if these concerns are not addressed sufficiently or mitigated to the fullest extent, it is in the best interest of the United States to reject the Keystone XL pipeline permit solely on the basis of the federal trust responsibility to tribal nations. The project as outlined in the DSEIS possesses tremendous risks to the cultural and natural resources of tribal nations and is not in the best interest of the tribal nations and their citizens.

The United States has treaty and trust responsibilities to protect tribal lands from hazards and threats posed to tribal nations and non-Native citizens, which will also be impacted by the Keystone XL pipeline.

Thank you for your commitment to protecting the health and welfare of Indian people throughout the United States.

Sincerely,

A handwritten signature in black ink that reads "Jefferson Keel". The signature is written in a cursive style with a large, stylized initial 'J'.

Jefferson Keel
President,
National Congress of American Indians



**National Congress of American Indians
(NCAI) Comments** in response to the United States Department of State Draft Supplemental Environmental Impact Statement (DSEIS) For the **KEYSTONE XL PROJECT** Applicant for Presidential Permit: TransCanada Keystone Pipeline, LP released on March 1, 2013.

Submitted April 22, 2013

Via electronic and U.S. mail to:
U.S. Department of State
Attn: Genevieve Walker, NEPA Coordinator
2201 C Street NW
Room 2726
Washington, DC 20520

keystonecomments@state.gov

Introduction

The proposed Keystone XL Project (“The Project”) referenced in the Draft Supplemental Environmental Impact Statement (DSEIS) has the potential to significantly impact tribal nations in Montana, Nebraska, North and South Dakota. The Project poses tremendous risks to the natural resources of tribal nations and as a result is not in the best interest of the United States and American Indian tribes and citizens. This impact would occur as the Project passed through critical natural resource areas – including across vital water supplies – as well as near and potentially over many culturally significant areas for tribal nations within those states.

In Montana, the pipeline passes extremely close to and could have catastrophic impacts on the natural resources related to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. Additionally, there are off-reservation trust lands of the Turtle Mountain Band of Chippewa Indians near the pipeline in Northern Montana.

In South Dakota, the Project passes extremely close to and could have significant impacts on the natural resources related to the Cheyenne River Sioux Tribe of the Cheyenne River Reservation. The Project has the potential to have significant impacts on critical water supply services for the Oglala Sioux Tribe of the Pine Ridge Reservation, Rosebud Sioux Tribe of the Rosebud Indian Reservation, and Lower Brule Sioux Tribe of the Lower Brule Reservation. Finally, it is of significance to note that the Project navigates extremely close to off-reservation trust lands of the Rosebud Sioux Tribe of the Rosebud Indian Reservation.

The proposed project crosses Montana, North Dakota, South Dakota, and Nebraska through many culturally significant areas for tribal nations within those states. The Keystone XL pipeline will also pass through or near burial grounds and other sacred places that are not held in trust by the federal government, but exist in traditional and historic tribal territories that have clear and ongoing tribal interests.

It is with great concern that NCAI submits our comments related to the proposed construction of the Keystone XL Pipeline and the DSEIS. NCAI has a number of environment impact concerns which are detailed in the pages to follow and is calling on the U.S. Department of State to adequately address and mitigate for these concerns pursuant to Executive Order 13175 on federal government’s requirement for consultation with tribal governments.

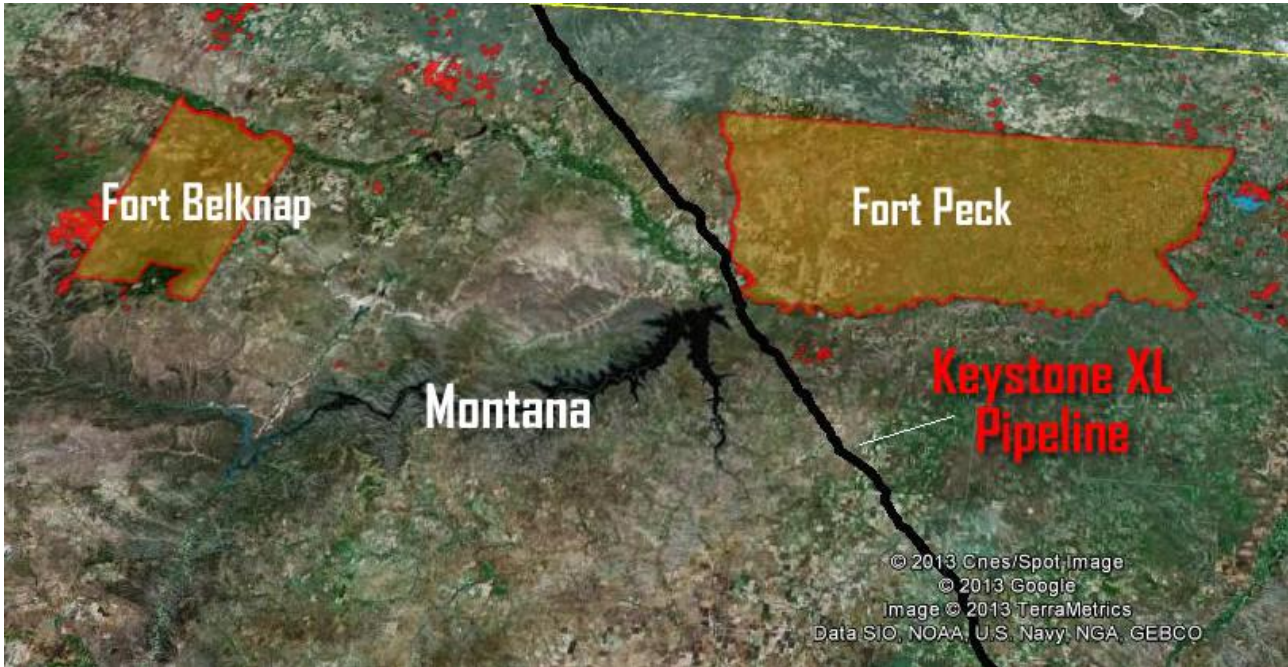


Figure 1 – Google Earth map depicting proposed Keystone XL Pipeline crossing through the state of Montana. Map indicates reservation and off-reservation tribal trust lands. Source: NCAI Analysis.

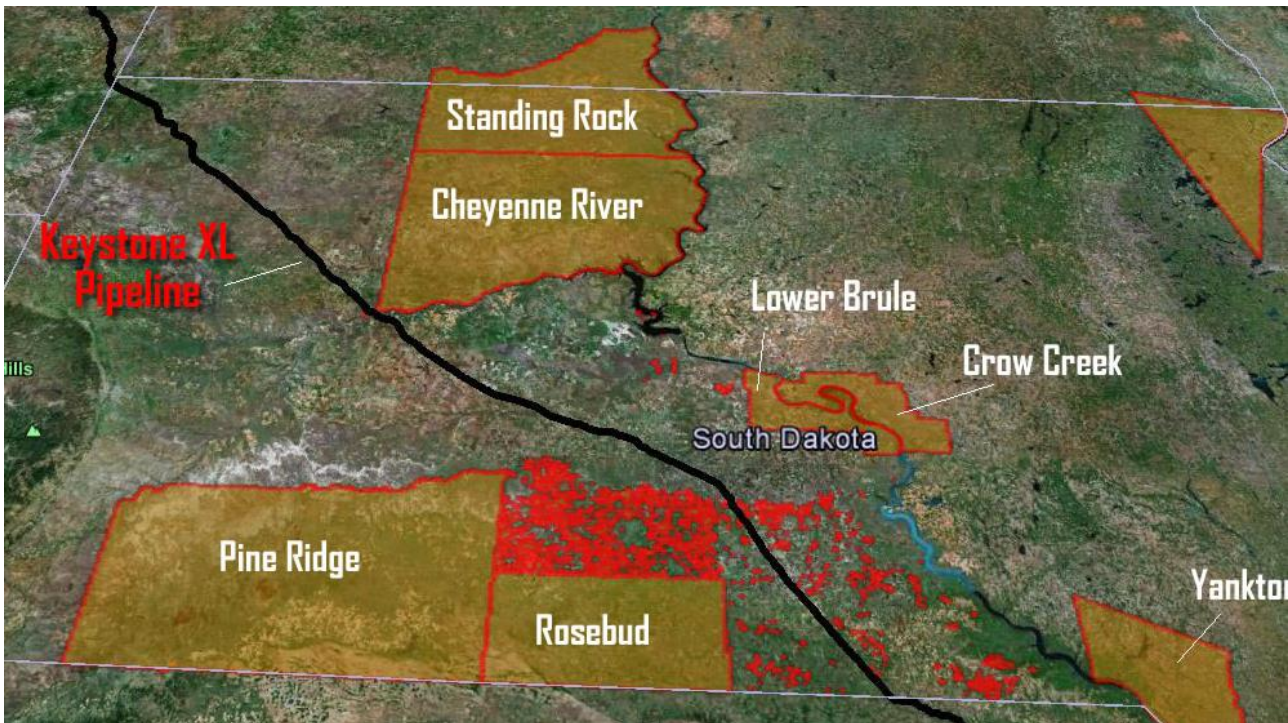


Figure 2 – Google Earth map depicting proposed Keystone XL Pipeline crossing through the state of South Dakota. Map indicates reservation and off-reservation tribal trust lands. Source: NCAI Analysis.

1. POTENTIAL ENVIRONMENTAL IMPACTS TO TRIBAL NATURAL RESOURCES, WATER QUALITY, AND WATER SUPPLY SYSTEMS

After review of the DSEIS it is evident that there are significant potential environmental impacts to the natural resources of American Indian tribes that have not been fully evaluated or communicated in this document. We call on the Department of State to engage in a more sufficient review and fully indicate the potential environmental impacts to tribal water resources and natural resources.

Specifically the DSEIS does not indicate the potential environmental impacts to the surface water, ground water, fisheries, and possibly water rights of the Fort Peck Tribes of Assiniboine and Sioux Tribes (Fort Peck Tribes) – along the Missouri River - and the Cheyenne River Sioux Tribe – along the Cheyenne River. While the Draft DSEIS partially addresses the potential impact to the The Mni Wiconi Rural Water System it does not address the potential environmental impact to the Fort Peck Tribes’ Assiniboine & Sioux Rural Water Supply System.

A. SURFACE WATER AND GROUNDWATER IMPACTS IDENTIFIED BY THE DSEIS

As indicated by the DSEIS the impacts of the Project to surface water and groundwater have the potential to be significant during the construction and operations phase of the Project.

As stated in the Executive Summary (ES.5.2.1 Surface Water) - of the DSEIS:

“The proposed Project would impact waterbodies across the states of Montana, South Dakota, and Nebraska. The proposed Project route would avoid surface water whenever possible; however, the proposed Project route would still cross approximately 1,073 waterbodies, including 56 perennial rivers and streams, as well as approximately 25 miles of mapped floodplains.

Construction Phase

Construction of the proposed Project could result in temporary and permanent impacts such as:

- Stream sedimentation;
- Changes in stream channel morphology (shape) and stability;
- Temporarily reduced flow in streams; and
- Potential impacts associated with spills.”

As stated in the Executive Summary (ES.5.2.2 Groundwater) of the DSEIS:

“The primary source of groundwater impacts from the proposed Project would be potential releases of petroleum during pipeline operation and, to a lesser extent, from fuel spills from equipment. The risks and impacts of these effects are discussed later in this Executive Summary. Any petroleum releases from construction or operation could potentially impact groundwater where the overlying soils are permeable and the depth to groundwater is shallow.”

As stated in the Executive Summary (ES.5.6.2 Oil Movement) regarding the impact of Large “Spills”:

“With a large spill, the majority of the spill volume would migrate away from the release site. The potential impacts from a large spill would be similar to the impacts from the medium-sized spill, but on a much larger scale. Once the spill reaches the surface, the oil would flow following topographic gradient or lows (e.g., gullies, roadside drainage ditches, culverts, and storm sewers) and eventually to surface water features. If the release enters flowing water or other surface water feature, the extent of the release could become very large, potentially affecting soil and vegetation along miles of river and shoreline. Sinking oil can be deposited in river or stream bottoms and become a continual source of oil as changing water flows release the deposited oil.”



Figure 3 – Google Earth map depicting proposed Keystone XL Pipeline crossing Missouri River at Milepost 89.6. Map indicates tribal trust lands. Source: NCAI Analysis

B. THREATS TO TRIBAL WATER SYSTEMS & WATER QUALITY: MAJOR WATERBODY CROSSINGS

Immediately identifiable is the fact that the proposed project crosses two major waterbodies which, in the case of a spill, would have significant impact on surface water, ground water, fisheries, and possibly water rights of the Fort Peck Tribes of Assiniboine - and Sioux Tribes – along the Missouri River - and the Cheyenne River Sioux Tribe – along the Cheyenne River. However, the DSEIS provides no impact assessment related to the potential impact to tribal nations with regard to surface water, ground water, fisheries, and possible water rights issues.

At both locations the crossing will be achieved by horizontal directional drilling (HDD). As defined by the DSEIS, HDD is “A trenchless method of crossing obstacles such as watercourses whereby a pilot hole is first drilled in a guided arc under the obstacle. If this is successful, the pilot hole is reamed to a diameter sufficient to accommodate the pipe, which is then pulled through the hole. Since success is not guaranteed, all HDD crossing plans must include a contingency alternative.” However there is no indication as to the potential impact HDD will have in these two major water crossings, nor have indications been made regarding any contingency alternative.

i. MISSOURI RIVER CROSSING - FORT PECK TRIBES OF ASSINIBOINE AND SIOUX TRIBES (MP - MILEPOST # 89.6)

The Missouri River crossing will take place at the Missouri River near the Southwestern most edge of the Fort Peck Reservation at milepost #89.6 and will be approximately 1,000 feet wide. The Missouri River travels east, serving as the southern boundary of the reservation for approximately 100 miles. It is also important to note that populations of the Fort Peck Reservation are highest along the Missouri River. Other than records of contact in the [Appendix E Record of Consultation Table](#) within the DSEIS, there is no mention or reference to the any study of the potential environmental impacts to the surface water, ground water, fisheries, and water rights, or the cultural impacts of a spill to this tribal nation.

Impacts on the Assiniboine & Sioux Rural Water Supply System (ASRWSS)

The crossing point is upstream from the Assiniboine & Sioux Rural Water Supply System (ASRWSS) water treatment plant near Wolf Point, Montana. This treatment plant is capable of delivering 13.6 million galls of water per day – upon completion the ASRWSS is estimated to serve approximately 10,439 people. ¹

Established with the enactment of the Fort Peck Reservation Rural Water System Act of 2000 (Public Law 106-382; 114 Stat. 1454) in October, 2000, the \$193 million project is authorized to provide municipal, rural, and industrial water to the Reservation and surrounding areas. According to the website for this project, “The water system will serve Reservation populations in or around the towns of Wolf Point, Poplar, Brockton, Fort Kipp, Oswego, and Frazer. Towns not on the Reservation include Glasgow, Scobey, Plentywood, and Culbertson which will be served by the Dry Prairie Rural Water Association.” ²

The need for the ASRWSS is based on the fact that “groundwater sources generally produce small quantities of water relative to demand for public supply, and groundwater quality is poor throughout the area.” ³ The ASRWSS has also been established to “provide for a single treatment plant on the Missouri River near Poplar, Montana, and will distribute water through 3,200 miles of pipelines. Present and future federal and state water quality criteria will be met by this single water

¹ Assiniboine & Sioux Rural Water Supply System - <http://www.fortpecktribes.org/asrws/>

² <http://www.fortpecktribes.org/asrws/about.htm>

³ Final Engineering Report – Fort Peck Assiniboine and Sioux Water Supply System Dry Prairie Rural Water System http://www.fortpecktribes.org/asrws/pdf/vol1/exec_summary.pdf

treatment plant rather than through 22 community plants. A single water source on the Missouri River will replace 22 individual community sources.”⁴

In connection with this crossing, it is important to reference that “the tribes own water rights to 1 million acre-feet of the Missouri River annually dating back to 1888. Approximately 7 million acre feet flow through northeast Montana every year, and this system will use about 6,000 acre feet annually.”⁵

The current water project is being built to address the already serious water quality problems in the region. According to the tribe, “ground water in northeastern Montana contains concentrations of sulfates and total dissolved solids that exceed the safe drinking water guidelines set forth by the EPA. These contaminants affect the taste and general acceptability of water. More than 80% of the private systems on the Fort Peck Reservation have documented nitrate levels above safe drinking standards. The region's ground water also suffers from contamination resulting from oil and gas development. High levels of iron, and manganese are additional water quality issues.”⁶

Additional stress to this region’s water supply, specifically to the Missouri River, brought on by “Large Spill” would result in unknown stress to the ASRWSS – though it is clear this is a direct threat to the water supply system which draws water from Missouri and is downstream of the crossing point. There is no mention of this situation in the DEIS and it is a significant omission. Evaluation of the impact of the Project to the tribal nation and the state efforts related to the ASRWSS must be addressed.

It is the advice of NCAI to include this information in the final version of the SEIS. If further consultation is required the federal government should engage in this immediately as pursuant to Executive Order 13175.

⁴ *ibid.*

⁵ <http://www.fortpecktribes.org/asrwss/questions.htm>

⁶ <http://www.fortpecktribes.org/asrwss/benefits.htm>

ii. CHEYENNE RIVER CROSSING - CHEYENNE RIVER SIOUX TRIBE – MP #430.07

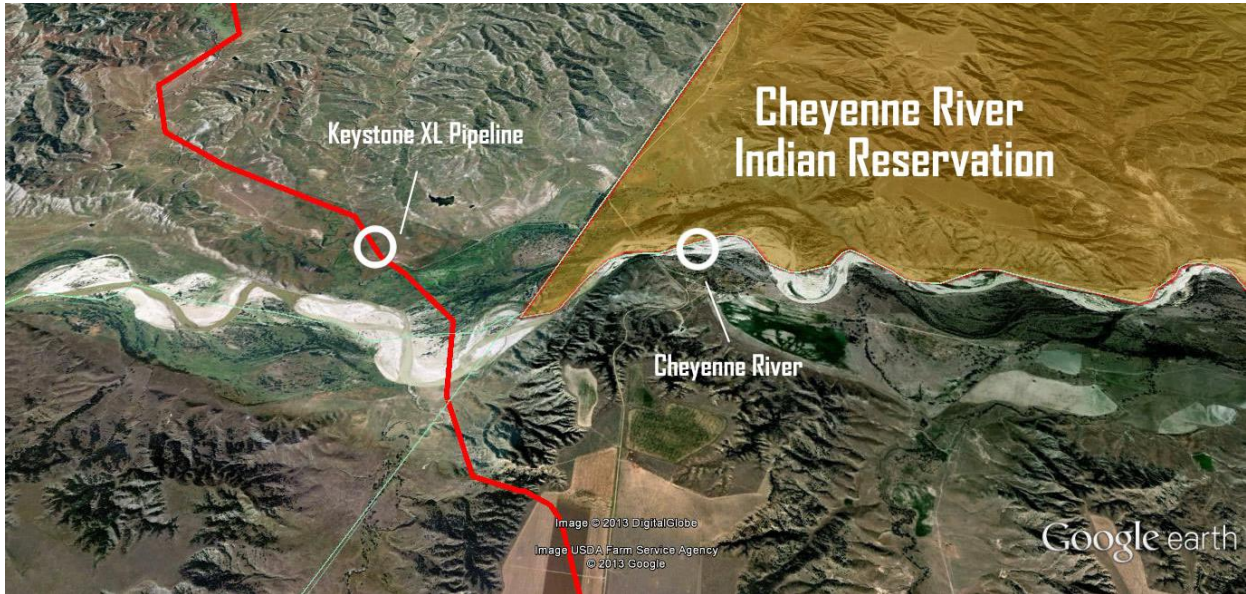


Figure 4 – Google Earth map depicting proposed Keystone XL Pipeline crossing Cheyenne River at Milepost 430.07. Cheyenne River Indian Reservation is indicated. Source: NCAI Analysis.

The Cheyenne River crossing of the pipeline occurs near the Southwestern most edge of the Cheyenne River Indian Reservation at milepost #430.07 and is approximately 1,600 feet wide. This river is a tributary of the Missouri River which flows easterly along the southern border of the Reservation to Lake Oahe, where both the Cheyenne River Indian Reservation and the Standing Rock Indian Reservation consist of the majority of the western shoreline of the Lake. Within the report there is no reference to any study of the potential environmental impacts to the surface water, ground water, fisheries, and water rights, or the cultural impacts of a spill to this tribal nation. It is the advice of NCAI to include this information in the final version of the SEIS. If further consultation is required the federal government should engage in this immediately as pursuant to Executive Order 13175.

C. THREATS TO TRIBAL WATER SYSTEMS: THE MNI WICONI RURAL WATER SUPPLY PROJECT (MWRWSP)

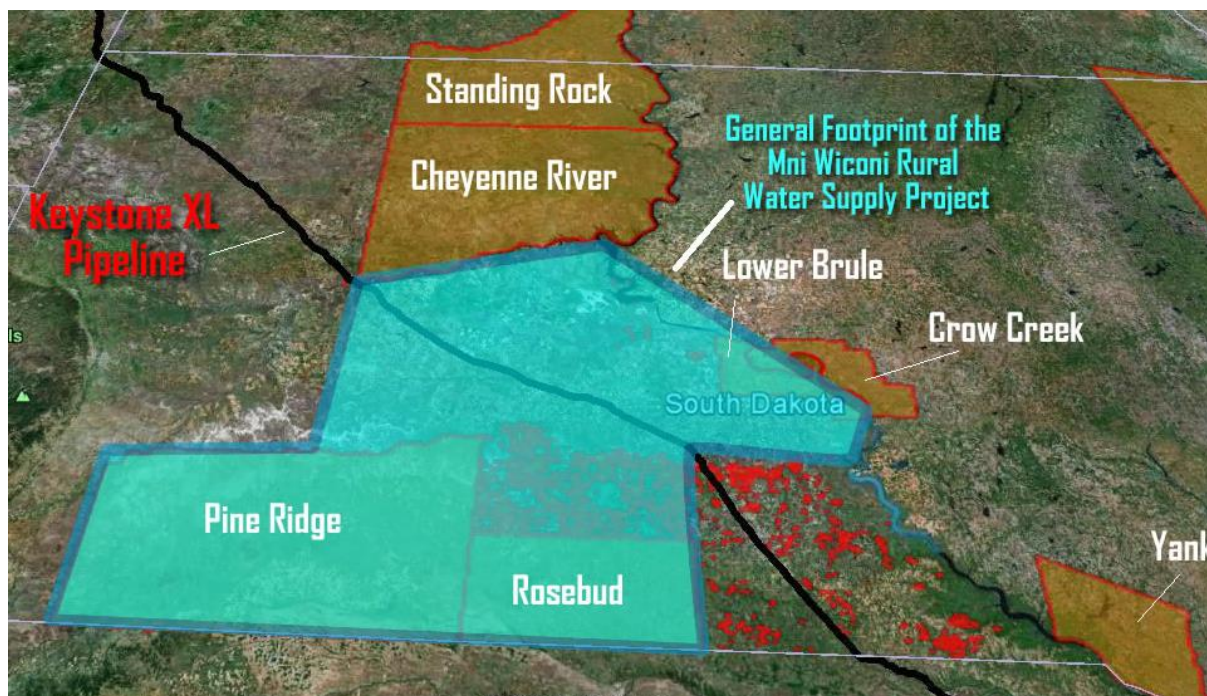


Figure 5– Google Earth map depicting proposed Keystone XL Pipeline crossing through the general footprint of the Mni Wiconi Rural Water Supply Project in South Dakota. Reservation and off-reservation tribal trust lands are indicated. Source: NCAI Analysis.

According to the U.S. Department of the Interior, Bureau of Reclamation (BOR), “The Mni Wiconi Rural Water Supply Project (MWRWSP) is a municipal, rural and industrial project that serves both tribal and non-tribal populations of the Pine Ridge, Rosebud, and Lower Brule Indian Reservations and the West River Lyman-Jones Rural Water System in seven counties of southwestern South Dakota.” Under the Mni Wiconi Rural Project Act [of 1988](Public Law 100-516) the Secretary of the Interior is responsible for “the operation and maintenance of existing water systems, including the core treatment plant and pipelines, and appurtenant facilities on the Pine Ridge, Rosebud and Lower Brule Indian Reservations.” The Mni Wiconi Project Act sets forth that the United States has a trust responsibility to provide adequate and safe water supplies to the reservations. Authorized in 1988 the project is now nearing completion and represents a federal investment of almost half a billion dollars, along with the work of tribal, federal, and state agencies to complete the project.

The BOR has noted the importance of the water system which provides “drinking water for residents of three tribal water systems and one non-tribal system where previous water supplies were insufficient or of poor quality.” The design population for the entire MWRWSP is a total of 52,000 people in South Dakota. The design population estimates that the MWRWSP is designed to

serve 21,000 people on the Pine Ridge Reservation, 17,000 on the Rosebud Reservation, and 1,900 on the Lower Brule Reservation⁷.

In section 3.3 (page 3.3 – 33), the DSEIS identifies that the Project would cross the MWRWSP distribution infrastructure – indicating that the BOR and tribal partners may have requirements for the crossings. While tribal nations, specifically the Oglala Sioux Tribe, have put forward concerns through official correspondence, beyond this reference the DSEIS fails to fully evaluate the risk posed by these crossings. It is our understanding that if the project is permitted, the tribe will insist that design requirements for crossings be developed cooperatively with BOR

The proposed pipeline would twice cross the MWRWSP. The Keystone XL pipeline will cross the MWRWSP at the Mni Wiconi Project Core Line - held in trust by the United States for the Oglala Sioux Tribe. The status of the land where the pipeline would cross the water line is problematic with the MWRWSP built through easements on private property that are held in trust for tribes by the BOR. The easement in Jones County allows the county to “cultivate, use, and occupy” the land as long as it does not endanger the MWRWSP water line.

There are two concerns raised by crossing water and oil pipelines: first, the pipeline could be damaged by corrosion and second, the water supply could be interrupted by a hot oil spill. The metal pipes could corrode more quickly due to their interaction with the soil and one of the crossings is near a section of the water line that includes PVC pipe that could be damaged by a hot oil spill.

The direct impact of pipe corrosion or damage from a spill would impact the Pine Ridge, Rosebud, and Lower Brule Indian Reservations who depend on, or will depend on (upon completion), the MWRWSP for their water. This is in addition to the tens of thousands of other non-Native South Dakota residents who could be affected. It is the advice of NCAI to include this information in the final version of the DSEIS. If further consultation is required the federal government should engage in this immediately as pursuant to Executive Order 13175.

⁷ Section 3.1 Projected Municipal, Rural and Industrial Demands, MWRWSP Final Engineering Report. Estimates based on Census Population 1960-1990. Footnotes in original report indicates historic Census undercounting in the on and off-reservation American Indian populations.

2. POTENTIAL IMPACT TO NATIVE AMERICAN SACRED PLACES

The proposed project crosses Montana, North Dakota, South Dakota, and Nebraska through many culturally significant areas for tribal nations within those states. The Keystone XL pipeline will also pass through or near burial grounds and other sacred places⁸ that are not held in trust by the federal government, but exist in traditional and historic tribal territories that have clear and ongoing tribal interests.

While consultation has been documented by the Department of State in the DSEIS (Section 1.6 Tribal and SHPO Consultation, and Appendix E Record of Consultation Table) it is unclear how the Department has engaged with the State Historic Preservation Offices (SHPOs) to ascertain impacts to off-reservation sacred and cultural places. Furthermore, it is unclear how and if tribes were involved in these Department discussions with SHPOs given that tribes have Tribal Historic Preservation Officers (THPOs) or other similar designees. Section 106 of the National Historic Preservation Act (NHPA) affords these protections to tribes to ensure that consultation with tribal governments or THPOs occurs. As stated by the Advisory Council for Historic Preservation's Section 106 Regulations Summary:

The [Section 106] regulations also place major emphasis on consultation with Indian tribes... Consultation with an Indian tribe must respect tribal sovereignty and the government-to-government relationship between the Federal Government and Indian tribes. Even if an Indian tribe has not been certified by [the National Park Service] to have a Tribal Historic Preservation Officer who can act for the SHPO on its lands, it must be consulted about the undertakings on or affecting its lands on the same basis and in addition to the SHPO.

Specifically, while the proposed route is not located within the boundaries of a reservation in Montana, North Dakota, South Dakota, or Nebraska, much of the proposed route would be located within the territory of tribal nations as recognized in the Treaty of Fort Laramie of 1851⁹. It is based on this fact that NCAI is concerned about the likelihood the proposed project will affect historic properties (properties that are listed on or eligible for the National Register of Historic Places) that hold religious and cultural significance for the tribal nations involved in that treaty (the Sioux; the Gros Ventre; Mandan, Hidatsa, and Arikara; the Assiniboine; the Blackfoot; the Crow; and the Cheyenne and Arapaho). Section 101 (d)(6) of the NHPA (16 U.S.C. § 470a(d)(6)) provides that the Department has a statutory duty to consult with the tribes to identify, evaluate, and assess how the proposed project would affect any such historic property.

Additionally, Agriculture Secretary Vilsack instructed the Forest Service and Office of Tribal Relations to develop a comprehensive review on "sacred sites" policies currently established in an effort to determine and further protect American Indian and Alaska Native sacred places. In December 2012 the USDA released this report and also an interagency Memorandum of Understanding to protect Indian "sacred sites." The Department of State should review the aforementioned materials to gain

⁸ NCAI does not use the term 'sacred sites' because it limits the scope of tribal cultural sacred items, locations, features, view sheds, and seasonal events and occurrences. Instead, NCAI uses the term 'sacred places' to fully embody tribal cultural and religious aspects. For this reason, where others use the term "sacred sites," the term is used with quotation marks.

⁹ 11 STAT. 749; 2 KAPPLER, LAWS AND TREATIES 594 (1904).

better knowledge and understanding of the cultural implications the Project proposes to tribes.

3. CONCERNS WITH SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN AND EMERGENCY RESPONSE PLAN SECTIONS

It is of serious concern, given the potential environmental impacts outlined in the DSEIS that in the section *Appendix I Spill Prevention Control and Countermeasure Plan and ERP*, there is no reference to measures in place to contact and coordinate with tribal emergency management authorities or engage with tribal governments regarding remediation funding in the event of a significant spill. It is the advice of NCAI to include this information in the final version of the SEIS. If further consultation is required the federal government should engage in this immediately as pursuant to Executive Order 13175.

4. CONSULTATION WITH AND OPPOSITION BY TRIBAL GOVERNMENTS

NCAI, regional tribal organizations, and tribal governments directly and indirectly impacted by the proposed pipeline have communicated substantial and reasonable opposition to this project. The DSEIS has not yet effectively integrated tribal consultation and feedback that has been consistently requested by tribal nations. Also, consultations with tribes previously conducted from 2009 until present should not usurp the Department's obligation to continually engage with tribal nations at each phase of these proposals. As stated in the Executive Summary (ES.5.4.1 Tribal Consultation):

Government-to-government consultation is underway for the current Supplemental EIS process for the proposed Project, and tribal meetings were held in October 2012 in Montana, South Dakota, and Nebraska. As the lead federal agency for the proposed Project, the Department is continuing throughout the Supplemental EIS process to engage in consultation on the Supplemental EIS, the proposed Project generally, and on cultural resources consistent with Section 106 of the National Historic Preservation Act of 1986 with identified consulting parties, including federal agencies, state agencies, State Historic Preservation Offices, the Advisory Council on Historic Preservation, and interested federally recognized Native American tribes in the vicinity of the proposed Project.

While the Department of State has noted an ongoing process to engage with tribal nations, the Department has still not developed an extensive and sufficient tribal consultation plan and has instead relied on its Executive Order 13175 implementation plan. This is unacceptable. Executive Order 13175 is predicated on federal, fiduciary trust responsibilities established pursuant to the Commerce Clause of the United States Constitution, recognizing tribes with the same political status as foreign nations; Presidential treaties and agreements with tribal nations adopted and ratified by the U.S. Senate; acts of Congress recognizing inherent tribal sovereignty; and rulings by the U.S. Supreme Court upholding the federal governments fiduciary trust responsibility to tribal nations.

Furthermore, the purpose of Executive Order 13175 is to ensure that federal agencies develop comprehensive plans to engage in consultation and coordination with tribal nations affected by agency

actions. The lack of guidance provided by a consultation plan does not ensure uniform and dedicated efforts by the agency to meaningfully adhere to its trust responsibilities. Further emphasizing these points, Administrator Cass R. Sunstein stated:

To ensure compliance with Executive Order 13175, President Obama instructed, “each agency head to submit . . . a detailed plan of actions the agency will take to implement the polices and directives of [that] Executive Order.” The President also instructed “each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.”¹⁰

Additionally, *Section 1.6 Tribal and SHPO Consultation* and *Appendix E Record of Consultation Table* of the DSEIS does not specify who were the tribal recipients of e-mails, mail, and faxes from the Department’s outreach efforts. Many tribal governments are not adequately staffed or funded due to dire economic circumstances, and tribal leaders and their existing staff are severely taxed with issues affecting their communities. The Department of State needs to specify how they are conducting their outreach – a simple letter addressed and mailed to a tribal chair or councilperson does not fulfill the consultation and coordination requirements envisioned by Executive Order 13175. This is exactly the reason why the Department of State needs to develop a comprehensive consultation and coordination policy for engaging tribal nations.

Again, we reiterate the need for the Department of State to develop a meaningful consultation plan to engage with tribal nations. We request that tribal consultation continue to ensure that concerns of tribal governments and members are, to the fullest extent, incorporated into the final draft of the DSEIS.

A. Tribal Opposition to Project

Tribal leaders strongly believe that the pipeline project is not in the national interest, that it violates longstanding treaties and agreements between tribal nations and the federal government, and that domestic energy should be met by developing energy resources responsibly to protect vital natural resources.

NCAI, along with other Intertribal organizations, have a long standing record and resolutions on file opposing the Keystone XL project, a selection of these resolutions are as follows:

- Resolution #REN-08-007 “Tribes United in Opposition of the Keystone Pipeline Project and Presidential Permit for the Purpose of Mitigation Settlements.”¹¹ (passed at NCAI’s 2008 Midyear Conference - Reno, NV)

¹⁰ See Office of Management and Budget. *M-10-33 Guidance for Implementing E.O. 13175, “Consultation and Coordination with Indian Tribal Governments”*. July 29, 2010. Accessed April 22, 2013. Available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2010/m10-33.pdf>.

¹¹ See National Congress of American Indians. Resolution #REN-08-007. Available at http://www.ncai.org/attachments/Resolution_PTifaiCucebXHumEiwyZioyjtINwCQsskLkTkrXnuEKpFfeWRjB_REN-08-007.pdf

- Resolution #MKE-11-030, “Opposition to Construction of the Keystone XL Pipeline and Urging the U.S. to Reduce Reliance on Oil from Tar Sands and Instead, to Work Toward Cleaner, Sustainable Energy Solutions.” (passed at NCAI’s 2011 Midyear Conference - Milwaukee WI). The resolution also points out that the Assembly of First Nations in Canada opposes the tar sands development and asserts that Keystone XL “would threaten, among other things, water aquifers, water ways, cultural sites, agricultural lands, animal life, public drinking water sources and other resources vital to the Peoples’ of the region in which the pipeline is proposed.”¹²
- The Great Plains Tribal Chairman’s Association (September 2011), through the Mother Earth Accord, stated and accepted that:
 - “We support and encourage a moratorium on tar sands development”;
 - “We insist on full consultation under the principles of ‘free, prior and informed consent’ from the United Nations Declaration on the Rights of Indigenous Peoples both in the United States and Canada”;
 - “We urge regional authorities to halt the Exxon-Imperial and ConocoPhillips Heavy Haul shipments of tar sands equipment through the United States and Canada”;
 - “We urge the United States and Canada to reduce their reliance on oil, including tar sands, and invest in the research and development of cleaner, safer forms of sustainable energy and transportation solutions, including smart growth, fuel efficiency, next-generation biofuels and electric vehicles powered by solar and wind energy.”
 - “We strongly believe that the proposed Keystone XL tar sands pipeline is not in the national interest of the United States or Canada; and
 - “We urge President Obama and Secretary of State Clinton to reject the Presidential Permit for the Keystone XL pipeline.”
- A Resolution was enacted by Great Plains Tribal Chairman’s Association (Rapid City, SD) on September 28, 2011 opposing the pipeline now being considered for authorization by the United States Department of State, on the basis that construction of such pipeline is not in the national interest of the United States.
- **Tribal Resolutions of Tribes Directly Impacted - Opposition to Project**
 - Montana
 - Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation – Tribal Executive Board - Resolution #26-2146-2013-03 (2013)

¹² See National Congress of American Indians. Resolution #MKE-11-030. Available at http://www.ncai.org/attachments/Resolution_HkgPdeJQmhLstPVJGNoJNsEqcyKxRGcpxBTUIVhIdsinhSAvkpgp_MK E-11-030.pdf.

- South Dakota
 - Ithanktonwan Oyate/Yankton Sioux General Council – April 4 and April 15, 2013 – Resolutions In Opposition to Keystone XL Pipeline (2013)
 - Oglala Sioux Tribe of the Pine Ridge Reservation - Tribal Council
 - 13-60 – Resolution Restating Opposition (March 2013)
 - 10-109- Oglala Sioux Tribe of the Pine Ridge Reservation - Oglala Sioux Tribal Council Opposing TransCanada Keystone Pipeline (June 2010)

- Rosebud Sioux Tribe of the Rosebud Indian Reservation
 - 2011-354– Opposing the construction of the Keystone Pipeline (2011)
 - 2011-308 - Rosebud Sioux Tribe of the Rosebud Indian Reservation – Endorsing Mother Earth Accord of the Great Plains Tribal Chairman’s Association (September 29, 2011)
 - 2008-160 - Rosebud Sioux Tribe of the Rosebud Indian Reservation – Opposing Phase II of Keystone (2008)
 - 2008-95 - Rosebud Sioux Tribe of the Rosebud Indian Reservation – Authorizing legal action with other Tribes opposing Keystone
 - 2008-44 - Rosebud Sioux Tribe of the Rosebud Indian Reservation – Opposing Keystone as it would desecrate sacred sites and burial grounds (2008)