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April 8, 2013

U.S. Department of State,
Attn: Genevieve Walker, NEPA Coordinator
2201 C Street NW, Room 2726, Washington, D.C. 20520

RE: Draft Supplemental EIS, Keystone XL Project

Dear Ms. Walker,

The Santa Lucia Chapter of the Sierra Club submits these comments on behalf of the Sierra Club's 2,000 members in San Luis Obispo County, located on the Central Coast of California.

The supplemental EIS finds “no significant impacts to most resources along the proposed Project route” based on the assumption that “TransCanada Keystone Pipeline, LP (Keystone) would comply with all applicable laws and regulations” and that Keystone would “incorporate into the proposed Project and into its manual for operations, maintenance, and emergencies...the mitigation measures required in permits issued by environmental permitting agencies,” etc.

The assumptions that these measures will result in no significant impacts are clearly in error. TransCanada's first Keystone pipeline, despite compliance with applicable laws and regulations and regardless of mitigation measures required by its permit, leaked twelve times in its first twelve months of operation. As we write, a tar sands oil spill is decimating the town of Mayflower, Arkansas. It has been 32 months since tar sands oil spilled into the Kalamazoo River, with cleanup expenses, so far, totaling \$762 million, after an original cleanup estimate of \$5 million. The assumption of the EIS fails to incorporate the fact that the oil industry, having demonstrated in recent years that it is incapable of effective and timely response to conventional oil spills, has proven even less capable of responding to a spill of tar sands oil. The impacts resulting from this incapability must be evaluated in light of the evidence provided by the Mayflower and Kalamazoo spills, and the fact that a spill from the Keystone XL pipeline would potentially be ten times the size of the Mayflower spill.

In its Market Analysis, the Supplemental EIS estimates future production based solely on projected future demand, omitting to make any estimates based on future public policy, the presumptive meaning of the statement at ES-20 that “more far reaching actions than are evaluated in this Supplemental EIS would be required to significantly impact the rate of production in the oil sands.” It appears that the EIS has chosen a preferred set of market forces

and a projection of status-quo public policy that allow it to portray the impacts of the project as insignificant.

The EIS errs in its assessment that “production of WCSB and Bakken crude oil will proceed with or without the proposed Project,” and therefore “the denial of a Presidential Permit would likely result in actions by other firms in the United States (and global) petroleum market, such as use of alternative modes to transport WCSB and Bakken crude oil.” In mistaking potential future economic and policy conditions for current environmental conditions, the EIS fails to reflect the legal principle expressed in *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985): “*It is clear that the timber sales cannot proceed without the road, and the road would not be built but for the contemplated timber sales..... [B]efore deciding whether to approve the proposed road, the Forest Service is required to prepare and consider an environmental impact statement that analyzes the combined impacts of the road and the timber sales that the road is designed to facilitate.*”

The court arrived at this ruling in *Thomas* rather than holding that the road-building project’s effect of triggering timber sales was mooted by the prospect of other companies building future logging roads resulting in future timber sales if the project did not go forward. Per *Thomas*, the No Project Alternative in the Keystone EIS must evaluate the elimination of 100 percent of the impacts of the extraction, transport, refining, and combustion of that portion of tar sands oil that is currently under the ground and would be extracted and transported via Keystone. NEPA requires analysis of the effects of the extraction, transport, refining and combustion of tar sands oil via the Keystone pipeline against the current environmental baseline condition – the oil left in the ground – not against speculative future demand scenarios based solely on current market conditions. The No Project Alternative may not dismiss the impacts of the expansion of Alberta tar sands oil field production by one million barrels of oil per day, the likely amount of additional production the Keystone XL project would facilitate.

The presumption that “production of WCSB and Bakken crude oil will proceed with or without the proposed Project,” based on the Market Analysis, results in the fundamental analytical failure of the Supplemental EIS, that this project will result in no increase in global warming emissions. The Final EIS must correct this assumption.

Thank you for your attention to these concerns,



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