

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No.: 08-CV-01363 (RJL)
	)	
UNITED STATES DEPARTMENT OF	)	
STATE, et al.,	)	
	)	
Defendants,	)	
	)	
and,	)	
	)	
TRANSCANADA KEYSTONE PIPELINE, LP,	)	
	)	
Intervenor-Defendant.	)	
	)	

**DEFENDANTS’ MOTION TO DISMISS PLAINTIFF’S  
FIRST AMENDED COMPLAINT**

Defendants U.S. Department of State, et al. (“State Department”) hereby move this Court for an order dismissing Plaintiff’s First Amended Complaint for lack of jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1), or, in the alternative, for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6). The grounds for Defendants’ Motion are:

- (1) Plaintiff seeks to enforce the terms of Executive Order 13337, which is not judicially enforceable;
- (2) The Court lacks jurisdiction to review Plaintiff’s claims because Presidential action is not reviewable under the Administrative Procedure Act, 5 U.S.C. §§ 701-06; or, in the alternative, the decision to issue Presidential Permits is committed to the State Department’s discretion by law and therefore is not reviewable pursuant to 5 U.S.C. § 701(a)(2); and

(3) The Plaintiff lacks standing to litigate its claim because the remedy that Plaintiff seeks cannot be provided by this Court because the President retains the ultimate authority to issue the Presidential Permit regardless of whether the State Department's decision is vacated.

In support of this Motion, Defendants submit the accompanying Memorandum in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint and exhibits thereto. Defendants request oral argument on the Motion.

Federal Defendants respectfully request that the Motion to Dismiss be granted, with the parties to bear their own costs and attorney fees.

Respectfully submitted this 20th day of October, 2008.

RONALD J. TENPAS  
Assistant Attorney General  
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/s/ Luther L. Hajek  
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