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Via email: keystonecomments@state.gov

April 22, 2013

The Honorable John Kerry
U.S. Department of State
P.O. Box 96503-98500
Washington, D.C. 20090-6503

*Re: Keystone XL Pipeline—Draft Supplemental Environmental Impact Statement (EIS
No. 20130056)*

Dear Mr. Secretary:

I am writing in opposition to the Keystone XL pipeline, both as a concerned citizen of Nebraska and as a professor with over 20 years of experience in natural resources and environmental law, in particular, the National Environmental Policy Act (NEPA). My colleagues, Craig Lawson, a professor with 35 years of experience in legal profession (ethics), bioethics, and torts, and Richard Leiter, the Director of the Law Library with 30 years of experience in legal research and libraries, join me in this letter. We write to express our passion for the affected communities and the environment and to convey our intimate knowledge of this area and of the law. However, we do not purport to represent the official views of the University of Nebraska.

We are concerned about the pipeline's national implications as well as its impact on Nebraska. We are unconvinced that the pipeline will "not likely result in significant adverse environmental effects," as stated in the EIS. All of the evidence points to the contrary. By failing to address these issues, and the related environmental impacts and alternatives, the EIS fails to comply with NEPA's requirements, and the proposed project undermines the public interest in sustainable development.

National Implications: The EIS's Failure to Analyze Cumulative Direct and Indirect Impacts

The EIS's conclusions that the Keystone XL pipeline is unlikely to result in significant environmental effects, and that there will be "no substantive change in global greenhouse gas emissions," is arbitrary and capricious. By failing to scrutinize the cumulative, long-term impacts of tar sands development, the EIS fails to comply with the regulatory requirements for a thorough analysis of both direct and indirect effects of the proposed pipeline. See 40 C.F.R. §§ 1508.7-8, 1502.16. There is a clear connection between the pipeline and the tar sands development. Indeed, Alberta's Premier Alison Redford has made four trips to Washington in the past 18 months in an effort to make her case that the pipeline is of "pivotal importance" to the future of North American tar sands development.

Moreover, the EIS fails to analyze "the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity," as required by NEPA, and in particular it gives short shrift to the "[e]nergy requirements and conservation potential of various alternatives" to the proposed pipeline. 40 C.F.R. § 1502.16(e). An adequate EIS would thoroughly analyze the following impacts, along with less environmentally destructive alternatives.

- According to the industry's own analysis of carbon emissions, the pipeline will carry and emit 181 million metric tons of CO₂ every year. That is comparable to the emissions from 51 coal plants or 37.7 million cars. Jeff Myer, et al., *Oil Sands, Greenhouse Gases, and US Oil Supply: Getting the Numbers Right – 2012 Update*, <http://www.ihs.com/products/cera/energy-industry/downloadfreecanadian-oil-sands.aspx> (Nov. 8, 2012).
- Tar sands pollute far more than conventional oil—27 million more metric tons of CO₂, according to the U.S. EPA—due to the way in which it burns and the energy required to extract it. Exploiting and transporting oil from the tar sands will cause 17 percent more carbon emissions than regular oil.
- Petcoke, a byproduct of the tar sands refining process, is exported for use as a cheap substitute for coal. This practice encourages more fossil fuel burning for energy production, and therefore more carbon emissions. The State Department's EIS does not acknowledge this aspect of the proposal.

When evaluating this project, the State Department should acknowledge that the pipeline's completion would take the U.S. even farther away from meeting its climate

goals. We can't protect future generations from the worst impacts of global warming while allowing ourselves to become hooked on even dirtier sources of fuel.

Local and Regional Implications: The EIS's Failure to Analyze Cumulative Direct and Indirect Impacts on Nebraska's Natural Resources and its People

Nebraska is home to a unique and extraordinary natural resource—the High Plains (Ogallala) Aquifer. The Aquifer provides water for significant proportions of agricultural products from the region as well as drinking water for Nebraska and five other states. The hydrologically connected rivers and wetlands, along with the prairies and croplands of this region, are situated within the North American flyway and therefore provide essential habitat for migratory birds such as sandhill cranes and the endangered whooping crane.

Much of the soil, rock, and sand overlying the aquifer is extremely porous and fragile, and their vegetation and soils are easily disturbed and destroyed. The Ogallala Aquifer—the largest underground aquifer in the United States—has an immense strategic value to the nation, and its importance will continue to increase as precipitation and run-off patterns change in the upcoming decades and as the world's demand for food increases. The wetlands found within the project area are also unique and fragile, and they provide a lifeline for migratory birds and other sensitive wildlife and plant species.

The new path chosen for TransCanada's pipeline still goes over the Ogallala Aquifer, and it still poses a significant threat of contamination to the groundwater and to the soils, wetlands, and habitat above it. Transportation of diluted bitumen through the pipeline will likely result in catastrophic impacts from spills to rivers, streams, and the Ogallala Aquifer, as demonstrated by the recent spill of tar sands oil from the Exxon Pegasus pipeline into Lake Conway, Arkansas. The Keystone XL pipeline would carry nine times more diluted bitumen than the Pegasus, creating the potential for even more catastrophic results than experienced in Arkansas. In-depth attention to these types of risks and potential impacts should be included in the EIS.

The EIS fails to recognize the extent to which the State of Nebraska and its citizens rely on the Ogallala Aquifer and the land for our livelihoods, and it fails to assess the full extent of the harm that would occur if this pipeline were approved. Thus, the EIS falls short regarding the “[n]atural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.” 40 C.F.R. § 1502.16(f). It also fails to recognize the unacceptable risk of permanent, irreparable, and irreversible harm posed by the proposed pipeline. The human and non-human communities that rely upon the integrity of the natural resources in this area cannot simply pick up and move away if their habitat is destroyed.

The EIS should also acknowledge that there are no federal or state laws that ensure against leaks and spills from a pipeline of this nature, nor are there adequate laws in place that ensure that prompt and effective clean-up and restoration occur if leaks or spills do in fact happen. Nebraska recently passed a modest pipeline bill that requires reclamation, and this is a step in the right direction. However, the bill is perhaps most notable for

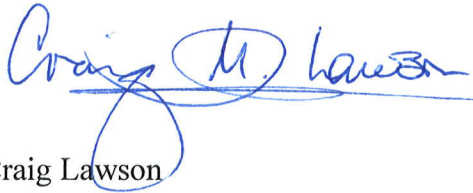
what it does *not* do. The bill does not address siting, liability, or emergency response concerns, even though, as the Congressional Research Service has concluded, the authority for addressing these issues rests with the states.

In sum, the EIS does not satisfy the purposes or requirements of NEPA. A more honest appraisal of the impacts and alternatives is imperative. However, even its truncated analysis indicates that the Keystone XL Pipeline is not in the U.S. national interest and it should be rejected.

Sincerely,



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