



February 20, 2009

Stephen J. Gallogly  
Director, Office of International Energy and Commodities Policy  
U.S. Department of State  
Washington, DC 20520  
(202) 647-4037 (fax)

Re: Public Participation in the Proposed Keystone XL Pipeline

Dear Mr. Gallogly,

We are writing to express the Sierra Club's significant concerns with the State Department's review of TransCanada's application for a Presidential Permit for the Keystone XL Project pursuant to the National Environmental Policy Act. We believe a swift remedy is necessary, including additional opportunities and time for public comment on the scope of the Environmental Impact Statement for the project.

On January 28th, 2009 the State Department published a notice of intent to prepare an Environmental Impact Statement for TransCanada's proposed Keystone XL Project in the Federal Register. The project is an international pipeline designed to transport tar sands oil from Alberta, Canada to oil refineries along the Gulf Coast in Texas.

Extraction of tar sands oil is one of the most destructive projects on earth. It contributes to climate change, devastates the boreal forest and its wildlife, uses and pollutes enormous quantities of water, deteriorates air quality and public health, and violates the rights of indigenous groups in the area. Production of tar sands oil releases three times as much global warming pollution as more conventional methods and is Canada's fastest growing source of greenhouse gases. And this is all done to meet oil demand in the United States, which imports about 60% of the tar sands oil produced in Canada through pipelines like the proposed Keystone XL Project.

President Obama has acknowledged the environmental damage wreaked by tar sands oil development. In an interview before his recent trip to Canada he said “What we know is that oil sands creates a big carbon footprint”, and “The more that we can develop technologies that tap alternative sources of energy but also contain the environmental damage of fossil fuels, the better off we're going to be”. The priority and support the administration has given clean energy is entirely appropriate, but tar sands oil can not be considered clean energy. According to studies conducted by the Canadian government tar sands oil has very little potential to mitigate the damage it causes due to the diverse state of development and diffuse pollution streams.

All of these issues, including clean energy alternatives for meeting our oil demands, should be addressed by the Environmental Impact Statement and we will provide full comments on the scope of that review at a later date. However, the opportunity for public comment on the scope of the review so far violates the intent, if not the letter, of the National Environmental Policy Act (NEPA). The very purpose of NEPA is to “ensure that federal agencies are informed of environmental consequences before making decisions and that the information is available to the public,” *Citizens to Preserve Better Forestry v. U.S.D.A.*, 341 F.3d 961, 970-71 (9th Cir. 2003), but the public participation to be allowed on the Keystone XL pipeline is limited to such an extent that the agency may not get the full information on environmental consequences that it otherwise could.

According to the Council on Environmental Quality’s (CEQ) NEPA handbook on collaboration, “One of the primary goals of the National Environmental Policy Act (NEPA) is to encourage meaningful public input and involvement in the process of evaluating the environmental impacts of proposed federal actions.” To this effect CEQ Regulations provide for scoping: “There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” 40 C.F.R. §1501.7. This requirement is important because scoping is often the first time proponents of the proposed action meet with the public. Public involvement during the scoping period helps to identify problems early in the review process. It also increases public confidence in NEPA.

Indeed, meaningful and effective public participation is one of the cornerstones of NEPA. The regulations require agencies shall “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 40 C.F.R. §1506.6(a). And the agency must “provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents” so that interested persons and agencies can be informed. 40 C.F.R. § 1506.6(b). See also 40 C.F.R. § 1500.2(d) (encourage and facilitate public involvement); 40 C.F.R. §1505.5(a) (make diligent efforts to involve the public); and 40 C.F.R. § 106.6(c) (agency must hold or sponsor public hearings or public meetings whenever appropriate).

Generally the State Department has done a good job of providing an early and open process in scoping for the Keystone XL Project. The preparation of a web site with the project application and information on how to get involved is admirable. However the process to provide notice of and hold public hearings was woefully inadequate for a project of this scope and importance. The Sierra Club has noted a trend toward shorter notice times for public hearings for scoping by

agencies implementing NEPA. In the case of the Keystone XL Project this trend reached unacceptable levels.

The first public hearing was held on February 9th, 2009 just 12 days after publication of the notice in the Federal Register, and the permit application was not immediately available for review on the web site. Although the hearings are being held near the route of the proposed pipeline they are each in a city with a population less than 25,000, with the exception of two early hearings in Beaumont, Texas and Tyler, Texas. The combination of limited notice and hearings in remote areas has made it difficult to encourage meaningful citizen participation in the scoping process.

The Sierra Club urges the State Department to fully comply with NEPA and provide a meaningful opportunity for citizen participation in the scoping process for this major pipeline project. We request that the State Department extend the public comment period on the scope of the Environmental Impact Statement for the Keystone XL Project for at least 90 days beyond March 16th and hold additional public hearings, with at least 21 days notice in the Federal Register, in the capitol city of each of the states on the proposed route as well as a hearing in Washington, D.C.

Thank you for your attention to this important matter, and we look forward to a prompt response and remedy of this situation.

Sincerely,



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