DEQ
Montana Department
of Environmental Quality

February 5, 2021

TransCanada Keystone Pipeline, LP
Attn: Denisha Cummings
700 Louisiana Street, Suite 700
Houston, Texas 77002

DEQ Application Number: MT4011079
USACE Number: NWO-2020-01055-PIE
Applicant: TransCanada Keystone Pipeline, LP
Waterways: 201 Surface Waterbodies and Wetlands
Location: Phillips, Valley, McCone, Dawson, Prairie, Fallon Counties

Dear Ms. Cummings:

The Montana Department of Environmental Quality (DEQ) reviewed your application for 401 Water Quality Certification. The following outlines DEQ's **final determination**:

Description of the Proposed Project:
A final determination has been made by DEQ to issue a 401 Water Quality Certification for the Keystone XL Pipeline Project (Project) (MT4011079) in eastern Montana. The 401 certification is only for water quality impacts and not for other possible impacts of the Project. The Project will cross 201 wetland and waterbody features regulated pursuant to Section 404 of the Clean Water Act through Phillips, Valley, McCone, Dawson, Prairie, and Fallon Counties. The Project will install a 36-inch diameter pipeline using the crossing techniques outlined within the application. The majority of construction crossings will implement the open-cut, dry trenching method. The trenchless horizontal directional drilling method underneath waterbodies will be utilized to avoid water quality impacts at specific waterbodies and wetlands including the Milk, Missouri, and Yellowstone Rivers or other locations where open-cut, dry trenching methods will not adequately avoid water quality impacts. The Project will result in the permanent disturbance of roughly 0.06 acres of wetlands and 0.04 acres of waterbodies due to the construction of permanent access roads.

401 Water Quality Certification General:
Montana's 401 Certification Rules are found at ARM 17.30.101 through ARM 17.30.109. These rules provide Montana's framework for implementing Section 401 of the Federal Clean Water Act. 33 U.S.C. § 1341.

Section 401 Certification is a federal/state cooperative program that increases the role of the state in decisions regarding natural resources. More specifically, DEQ reviews proposed activities to determine the impacts, if any, upon applicable water quality standards. Water quality standards include the beneficial uses of a water body, the applicable numeric and narrative water quality criteria, and nondegradation policies. Following its certification review, DEQ may waive certification, deny certification, grant certification, or grant certification with conditions.

PROJECT SPECIFIC CONDITIONS

1. Environmental specifications developed by DEQ to minimize adverse environmental impacts are set forth in TransCanada Keystone Pipeline, LP (Keystone) Certificate of Compliance under the Major Facility Siting Act and supplemental Attachment 1B, which is incorporated by reference as enforceable provisions of this 401 Water Quality Certification. Should there be a conflict between the measures developed by Keystone, measures required by federal agencies, and the environmental specifications developed by DEQ and the Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation Office of Environmental Protection (OEP), the more environmentally protective provision will apply as determined by DEQ and OEP.
2. All work in and near Waters of the State shall be done to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMPs) suitable to prevent exceedances of applicable water quality standards shall be in place before clearing, filling, and grading work and shall be maintained throughout construction.
3. Slope Breakers and Trench Breakers: For each delineated wetland crossed, a permanent slope breaker and trench breaker shall be installed at the base of slopes near the boundary between the wetland and adjacent upland areas. Trench breakers shall be located immediately upslope of the slope breaker.
4. Isolation of in-water work areas: The open-cut, wet method of constructing stream crossings is not allowed if water is present at the time of construction.
5. Turbidity: All practical BMPs on disturbed banks and within waters must be implemented to minimize turbidity during incidental in-water work.
6. Clean Fill Criteria: Fill placed for the proposed Project shall not contain toxic materials.
7. Deleterious Waste Materials: All construction debris, excess sediment, and other solid waste material shall not be stockpiled below the Ordinary High Water Mark (OHWM) and shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
8. Spill Prevention: Vehicles must be fueled, operated, maintained, and stored in upland areas that minimize disturbance to habitat and prevent contamination to any surface water.
    a. No petroleum products, fresh concrete, lime, wash water, chemicals, or other toxic or harmful materials shall be allowed to enter state waters.
    b. All equipment is to be inspected for oil, gas, diesel, antifreeze, hydraulic fluid and other petroleum leaks. All such leaks will be properly repaired, and equipment cleaned prior to being brought on site. The equipment is not allowed to continue operating upon discovery of the leak and will be removed from the Project area until it is repaired.
9. Cut Slopes Adjacent to Waterbodies: Cut slopes adjacent to waterbodies shall be stabilized and revegetated to prevent further erosion into Waters of the State.

10. Site Access: Keystone shall allow DEQ and OEP inspectors reasonable entry and access to the site in order to inspect for compliance with the certification requirements applicable to the activity.
11. Hydrostatic Testing: Keystone shall obtain a Montana Pollution Discharge Elimination System (MPDES) permit for hydrostatic testing discharges. Hydrostatic Testing discharge flows are exempt from coverage by 318 Authorizations when discharging to state waters.
12. Temperature of Surface Waterbodies: Thermal pollution at all waterbody crossings, including wetland crossings, shall not cause an exceedance of the applicable water quality standard of the waterbody.
13. Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation Beneficial Uses: All work and discharges upstream of Waters of the Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation shall maintain the beneficial uses of Waters of the Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation. Keystone shall consult with OEP prior to construction of the Project to ensure compliance with the applicable and federally-approved water quality requirements of the Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation.
14. Plan Review and Approval: All procedures and BMP specifications for items 2 – 10 above must be submitted to DEQ and OEP for approval at least 30 days prior to implementation. Approval must be received by DEQ and OEP prior to implementation.
15. Reopener Clause: This 401 certification may be reopened and modified to include the appropriate effluent limitations, compliance schedules, or other appropriate requirements to ensure compliance with any applicable water quality standards including, but not limited to, requirements to ensure the integrity of the pipeline is maintained and to avoid potential future risks to water quality standards.

401 WATER QUALITY CERTIFICATION

DEQ has examined the complete application, MT4011079, and bases its determination upon an evaluation of the information contained in the application that is relevant to water quality. DEQ certifies that the Project in its current form following the conditions in the 401 Certification will not violate water quality standards. Certification of this proposal does not authorize Keystone to exceed any applicable water quality standards.

Please contact Water Protection Bureau Staff at (406) 444-5546, if you have questions.

Sincerely,

Jon Kenning, Chief
Water Protection Bureau
Water Quality Division
Montana Department of Environmental Quality

cc: Sage Joyce, U.S. Army Corps of Engineers
Mike Aubele, EXP