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Congress of the United States

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July 02, 2010

The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
Harry S. Truman Building
2201 C Street, NW
Washington, DC 20520

Dear Madam Secretary:

I am writing to inform you of my concerns about the proposed Keystone XL pipeline to transport heavy crude oil from the Canadian tar sands in Alberta to the Gulf Coast. The State Department's decision on whether to permit this pipeline represents a critical choice about America's energy future. This pipeline is a multi-billion dollar investment to expand our reliance on the dirtiest source of transportation fuel currently available. While I strongly support the President's efforts to move America to a clean energy economy, I am concerned that the Keystone XL pipeline would be a step in the wrong direction.

I am also concerned that the State Department has failed to analyze the most significant environmental impacts of this decision, as required by law, and is conducting the permitting process in a manner that lacks transparency and limits the ability of other relevant agencies to participate.

The President has delegated the authority to permit transboundary pipeline projects to the State Department pursuant to Executive Orders 11423 and 13337, which require a finding that a project is in the national interest.¹ Prior to making the national interest determination, the National Environmental Policy Act requires the State Department to prepare an environmental impact statement that assesses impacts on the environment that would result from a project and evaluates alternatives that would avoid or minimize adverse environmental effects.²

¹ Exec. Order 11423, 33 Fed. Reg. 11741 (Aug. 16, 1968); Exec. Order 13337, 69 Fed. Reg. 25299 (Apr. 30, 2004).

² National Environmental Policy Act of 1969, Pub. L. No. 94-83; Department of State, *Keystone XL Oil Pipeline Project Draft EIS (DEIS)* (April 16, 2010), 1-1.

UNCLASSIFIED

UNCLASSIFIED

The Honorable Hillary Rodham Clinton
 July 02, 2010
 Page 2

Keystone XL is a \$7 billion pipeline that would transport up to 900,000 barrels/day (bpd) of tar sands crude oil almost 2,000 miles from Alberta to refineries in the Gulf Coast.³ This pipeline would roughly double the quantity of tar sands fuel currently being imported, and in conjunction with two previously permitted tar sands pipelines that are not yet in full operation—Keystone and Alberta Clipper—would more than triple the quantity of tar sands fuel imported to the United States.⁴ The cumulative effect of the three tar sands pipelines would be to increase tar sands imports to over 3 million barrels per day. To process this large increase in tar sands imports, U.S. refineries will invest billions of dollars more in refinery upgrades.⁵

My concern is that this project would have a major adverse impact on the carbon intensity of U.S. transportation fuel. The problem is that oil can be extracted from the tar sands only by using three times the energy required to produce a barrel of conventional oil. Studies estimate that shifting to tar sands fuel increases lifecycle greenhouse gas emissions by up to 37% compared to the baseline fuel supply.⁶ Based on a mid-range estimate of the impacts, increasing the use of tar sands fuel to over 3 million barrels per day would increase lifecycle greenhouse gas emissions for transportation in the United States by an amount roughly equivalent to adding 18 million passenger vehicles to the roads.⁷ The combined effect

³ TransCanada Keystone Pipeline, L.P., *Application of TransCanada Keystone Pipeline, L.P. for a Presidential Permit Authorizing the Construction, Operation, and Maintenance of Pipeline Facilities for the Importation of Crude Oil to be Located at the United-States-Canada Border*, 7-9 (Sept. 19, 2008).

⁴ In 2009, the United States imported approximately 950,000 bpd of tar sands oil. CERA, *The Role of Canadian Oil Sands in US Oil Supply*, 9 (2010). Keystone will carry up to 590,000 bpd of bitumen, and Alberta Clipper will carry up to 800,000 bpd. Department of State, Keystone Pipeline Project (online at: <http://www.keystonepipeline.state.gov/clientsite/keystone.nsf?Open>); Enbridge, Alberta Clipper, online at: <http://www.enbridge-expansion.com/expansion/main.aspx?id=1218>.

⁵ E.g., the Motiva refinery, owned by Royal Dutch Shell and Saudi Aramco, is undertaking a \$7 billion project to double capacity to 600,000 bpd and allow processing of heavier crudes. *In Texas, Oil Sands Firms Fight for Their Share*, *The Globe and Mail* (Nov. 6, 2009). The draft EIS cites multiple planned refinery expansions and upgrades in the Gulf Coast to increase bitumen and heavy oil refining capacity. *DEIS* at 1-6.

⁶ Mui et al, *GHG Emission Factors for High Carbon Intensity Crude Oils*, NRDC (June 2010) (surveying results from five studies compared to 2005 baseline).

⁷ See U.S. EPA, *Greenhouse Gas Equivalencies Calculator* (online at: www.epa.gov/rdee/energy-resources/calculator.html).

UNCLASSIFIED

UNCLASSIFIED

The Honorable Hillary Rodham Clinton
 July 02, 2010
 Page 3

of the three tar sands pipelines would be to erase roughly two-thirds of the global warming pollution reductions that the Administration's historic motor vehicle standards would achieve in 2020.⁸

I am also concerned that the EIS for this project fails to discuss these global warming impacts, which are the most significant environmental problem associated with the project.⁹ I am submitting separately more detailed comments on the EIS. In brief, the State Department's position that it need not consider such impacts is contrary to longstanding guidance from the Council on Environmental Quality, as well as a recent district court decision.¹⁰ As a matter of good government, it makes little sense to prepare an EIS, which has the sole purpose of ensuring that the government understands the environmental impacts of a proposed action, that excludes consideration of the primary environmental impact. I urge the Department to prepare a supplemental EIS that addresses the full environmental impacts of the Keystone XL pipeline, using a lifecycle greenhouse gas emissions analysis prepared by the Environmental Protection Agency and the Department of Energy and allow for public comment on that supplemental EIS.

Finally, I am troubled by the process that the State Department appears to be following for the national interest determination. E.O. 13337 recognizes that these complex decisions involve matters within the expertise of multiple federal agencies, and it provides specified federal agencies 90 days to comment on the application.¹¹ But in this proceeding, the State Department started the clock for agency comments on June 16, 2010. This means that agencies must provide views on whether the project is in the national interest without the information on the project's environmental impacts that should be discussed in the final EIS.¹²

⁸ See U.S. EPA and U.S. DOT, *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule*, Table III.F.1-1, (May 7, 2010) (online at www.epa.gov/otaq/climate/regulations.htm).

⁹ The EIS does address the much smaller quantity of greenhouse gas emissions associated with constructing and operating the pipeline, and briefly and inadequately considers the additional greenhouse gas emissions that may result from refinery operations in the United States, but excludes all greenhouse gas emissions that will occur in Canada as a result of increased production of tar sands for export through the pipeline.

¹⁰ Council on Environmental Quality, *Council on Environmental Quality Guidance on NEPA Analyses for Transboundary Impacts* (July 1, 1997); *Government of the Province of Manitoba v. Salazar*, ___ F.Supp. 2d ___, 2010 WL 744713 (D.D.C.) (Mar. 5, 2010).

¹¹ Exec. Order 13337, § 1(c), 69 Fed. Reg. 25299 (Apr. 30, 2004).

¹² The comment period on the DEIS closes July 2, 2010, and the State Department would likely need several months to respond to comments and finalize the EIS, while agency comments on the national interest determination are due September 15, 2010.

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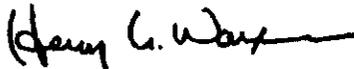
UNCLASSIFIED

The Honorable Hillary Rodham Clinton
July 02, 2010
Page 4

The State Department should comply with the purpose and process requirements of E.O. 13337 and NEPA by providing agencies 90 days to comment after the supplemental EIS is final. I also urge the Department to develop criteria for determining whether this project is in the national interest and to make those criteria public.

Thank you for your consideration of my views on this matter.

Sincerely



Henry A. Waxman
Chairman

Enclosure

cc: The Honorable Jacob J. Lew
Deputy Secretary of State for
Management and Resources

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