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Washington, D.C. 20520

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2/15/08

2008 FEB 19 P 1:01



ACTION MEMO FOR THE DEPUTY SECRETARY - D

FROM: EEB - Elizabeth L. Dibble, Acting *esofn*

SUBJECT: TransCanada Keystone Pipeline and National Historic Preservation Act

Recommendations

That you approve and sign the Programmatic Agreement for the Keystone Pipeline Project as the appropriate means by which the Department will fulfill its obligations under Section 106 of the National Historic Preservation Act. This Programmatic Agreement needs to be executed before the issuance of a Presidential permit for the pipeline project.

Approve *JAN 2/15/08* Disapprove _____

That you approve and sign the Delegation of Authority delegating the authorities of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) to the Under Secretary for Political Affairs, the Under Secretary for Economic, Energy, and Agricultural Affairs, and the Under Secretary for Democracy and Global Affairs.

esofn
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Approve *JAN 2/15/08* Disapprove _____

Background

TransCanada Keystone Pipeline, LP (TransCanada) has applied for a Presidential permit for the construction, connection, operation, and maintenance of oil pipeline facilities at the U.S.-Canada border for the transport of crude oil across the U.S.-Canada international boundary. This pipeline project is designed to transport 591,000 bbl/day of Canadian crude oil production from the Western Canadian Sedimentary Basin to existing terminals in Missouri, Illinois, and potentially Oklahoma through a 1,300 mile, 30-inch diameter pipeline.

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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 in turn has delegated the authority to issue such permits to you, the Under Secretary for Political Affairs, and the Under Secretary for Economic, Energy, and Business Affairs. Delegation of Authority 118-2 (January 23, 2006). In practice, E has approved the issuance of the permits.

Before the Presidential permit may be considered, a number of steps must be taken to ensure compliance with applicable environmental and other statutes, including Section 106 of the National Historic Preservation Act (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, 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.

In this case, we have determined that the effects on historic properties of TransCanada's application cannot fully be 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, TransCanada, 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 TransCanada will complete these requirements during pipeline construction.

The PA will be signed by the ACHP, the Department, TransCanada, other relevant federal agencies, state historic preservation officers, and some Indian tribes. The PA will be incorporated by reference into the terms of any Presidential permit issued to TransCanada. We recommend that you sign the PA as the appropriate means by which the Department will fulfill its obligations under Section 106 of the NHPA. During the week of February 18, EEB, OES, WHA,

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and L intend to recommend to E that he issue the actual permit once you have signed the PA.

Finally, we recommend that you sign the attached Delegation of Authority to the Under Secretary for Political Affairs, the Under Secretary for Economic, Energy and Agricultural Affairs, and the Under Secretary for Democracy and Global Affairs of authorities in Section 106 of the NHPA. These are the officials under whose jurisdiction Section 106 matters are most likely to arise. Under Delegation of Authority 245 (April 23, 2001), you have been delegated by the Secretary the authority to exercise, to the extent authorized by law, all authorities and functions vested in the Secretary and to re-delegate such functions and authorities. You therefore have the authority to approve this re-delegation of authority under Section 106 of the NHPA.

Attachments:

- Tab 1 – Programmatic Agreement
- Tab 2 – Delegation of Authority

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Approved: EEB/ESC: Steven Bondy (ok)

Drafted: L/OES:JJKim, 7-1660; 02/07/2008

Cleared: EEB/ESC/TEC: PHaymond (ok)
EEB/ESC/TEC/EPC: Matt McManus (ok)
OES/Env:HLee: EOrlando (ok)
EEB:Jizzo (ok)
L/EEB:JSchnitker (ok)
L/M:AKottmyer (ok)
E: TPierce (ok)
D: Klee (ok)
P: AMeltzer (ok)
S/P: MTchakalov (ok)
G: JMeline (ok)
S/ES-CR: EHardy (ok)
WHA/FO: Roberta Jacobson - ok
WHA/CAN: Eleanore Fox - ok
WHA/EPSC: Faith Corneille - ok

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Delegation by the Deputy Secretary of State to the Under Secretary of State for Political Affairs, the Under Secretary of State for Economic, Energy and Agricultural Affairs, and the Under Secretary of State for Democracy and Global Affairs of Authorities Under Section 106 of the National Historic Preservation Act

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and pursuant to Delegation of Authority No. 245 of April 23, 2001, I hereby delegate to the Under Secretary of State for Political Affairs, the Under Secretary of State for Economic, Energy and Agricultural Affairs, and the Under Secretary of State for Democracy and Global Affairs the authorities granted to the head of the agency under Section 106 of the National Historic Preservation Act, 16 USC 470f.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary and the Deputy Secretary may at any time exercise any authority or function delegated by this Delegation of Authority.

2/15/08
Date

John D. Negroponte
John D. Negroponte
Deputy Secretary of State

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Approved: EEB/ESC: Steven Bondy ()

Drafted: L/OES:JJKim, 7-1660; 02/07/2008

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