

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of the Application of
TransCanada Keystone Pipeline, LP to Amend their
Certificate of Compliance under the Major Facility Siting Act.

On December 27, 2018 TransCanada Keystone Pipeline, LP (Keystone) submitted an application to amend their Certificate of Compliance (the Certificate) issued by the Department of Environmental Quality (DEQ) on March 30, 2012. The Certificate authorizes the construction, operation, and maintenance of the Montana portion of the Keystone XL Pipeline, a 36-inch-diameter crude oil pipeline and associated facilities. The pipeline would enter Montana at the United States-Canada border crossing near the Port of Morgan, Montana, and extend southeast, crossing into South Dakota about 35 miles southeast of Baker, Montana. In Montana, the length of the pipeline is approximately 285 miles.

Keystone has proposed to DEQ an amendment for a larger geographic area within which to obtain sagebrush seed. On three separate occasions Keystone has tried to obtain enough silver sagebrush and Wyoming big sagebrush seed within a 100-mile offset of the pipeline corridor to comply with the Certificate. Keystone's efforts to commercially collect sagebrush seed within the approved region have resulted in an inadequate amount of sagebrush seed to meet the project's needs. Keystone has requested approval to expand the sagebrush seed collection zone from 100 miles to 300 miles of the reclaimed areas or from appropriate seed transfer zones, as designated by the Natural Resources Conservation Service (NRCS) and the United States Department of Agriculture (USDA) Forest Service.

Specifically, Keystone requests the following amendment to the Certificate. Amendment text is identified with new text is underlined and deleted text has strikethrough:

Sensitive Area Modification (Attachment 1B, page 4, fifth bullet):

Unless requested by the affected LANDOWNER, the OWNER shall use locally adapted sagebrush seed, collected within 300 ~~100~~ miles of the areas to be reclaimed or from appropriate seed transfer zones.

DEPARTMENT DECISION

Pursuant to Section 75-20-219(1), Montana Code Annotated (MCA), if DEQ determines that the proposed change would result in a material increase in any environmental impact of the facility, or a substantial change in the location of all or a portion of the facility as set forth in the certificate, DEQ is required to grant, deny or modify the amendment with conditions it considers appropriate. Under Section 75-20-219(2), MCA, if DEQ determines that the proposed change in the facility would not result in a material increase in any environmental impact or a substantial change in the location of all or a portion of the facility as set forth in the certificate, DEQ is required to automatically grant the amendment either as applied for or upon terms or conditions that DEQ considers appropriate. Therefore, whether or not there is a material increase or a

substantial change in the location of all or part of the facility, DEQ has the authority to grant and condition its approval of the amendment.

The change proposed by Keystone in the amendment application would not result in a material increase of any environmental impact. The Certificate requires Keystone to implement several reclamation measures that favor the establishment of silver sagebrush and Wyoming big sagebrush in disturbed areas, where compatible with the surrounding land use and habitats. The reclamation of sagebrush in areas disturbed by Keystone will be a component of minimizing impacts to Greater Sage-Grouse habitat and other wildlife species who depend on sagebrush habitat. Herbaceous composition and structure are particularly important aspects of Greater Sage-Grouse habitat (Connelly 2000) and can have concomitant influences on demographic rates, including nest survival (Doherty 2014). During brood-rearing, an understory canopy cover >15% is required by Greater Sage-Grouse, whereas in the winter, understory height is not applicable (Connelly et al. 2000), as sagebrush provides nearly exclusive food and cover to Greater Sage-Grouse (Pennington 2016). If Keystone is unable to collect an adequate amount of sagebrush seed for reclamation, it could have a detrimental impact to Greater Sage-Grouse and other wildlife that are supported by sagebrush vegetation.

Keystone has developed their sagebrush seeding standard based on previous research and experience on previous projects (TransCanada Keystone Pipeline, LP 2018). Keystone has specified sagebrush seed rates of between three and five pounds of Pure Live Seed (PLS) per acre in areas where sagebrush currently occurs on the project (TransCanada Keystone Pipeline, LP 2018). In total, Keystone will need approximately 2,000 pounds PLS of sagebrush seed, which equates to approximately 6,000 to 10,000 bulk pounds of sagebrush seed, depending on seed purity and viability (TransCanada Keystone Pipeline, LP 2018). The USDA Forest Service (Mahalovich 2004) have developed seed and plant transfer guidelines for almost a dozen species of sagebrush. The guidelines developed by the USDA Forest Service with this distance of 300 miles “is justified by the wind-pollinated nature of the group wherein genetic makeup is often quite similar among populations of the same taxa. For example, some Wyoming big sagebrush individual plants have genetic markers more in common with distant populations (McArthur and others 1998) than with local populations” (Mahalovich 2004). The requested expansion of the collection zone from 100 miles to 300 miles, or from appropriate seed transfer zones, is consistent with the guideline suggested by the USDA Forest Service (Mahalovich 2004). The proposed amendment is also similar in the requirements for the Bureau of Land Management (BLM) lands for the project (WESTECH 2013).

Because the change proposed by Keystone in the amendment application does not result in a material increase in any environmental impact or a substantial change to all or a portion of the facility, DEQ is required to automatically grant the amendment under Section 75-20-219(2), MCA, either as applied for or upon terms or conditions that DEQ considers appropriate. DEQ approves the proposed change as set forth in the application for amendment submitted by Keystone.

Conditions set forth in the Certificate of Compliance and Environmental Specifications and subsequent amendments remain in full force and effect.

A person aggrieved by the final decision of DEQ on an application for amendment of a certificate may within 15 days appeal the decision to the Board of Environmental Review as provided in Section 75-20-223(2), MCA.

Dated this 23rd day of January, 2019.



Shaun McGrath
Director
Department of Environmental Quality

References

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- WESTECH. 2013. "Results of Conservation between Bureau of Land Management-Miles City Office and WESTECH Environmental Services Inc." *Contact Record*. February 5.