



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[Docket No. FWS–R6–ES–2020–0014; FF06E220000-201-FXES11140600000]**

**Habitat Conservation Plan and Draft Environmental Assessment, Keystone XL Pipeline; Incidental Take Permit Application for American Burying Beetle; Tripp County, South Dakota, and Antelope, Boyd, Brown, Cherry, Holt, and Keya Paha Counties, Nebraska**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for public comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of documents related to an incidental take permit (ITP) application under the Endangered Species Act of 1973, as amended (ESA). We have received an application from TransCanada Keystone Pipeline, L.P. (Keystone) for a 50-year ITP for take of the federally endangered American burying beetle incidental to otherwise lawful activities associated with its Keystone XL pipeline project in parts of South Dakota and Nebraska. Pursuant to the ESA and the National Environmental Policy Act (NEPA), we announce the availability of Keystone’s ITP application, including Keystone’s Draft Keystone XL Pipeline American Burying Beetle Habitat Conservation Plan (HCP), and the Service’s draft environmental assessment for public review and comment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

**DATES:** We will accept comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL***

**REGISTER**]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Standard Time on the closing date. For more information, see **Public Availability of Comments**.

**ADDRESSES:** *Obtaining documents:* You may obtain the documents at <http://www.regulations.gov> in Docket Number **FWS–R6–ES–2020–0014**.

*Comment submission:* You may submit written comments by one of the following methods:

- *Internet:* <http://www.regulations.gov>. Search for and submit comments on Docket No. **FWS–R6–ES–2020–0014**.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R6–ES–2020–0014; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:** Drue DeBerry, 303–236–4774

(telephone). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** We, the Fish and Wildlife Service (Service), announce the availability of documents related to an incidental take permit (ITP) application under the Endangered Species Act of 1973, as amended (ESA 16 U.S.C. 1531 *et seq.*). We have received an application from TransCanada Keystone Pipeline, L.P. (Keystone) for a 50-year ITP for take of the federally endangered American burying beetle (*Nicrophorus americanus*) incidental to otherwise lawful activities associated with construction, operation, and maintenance of its Keystone XL pipeline project, in Tripp County, South Dakota, and Antelope, Boyd, Brown, Cherry, Holt, Keya Paha Counties,

Nebraska. Keystone has proposed a conservation program to minimize and mitigate for the impacts of the incidental take as described in its Draft Keystone XL Pipeline American Burying Beetle Habitat Conservation Plan (HCP). Pursuant to the ESA and the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), we announce the availability of Keystone's ITP application, including its HCP, and the Service's draft environmental assessment, for public review and comment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

### **Background**

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

### **Applicant's Proposed Project**

Keystone is seeking a permit for the incidental take of the federally endangered American burying beetle for a term of 50 years. Incidental take of this species may occur due to construction, operation, and maintenance of the pipeline and associated electric infrastructure. The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of the covered activity on the covered species. The biological goals and objectives are to avoid or minimize potential take of American burying beetle and to provide permanent habitat conservation

mitigation measures for American burying beetles to offset any unavoidable impacts during construction, operation, and maintenance of the project.

The HCP provides avoidance and minimization measures, which include measures to minimize impacts prior to construction and restoration of habitat after impacts. The estimated level of American burying beetle take from the project is 551 American burying beetles over the 50-year project duration, which would occur in Tripp County, South Dakota, and Antelope, Boyd, Holt, and Keya Paha Counties, Nebraska. To offset unavoidable impacts to the American burying beetle, Keystone will acquire, protect, and manage a minimum of 1,035 acres of American burying beetle habitat in perpetuity. These mitigation lands are expected to be acquired in Brown and/or Cherry Counties, Nebraska.

### **National Environmental Policy Act**

The issuance of an ITP triggers the need for compliance with NEPA. We have prepared a draft EA that analyzes the environmental impacts on the human environment resulting from two alternatives: a no-action alternative and the proposed action, and also addresses alternatives that were considered but that were dismissed from further consideration.

### **Next Steps**

We will evaluate the HCP and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA. We will also evaluate whether issuance of a section 10(a)(1)(B) permit would appreciably reduce the likelihood of survival and recovery of the species in the wild by conducting an intra-Service section 7 consultation. We will use the results of our intra-Service consultation,

in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

### **Public Availability of Comments**

We will post all public comments and information received electronically or via hardcopy at <http://regulations.gov>. All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

### **Authority**

This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

**Nicole Alt,**  
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Ecological Services,  
Mountain-Prairie Region.*