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200914329 Rev. 1  
United States Department of State

Washington, D.C. 20520

JUL 31 2009

**ACTION MEMO FOR DEPUTY SECRETARY STEINBERG**

FROM: EEB – David D. Nelson, Acting *DDN*

SUBJECT: Alberta Clipper Pipeline and the National Historic Preservation Act

**Recommendations**

*YB 8/3/09*

That you approve and sign the attached Programmatic Agreement for the Alberta Clipper Pipeline Project as the appropriate means by which the Department will ensure consistency with section 106 of the National Historic Preservation Act (NHPA). This Programmatic Agreement needs to be executed before or concurrent with the issuance of a Presidential Permit for the pipeline project.

Approve *[Signature]* Disapprove \_\_\_\_\_

*AUG - 8 2009*

**Background**

On May 15, 2007, Enbridge Energy, Limited Partnership (Enbridge) submitted to the Department an application for a Presidential Permit for construction, connection, operation, and maintenance of an oil pipeline and associated facilities at the U.S./Canada border. The proposed pipeline will enable Enbridge to import heavy crude oil extracted from Canadian tar sands (the Alberta Clipper Project). Enbridge is a limited partnership duly organized under the laws of the State of Delaware and a wholly owned subsidiary of Enbridge Energy Partners, L.P. ("Enbridge Partners"), a Delaware limited partnership headquartered in Houston, Texas. The U.S. portion of the pipeline would consist of approximately 326.9 miles of 36-inch-diameter pipeline and associated facilities installed primarily within or adjacent to the existing Enbridge pipeline corridor from the U.S./Canada border to the existing Enbridge terminal in Superior, Wisconsin. The Project would also require new construction at existing pump stations and construction of delivery facilities and mainline valves. The proposed Alberta Clipper Project would provide approximately 450,000 bpd of heavy crude oil capacity to meet anticipated demand.

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Under Executive Order 13337, the President has authorized the Secretary of State to issue Presidential Permits for cross-border facilities. The Secretary delegated that authority to you, the Under Secretary for Political Affairs, and the Under Secretary for Economic, Energy, and Business Affairs in Delegation of Authority 118-2 (January 23, 2006). Further, on Delegation of Authority No. 245-1 dated February 13, 2009, Secretary Clinton delegated to the Deputy Secretary of State and the Deputy Secretary of State for Management and Resources, to the extent authorized by law, all authorities and functions vested in the Secretary of State or the head of agency by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued.

Before the Presidential permit may be considered, a number of steps must be taken to ensure consistency with applicable environmental and other statutes, including section 106 of the NHPA. Section 106 requires the "head of any Federal agency" having the authority to license any "undertaking" to take into account the effects of the "undertaking" on any historic properties (which could include traditional Indian cultural properties), and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such "undertaking." The ACHP's implementing regulations further provide that each agency must ensure that "an agency official with jurisdiction over an undertaking" and who "has approval authority for the undertaking" take legal and financial responsibility for compliance with section 106, and that the section 106 process must be completed prior to the issuance of any license. As discussed above, the authority under section 106 of the NHPA has been delegated to you. Former Deputy Secretary Negroponte signed a similar Programmatic Agreement in connection with an earlier U.S.-Canada trans-boundary pipeline (Keystone).

In this case, we have determined that the effects on historic properties of Enbridge's application cannot be fully determined prior to the issuance of the Presidential permit and actual construction of the pipeline. Accordingly, as contemplated in the regulations, the Department has agreed to enter into the attached Programmatic Agreement (PA). The PA requires that during the course of pipeline construction the Department, Enbridge, and other entities will make reasonable and good faith efforts to identify historic properties, continue to undertake consultations with potentially affected parties (including Indian tribes), assess whether historic properties may be adversely affected, and take appropriate mitigation measures prior to construction of the pipeline. If that effort is not successful, the PA establishes the procedures through which the Department and Enbridge will complete these requirements during pipeline construction.

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The PA has been signed by the ACHP, Enbridge, other relevant federal agencies, state historic preservation officers, and relevant Indian tribes. The PA will be incorporated by reference into the terms of any Presidential permit issued to Enbridge. Should you decide to sign the permit, we recommend that you sign the attached PA as the appropriate means by which the Department will fulfill its obligations under section 106 of the NHPA.

Attachment:

Programmatic Agreement

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July 24, 2009

AM to D Programmatic Agreement final 7-24-09.doc

Drafted:    EEB/ESC/IEC:    J. Brian Duggan; 7x1291

Approved:   EEB:                David D. Nelson, Acting - ok

Cleared:    EEB/ESC:                DAS Douglas C. Hengel – ok  
              EEB/ESC/IEC:        Matt McManus – ok  
              E:                        Thomas Hastings – ok  
              OES/ENV:              Betsy Orlando – ok  
              L/EEB:                 Wynne Teel – ok  
              L/OES:                 Keith Benes – ok  
              L/OES:                 John Kim – ok  
              WHA/CAN:              Eleanore Fox – ok  
              D(S):                  Pamela Park – ok  
              OES/EGC:              Trigg Talley – info  
              S/P:                    Francisco Gonzalez – ok  
              P:                        Laura Rosenberger – ok

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