



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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DALLAS, TX 75202-2733

NOV 08 2011

Mr. Dolan Dunn
Planning, Environmental, and Regulatory Division
Galveston District
Department of the Army, Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

RE: Permit No. SWG-2009-00895, TransCanada Keystone Pipeline, L.P.

Dear Mr. Dunn:

In reference to the coordination notice dated October 21, 2011, the U.S. Environmental Protection Agency (EPA), Region 6, has reviewed the subject information, and would like to offer the following comments for consideration by the U.S. Army Corps of Engineers (Corps) in reaching a decision relative to compliance with the EPA's *404(b)(1) Guidelines for Specifications of Disposal Sites for Dredged or Fill Material (40 CFR Part 230)* (the Guidelines). According to the notice, the applicant TransCanada Keystone Pipeline, L.P., is proposing to construct the Keystone XL crude oil pipeline and related facilities, portions of which would be located in several counties within the Galveston District.

The proposed Pre-Construction Notification (PCN) submitted to the Galveston District, and included with the coordination notice, indicates 101 crossings of waters of the United States are proposed. Of the 101 crossings, one crossing (Feature ID W2MLB001) invokes Texas Regional Condition 2(b) Bald Cypress-Tupelo Swamps. Per this Regional Condition, the Corps is coordinating with the resource agencies as specified in Nationwide General Condition 27(d). According to the notice, in order to meet the single and complete project requirement for linear projects, the Corps has determined that due to close proximity and the contiguous nature of Feature IDs, W7KHA005, W2MLB001, S2MLB001, and W2RLB004 are part of a single and complete crossing under this coordination notice.

It appears, based on Table 2, Page 10 of 317, that the combined total impact of this single and complete crossing of waters of the U.S., including wetlands would be 1,970.4 linear feet of wetlands, 1.8 acres of temporary impacts and 1.25 acres of permanent impact. The crossing would impact palustrine forested and palustrine emergent wetlands and cross Pine Island Bayou, a perennial tributary to the Neches River.

It appears that this single and complete crossing would not be eligible for authorization under nationwide general permit 12 (NWP 12), as is proposed. According to the Corps final notice of NWP re-issuance published in the Federal Register on March 12, 2007, the threshold for any single and complete project authorized under NWP 12 is limited to a loss not greater than $\frac{1}{2}$ acre of waters of the U.S. Therefore, it appears the total impact would exceed $\frac{1}{2}$ acre and verification of this crossing is not consistent with the terms and conditions of NWP 12. Also according to the March 2007 Federal Register Notice, under the Nationwide Permit General Condition 20(e), it states "that mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of $\frac{1}{2}$ acre, it cannot be used to authorize any project resulting in the loss of greater than $\frac{1}{2}$ acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters".

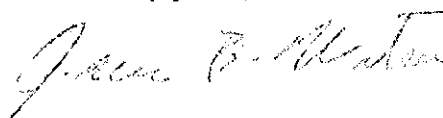
In addition, of the 101 crossings that require preconstruction notification to the Corps, it appears that approximately 60 crossings of waters of the U.S. would each result in greater than a $\frac{1}{2}$ acre loss of waters of the U.S., and would therefore not be eligible for authorization under NWP 12. For example: Feature ID W2ZJF003 consists of a crossing of 10,827.6 linear feet of a palustrine forested wetland that would result in a temporary adverse impact of 10.25 acres of waters of the U.S. and a permanent loss of 12.43 acres of waters of the U.S.

Section 404(e) of the Clean Water Act states that general permits, including NWPs, may be issued for activities that will cause only minimal individual and cumulative adverse effects on the environment. EPA believes that this individual crossing and many others included in the PCN exceed the minimal effects threshold established in the current NWP 12, and in combination, the approximately 60 crossings would result in significant cumulative effects on the aquatic ecosystem.

The EPA Region 6 would be supportive of a determination by the District Engineer that a permit application for a standard individual permit is required for this proposed pipeline project in the Galveston District. Consideration of this proposal through the Clean Water Act Section 404 individual permitting process would provide for completion of a public interest review, would allow for public participation, development of a complete alternatives analysis to assist in further avoidance and minimization of environmental impacts such as use of existing Rights of Way, development of a mitigation plan for remaining unavoidable impacts, and overall greater collaboration among the Corps, the resource agencies, and the public.

We appreciate the Corps' continued efforts to coordinate these permit actions with EPA, and offer assistance in working closely with you and our other partners on meaningful forward progress in evaluating this proposal. Should you have any questions regarding our comments, feel free to contact me or Jim Herrington, of my staff, at (254) 774-6042.

Sincerely yours,



Jane B. Watson, Ph.D.
Associate Director
Ecosystems Protection Division

cc: Mike Morgan, Texas Parks and Wildlife Dept, Dickinson, TX
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