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November 03, 2010

Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Re: Keystone XL Pipeline Project

Dear Secretary Clinton:

I am writing in response to Senator Mike Johanns' letter to you, dated November 1, 2010, with respect to the State Department's review of the proposed Keystone XL Pipeline Project. Senator Johanns requests that the State Department prepare a Supplemental Draft Environmental Impact Statement for the Project, based on his assertion that the Draft Environmental Impact Statement (DEIS) does not sufficiently analyze alternative pipeline routes and certain soils impacts. As discussed below, the routing alternatives analysis in the DEIS fully takes into account all reasonable alternatives and satisfies the Department's obligations and the public's interests in that regard.

Under the National Environmental Policy Act (NEPA), the environmental impact statement must consider a reasonable range of alternatives to the proposed action. 42 U.S.C. § 4332(2) (C) (iii); 40 C.F.R. 1502.14(a). The range of alternatives that must be examined is bounded by the "purpose and need" for the proposed agency action. See 40 C.F.R. §§ 1502.13, 1508.9 (b). It is also "bounded by some notion of feasibility." Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, 435 U.S. 519, 551 (1978) ("detailed statement of alternatives cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man."). An agency need only consider alternatives that are reasonable in light of its stated objectives. See Laguna Greenbelt, Inc. v. Dep't of Transp., 42 F.3d 517, 524 (9th Cir. 1994) (the "range of alternatives that must be considered in the EIS need not extend beyond those reasonably related to the purposes of the project."). An agency satisfies its obligation to consider reasonable alternatives when its analysis is focused by the primary objectives of the project.

Chapter 4 of the State Department's DEIS for the Keystone XL Project includes an analysis of a range of reasonable alternatives to the Project, based on the defined purpose and need of the Project. The alternatives reviewed by the Department were derived based on information provided by Keystone in its application, as well as information and suggestions provided during public and agency scoping, and through research and analysis conducted by DOS and its environmental contractor. A reasonable range of alternatives was defined and each alternative was analyzed to determine whether it would meet a number of objectives:

- Meet the Project's purpose and need;
- Provide a feasible alternative to the proposed action;
- Provide at least an equivalent level of Project benefit given the potential environmental consequences.

REVIEW AUTHORITY: Adolph Eisner, Senior Reviewer

To be considered in the DEIS, alternative pipeline routes generally were required to connect several Project control points. These fixed control points place constraints on potential geographical alternatives to achieve the Project's purpose and need. With respect to the portion of the route that impacts Nebraska (the Steele City segment), those control points are the international border crossing between Saskatchewan and Montana near the town of Morgan, Montana and the northern end of the Cushing Extension portion of the previously approved Keystone Pipeline Project. The border crossing location is a control point because it is directly south of the source of the oil to be transported by the Project at Hardisty, Alberta, Canada. The northern end of the Cushing Extension is a control point because, with only the addition of new pumping capacity, it allows the Project to take advantage of the approved (and now constructed) Cushing Extension portion of the Keystone pipeline system, thus avoiding some 298 miles of new construction in order to deliver the oil to the Gulf Coast.

The proposed route and the alternative routes considered in the DEIS take a generally diagonal path from the border crossing point to the Steele City, Nebraska commencement point of the Cushing Extension. This is the most environmentally sound approach because a diagonal route is the shortest path between the two control points. The DEIS explicitly recognizes that the shortest length for a pipeline route is environmentally preferable:

Development of alternatives also considered the desire to reduce the line miles of pipeline that would be required to reach the Project terminus. As a general rule, each mile of the proposed Project would impact approximately 13.3 acres during construction and 6.0 acres during operation As a result, there are generally environmental advantages to keeping the length of pipe required to reach the Project destination as low as possible while considering other issues of concern. (DEIS page 4-10).

In his letter, Senator Johanns suggests that the Department should consider a route that would run parallel to the existing Keystone Pipeline route. Such a route would be fundamentally inconsistent with the environmental advantages inherent in a direct diagonal route and would significantly increase environmental impacts. To parallel the Keystone Pipeline, the route would have to diverge from the proposed route in Alberta and run to the east through Saskatchewan, and Manitoba for 600 miles to a point where the route would turn south and run through North Dakota, South Dakota and Nebraska. To reach Steele City, Nebraska via this route would require a total of 1,241 miles of new pipeline construction. This compares to the 1,028-mile length of the proposed Steele City segment of the Keystone XL Pipeline. As recognized above, the additional 213 miles of pipeline construction required by Senator Johanns' recommended route represents an increase in length of 21 percent and would affect nearly 3,000 more acres of land, significantly increasing the impact to the environment, as well as causing impacts to many more landowners.

The suggestion in Senator Johanns' letter fundamentally fails to recognize or acknowledge that the route of the original Keystone Pipeline minimized the environmental impact of that project because Keystone was able to convert an underutilized portion of an existing natural gas pipeline and avoid 537 miles of new construction. This also resulted in a direct north-south route in the United States, further reducing impacts. There is no similar opportunity to convert an existing facility for Keystone XL. Accordingly, utilizing the Keystone Pipeline pathway would result in significantly greater environmental impact than the proposed diagonal route. Thus, any perceived environmental advantage from paralleling the Keystone Pipeline route would be heavily outweighed by the hundreds of miles of additional new construction that such a route would require.

Within the parameters set out in the DEIS, including recognition of the control points, the Department considered a reasonable range of potential route alternatives. Based on its assessment of these alternatives, the Department determined that none of the identified alternatives offered an environmental advantage over the proposed route. Keystone submits that this conclusion is well founded and fully justified.

Keystone understands the importance of Nebraska's special resources, including the Sandhills and the vast Ogallala Aquifer. We take very seriously our responsibility to ensure the integrity of our pipeline system and our readiness to respond through every inch of the State of Nebraska and all other states and provinces we traverse.

It is important to recognize that pipelines currently crossing over the top of the Ogallala Aquifer transport a variety of products, including crude oil similar to that to be transported by Keystone; refined petroleum products such as gasoline, diesel fuel and jet fuel; natural gas; and other products. As referenced in the attached fact sheet, *Pipeline Safety and the Ogallala Aquifer*, more than 21,000 miles of pipelines cross Nebraska. In addition, 6,000 barrels of crude oil are produced daily in Nebraska and tens of thousands of barrels are produced in adjacent states through the Ogallala Aquifer. In Nebraska, 17 of the 18 oil-producing counties sit atop the Ogallala Aquifer.

Senator Johanns' letter also suggests that a supplemental DEIS should consider avoidance of the Sandhills region and any environmental significance of soils composition. As discussed above, avoidance of the Sandhills region by a route that departs from a diagonal approach between the control points would dramatically increase environmental impacts. Moreover, the DEIS addresses construction in the Sandhills, including many special considerations and measures that would be undertaken in that region. The DEIS also contains an extensive analysis of soil compositions in the Project area (DEIS Section 3.2). Finally, based on comments that have been received on the DEIS, the Department can further address these issues in the Final EIS.

To conclude, there is no justification for conducting a supplemental Draft Environmental Impact Statement in this case. The Department's environmental review of the Keystone XL Project under NEPA has been on-going for two years and continues at this time. It has been open and transparent and has provided ample opportunity for public involvement. To engage in a supplemental review of alternative routes, such as the route suggested in Senator Johanns' letter, which is obviously environmentally inferior on its face, or for the purpose of re-starting the on-going consideration of soils issues, would elevate process over rational decision making, with no benefit to the public, while unduly delaying the important pending national interest determination.

Sincerely,



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President & CEO
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cc:

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