

WORC

Western Organization of Resource Councils

July 2, 2010

Elizabeth Orlando
OES/ENV Room 2657
U.S. Dept. of State
Washington, DC 20520

Mr. Greg Hallsten
Director's Office
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

VIA E-mail to xlpipelineproject@state.gov
And to Keystone@mt.gov

Dear Ms. Orlando and Mr. Hallsten:

The Western Organization of Resource Councils (WORC), Dakota Rural Action, and the Northern Plains Resource Council appreciate the opportunity to submit comments on the Environmental Impact Statement prepared by the United States Department of State and the Montana Department of Environmental Quality on the proposed Keystone XL Pipeline.

WORC is a regional network of seven grassroots community organizations with 10,000 members and 45 local chapters. Members in three of those organizations – the Northern Plains Resource Council in Montana, the Dakota Resource Council in North Dakota, and Dakota Rural Action in South Dakota – would be directly affected as landowners or neighbors of the proposed pipeline.¹

We are submitting these comments in addition to comments filed jointly with several other groups; comments submitted by Plains Justice and several other groups, which we endorse; and comments to DEQ related to the Montana Major Facility Siting Act and the Montana Environmental Policy Act submitted by Plains Justice and the Northern Plains Resource Council, in which we also join.

We do not believe the DEIS is adequate to provide a basis for the State Department to decide if this pipeline is in the national interest or for the State of Montana to issue a certificate under the Major Facility Siting Act. The DEIS is insufficient to justify construction of this huge pipeline, the taking of hundreds of miles of private land, the

¹ Impact to members of Dakota Resource Council in North Dakota depends on the alternative routes, potential “on-ramps” to transport domestic oil from North Dakota and Montana to the pipeline.

disruption of farming and ranching operations, damage to roads, damage and risk of contamination of water supplies, or the risk of leaks and spills on the environment.

The draft EIS glosses over the central question of whether the pipeline is really needed, and therefore in the national interest and the interests of the State of Montana. The draft EIS describes the proposed waiver of standard pressure limitations for high pressure, high volume oil pipelines, but does not even pretend to analyze the impacts of the possible alternative decisions by the Pipeline and Hazardous Materials Safety Administration, or PHMSA, a cooperating agency in preparation of this EIS, on TransCanada's application for such a waiver.

The DEIS does not disclose what areas are "High Consequence Areas" or what are the remaining, low consequence areas. This DEIS should have analyzed the potential risks and impacts of a spill for High Consequence Areas, low consequence areas, and with whatever conditions or restrictions PHMSA plans to propose in exchange for granting a pressure waiver, before the Department of State decides the pipeline is in the national interest or the Montana DEQ decides that it deserves a Montana Major Facility Siting Act certificate. A better assessment of the risks of the BP offshore drilling operation could have avoided the disaster unfolding in the Gulf right now. A hard look at TransCanada's request to waive standard safety regulations for hazardous liquid pipelines is certainly warranted in light of the apparent role of lax regulation in that disaster.

The DEIS does not contain or evaluate TransCanada's emergency response plan, which the Department of Transportation must approve prior to pipeline operations. The largely volunteer emergency personnel, potentially affected property owners, and others who live near the pipeline deserve an opportunity to comment on TransCanada's emergency response plan prior to issuance of permits and approval of the plan. Again, the disaster in the Gulf serves as a warning – if federal officials had made BP prepare a real plan for dealing with a spill before the company was allowed to drill, we would have known before it was too late that BP could not contain or clean up after a catastrophic spill. BP's plan discussed walruses in the Gulf, but failed to account for the possibility of hurricanes. This EIS fails to include even an inadequate emergency response plan. A leak of as much as 5% of the projected capacity of the pipeline – 45,000 barrels, or almost two million gallons – can leak from high pressure pipelines undetected for days or even weeks, if surface evidence of a spill does not appear.

The DEIS has no useful information on abandonment at the end of the expected 50 year life of the pipeline. What would the environmental impacts be if the pipeline is abandoned prematurely? The pipeline's economic viability is dependent on the highly volatile world price of oil, which has already forced cancellation or indefinite delay of billions of dollars worth of investment in tar sands projects in the last year or two. Premature abandonment would harm not just investors and shareholders, but could also harm affected landowners, nearby communities, and the environment. Is TransCanada going to abandon the pipeline in place? What will the impacts be of letting more than a thousand miles of 36" pipe rust in place? What happens to the oil and other hazardous residues in the pipeline after the last barrel of tar sands oil has gone through? What

agency is responsible for monitoring abandoned pipelines and insuring that any messes are cleaned up? Who will be liable for environmental contamination or other damage after a pipeline is abandoned under private land?

The U.S. Department of State should redraft or issue a supplement to this EIS, with a new public comment period, expanding the analysis in this EIS to include:

- (1) Analysis of the impacts of alternative actions by the Department of Transportation on the special permit.
- 2) Analysis of TransCanada's Emergency Response Plan, so that local first responders, and landowners can know what the plans are for preventing and cleaning up leaks and spills that would directly affect them, and suggest improvements;
- (2) A life-cycle analysis of tar sands, including the impacts on the climate and other impacts of producing the tar sands in Canada, using the Council on Environmental Quality guidelines for these analyses now under development;
- (3) A thorough, independent, and detailed analysis of the need for the pipeline. Absent a clear, unambiguous showing that the pipeline is needed, is the best alternative to meet the nation's transportation energy needs, and is in the national interest, TransCanada should not have the right to condemn landowners for the right of way to construct the pipeline;
- (4) A clear analysis of the impacts at abandonment of the pipeline, including a description of which government agencies will be responsible for oversight and enforcement of actions at abandonment, and how liability for contamination or other environmental damage will fall between TransCanada or its successors, landowners, and other entities; and
- (5) Analysis of conditions that should be attached to any national interest determination or Montana Siting Act certificate for the Keystone XL Pipeline. A list of suggested conditions is included at the end of these comments.

The EIS Does Not Adequately Address Issues Raised in Scoping

In our letter commenting on the scope of the EIS in April, 2009, we asked that the EIS provide and analyze information on several issues and questions. The draft EIS fails to address most of these issues or answer most of the questions adequately, if it addresses them at all. Accordingly, we request that the Department of State and the Montana Department of Environmental Quality revise the draft EIS to include information on the following issues and questions, so that residents along the proposed route, landowners who would be forced to host the pipeline through condemnation, and other interested persons can review and comment on information critical to the major federal actions facing the Departments of State, Transportation, and other federal agencies, and the Montana Department of Environmental Quality.

Need for and Alternatives to the Pipeline

In our scoping comments we asked that the EIS thoroughly evaluate and present information and analysis related to the need for, and alternatives to, constructing and operating the Keystone XL Pipeline. This information and analysis is important because the EIS is meant to inform the Department of State about whether the proposed pipeline is in the national interest, and to inform the Montana Department of Environmental Quality, Board of Environmental Review and other decision makers whether construction and operation of the pipeline will serve the public convenience and necessity. Should those and other necessary permits be issued, two thousand miles of pipe will be constructed and buried, after nearly as many miles of private land is condemned or acquired under threat of condemnation. Hundreds of thousands of barrels of oil per day will be pumped through the pipe under high pressure.

The Department of State must decide whether the Keystone XL Pipeline is in the national interest before issuing a Presidential Permit. The Department should have, but did not, thoroughly evaluate the applicant's claims about the potential benefits of the oil that would flow through the pipeline, nor did it seriously evaluate alternative means of meeting the nation's energy needs, or consider alternative investments of the funds that would be needed to build the line. Finally, the draft EIS did not analyze the negative impacts of the high level of greenhouse gas emissions over the life cycle of fuel made from tar sands.

For the Montana Department of Environmental Quality, questions related to the need for and alternatives to the pipeline, and whether the pipeline will serve the public convenience and necessity, were described in detail in the comments of the Northern Plains Resource Council, Western Organization of Resource Councils, the Sierra Club, and Plains Justice on the Major Facility Siting Act Application of TransCanada for the Keystone XL crude oil pipeline, dated March 6, 2009.

The draft EIS fails to take a hard look at the need for the pipeline. There will be excess capacity in the Alberta Clipper, Keystone I and other pipelines for the foreseeable future, even taking the projections of the Canadian tar sands industry and the public statements of pipeline operators at face value. At a minimum, the State Department should consider the alternative of asking TransCanada to resubmit its application in seven to ten years, if U.S. demand and Canadian supply of tar sands do eventually warrant it.

Of course, the EIS should go beyond accepting the statements of the applicant and the tar sands industry at face value in considering need and defining the range of reasonable alternatives, but it did not. The EIS should have looked at the likely affect of pricing carbon on the demand for tar sands, and consider that demand in relation to the demand for lower carbon alternatives for meeting transportation needs, including high efficiency biofuels, increased automobile efficiency, plug-in hybrids, increased use of mass transit, and redesign of transportation infrastructure. The EIS dismisses all of these viable alternatives to construction of the pipeline with the excuse that the no action alternative would not allow TransCanada to get tar sands oil from Alberta to the U.S. Gulf Coast.

However, the national interest determination should not hinge on whether TransCanada can implement its business plan; there is no inherent national interest in enabling TransCanada to profit by gaining easier access to Gulf Coast markets. Rather, the national interest determination should be based on whether the proposed pipeline, or alternative means of meeting U.S. transportation needs, provides the most benefits with the least costs to society.

In our scoping comments, we said that the EIS “must evaluate the applicant’s claims that the pipeline is in the national interest, including analysis showing whether construction and operation of the proposed pipeline would have greater or lesser impacts on the physical and human environment than alternatives to construction of the pipeline.” This is explicitly required of the analysis that the Montana Department of Environmental Quality must perform under the Montana Major Facility Siting Act, which requires a balancing of the need for a proposed project against its impacts on the human environment. The EIS should have but does not enable the public, the State Department and DEQ to compare the impacts of the proposed project with the impacts of reasonable alternatives on the natural and human environment, because it arbitrarily dismisses all alternatives as unreasonable or impossible.

In scoping, we said that analysis of the no action alternative should include analysis of the environmental and economic impacts of “the most likely combination of alternative sources of liquid fuel, increased efficiency, and reduced domestic oil use that would replace the liquid fuel available in the U.S. from the proposed project, in the event the pipeline is not built.” The EIS did not do this, instead asserting that the U.S. would have to rely on oil imports from more unstable and less friendly countries, without analytic sophistication beyond the assertion that meeting U.S. transportation needs through increased energy efficiency or alternative fuels is “unlikely.” It fails to even mention the possibility of alternatives we suggested in scoping:

“Displacing the oil to be transported by pipeline through investments equal to the planned cost of the pipeline in cheaper, faster, safer alternatives, such as biodiesel and other renewable fuels, plug-in hybrid vehicles powered by wind, more efficient vehicles and oil-consuming equipment and infrastructure, and increased passenger rail and other mass transit. This analysis should include an analysis of how much oil could be saved each year with investment of the billions of dollars that TransCanada proposes to sink into this pipeline, on top of the \$50-\$100 dollars per barrel cost of extracting the tar sands oil.”

We said that “[t]he EIS must evaluate the claims made in the application that the supply of oil from Canadian tar sands will increase by 1.6 million barrels per day by 2017...” Instead, the EIS simply takes Canadian tar sands industry projections at face value, without independent evaluation of their assumptions and calculations.

Pipeline Safety and Department of Transportation Permits and Reviews

In our scoping comments, we expressed concern about the apparent lack of understanding or coordination between the Departments of State and Transportation. In those comments, in correspondence with PHMSA, and in meetings with both agencies, we have raised the apparent failure of the Department of Transportation to act as it should as a cooperating agency. We have argued that PHMSA should coordinate its permitting processes so that the State Department's EIS could inform its decisions (1) whether to approve, approve with conditions or reject TransCanada's application for a special permit waiving standard pipeline safety restrictions on operating pressure (and therefore pipe thickness), and (2) whether to approve, ask modifications to or reject TransCanada's emergency response plan.

Specifically, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) must approve or disapprove a special permit for Keystone to operate the pipeline at a higher percentage of the designed specified minimum yield strength (SMYS) of its pipe, effectively allowing use of thinner pipe than would otherwise be required under U.S. pipeline safety regulations. PHMSA should not make a decision approving a special permit for Keystone prior to analysis of the pipeline in an EIS. The EIS should have analyzed options for pipeline thickness, quality, and construction and operation procedures that could be required under a special permit, and the potential risks to the natural and human environment under those options.

The EIS understates impacts on the environment, including farms and ranches.

Our scoping comments urged analysis of these issues and impacts of construction and operation of the pipeline and associated facilities on the environment, which the draft EIS fails to analyze either adequately, or at all:

- The draft EIS appears to list only the acreage directly removed from agricultural production, for construction or operation, but does not analyze the acreage lost from agricultural operations because of interruptions caused by changes to or lack of access to fields, equipment, farm roads, and farm buildings.
- The draft EIS makes no attempt to estimate the loss of agricultural production or the cost to farmers and ranchers caused by land put out of production, loss of access, dust, weeds, fire, or the use of hazardous materials, except to claim, erroneously, that land disturbed by construction or hazardous materials spills would be restored to full productivity within one year.
- The draft EIS fails to analyze the impacts of pipeline construction to streambeds and water-bearing underground, clay-bottomed gravel beds along intermittent streams with and without requirements to reconstruct these critical water sources, or to discuss potential mitigation such as reconstruction of shallow aquifers through selective removal and replacement of topsoil, subsoil, gravel and clay. The draft EIS at 3.3.24 appears to acknowledge that these aquifers will be disturbed by construction and not reconstructed. The final EIS should clarify this

- and estimate the impact of destroyed aquifers on farmers, ranchers, recreationists, and others who depend on those resources.
- The draft EIS fails to seriously analyze the potential damage to surface and groundwater from operation of the pipeline including leaks, spills, and accidents, because it did not analyze worst-case scenarios, such as a spill in the Ogallala aquifer, the increased risk of irremediable leaks because of the weight of tar sands compared to conventional oil, or the likelihood of leaks, spills and accidents of varying size and seriousness.
 - The draft EIS does not estimate the cost of fully reclaiming agricultural land and wildlife habitat or water supplies from damage during construction, simply asserting that TransCanada would be responsible for reclaiming the right of way and other disturbed lands. This provides no basis for assessing the merits of assessing bonds or other financial assurance so that all activities needed to fully and timely reclaim disturbed areas and water resources will be done after construction, after leaks or spills, and after the pipeline goes out of service, as we had suggested in our scoping comments.
 - The EIS did not analyze the environmental impacts of premature abandonment of the pipeline. The pipeline's economic viability is dependent on the volatile world price of oil, which has forced cancellation or indefinite delay of billions of dollars worth of investment in tar sands projects, and left the two largest pipelines carrying tar sands to the U.S. virtually empty. Premature abandonment of the pipeline would harm not just investors and shareholders, but could also harm affected landowners, nearby communities, and the natural environment.
 - The EIS failed to analyze the impacts of alternative scenarios for decommissioning and abandonment at the end of the pipeline's useful life, including options for minimizing the environmental impacts and safety hazards. It does not describe what agency or agencies would be responsible to clean up, dig up pipe out of abandoned rights of way, and reclaim the right of way, if TransCanada defaults on its obligations. The EIS does not analyze the environmental impacts of letting the pipe rust and collapse if it is not removed on decommissioning. It does not analyze whether the pipe would be a hazard in farming and ranching areas, as abandoned pipelines are in other parts of the country. The draft EIS does not clarify who or what entity would be liable for the costs of clean up in the event any section of the pipeline caused contamination or posed an environmental hazard. The EIS does not discuss whether any agency has authority to require, condition, or review plans for decommissioning, or to ensure that plans are carried out. It does not describe the legal responsibilities of TransCanada and its successors. It does not analyze whether any agency has authority to require TransCanada to post bonds or other financial assurance to ensure proper abandonment and reclamation of the right of way, as would be required for a coal mine or oil and gas wells.
 - The draft EIS fails to analyze the environmental and economic impact of construction and operation of electrical generating facilities needed to provide the hundreds of megawatts of generating capacity needed to run the pumps for the pipeline. The lifecycle greenhouse gas emissions generated from construction and operation of these generating sources should have been analyzed, along with the

- direct environmental impacts of construction of new generating facilities, and the projected costs to customers of rural electric cooperatives, the Western Area Power Administration, and other electric utilities that will need to build new generating and transmission capacity to serve the loads required for the pipeline. The draft EIS did not do this, nor did it disclose whether rates charged to TransCanada will cover the full costs of the added capacity, or whether other residential, agricultural and commercial ratepayers will foot part of the bill.
- The draft EIS failed to analyze the effect of adoption of carbon-control policies by the U.S. and Canadian governments on pipeline economics as well as on the decision whether the pipeline is in the national interest. Enactment of a carbon tax, carbon emissions limits, cap and trade bills, or other public policies designed to limit and/or economically penalize high-carbon fuels will adversely impact tar sands oil development and pipelines disproportionately, because tar sands fuel is a relatively high-carbon emitter over its full lifecycle (compared to conventional petroleum-derived fuel). Public policy designed to curb greenhouse gas emissions could make operation of the pipeline uneconomical, by increasing the cost of tar sands delivered to Gulf Coast oil refineries relative to the cost of lower-carbon alternatives. Public policies to limit carbon emissions could also eliminate the demand (and need) for the oil to be transported through the pipeline, by reducing demand for crude oil and increasing demand for renewable fuel and more energy efficient vehicles. The State Department and the Montana Department of Environmental Quality must consider the relative lifecycle emissions of climate-change causing gases from the extraction, separation, transportation, refining and use of tar sands made possible by construction and operation of the proposed pipeline, compared to the full lifecycle emissions of alternatives to the pipeline, but have failed to do so in the draft EIS. This analysis is critical in determining whether the pipeline is in the national interest and whether it serves the public interest in Montana.
 - The EIS fails to analyze the relative risks and the potential impacts of leaks and spills of alternative decisions by the Department of Transportation on granting the waiver for which TransCanada has applied from maximum operating pressure regulations. This analysis is particularly important for rural, low-population density areas of Montana and the Dakotas, since TransCanada is selectively applying for this permit in rural areas, as opposed to high population urban areas. The EIS should have analyzed the impacts of operation of the pipeline under alternative scenarios, including different requirements by the Department of Transportation for pipeline thickness, operating pressure, and monitoring requirements. Different sets of standards and protocols for operation of the pipeline will yield different levels of risk, and thus different levels of impacts from pipeline leaks, spills, and other accidents. Oil pipeline leaks and spills, over time, are the rule, not the exception, as the recent catastrophic spill in Salt Lake City demonstrates.
 - The EIS fails to analyze the adequacy of the applicants' plans for response to accidents, spills, and other emergencies during operations – and, in fact, it doesn't include the details of Keystone's Emergency Response Plan, because TransCanada has not prepared one. The proposed pipeline would cross hundreds

of miles of remote, often fragile areas. Finding and gaining access to sites of leaks and spills may be difficult or slow along much of the pipeline route, and personnel and equipment capable of cleaning up leaks and spills will be few and very far between. The methods of cleanup for small leaks as compared to spills, for cleaning up spills affecting groundwater as opposed to surface water, and other information in the emergency response plan is necessary for an adequate analysis of the potential impacts of spills and leaks in the EIS.

Failure to make the proposed Emergency Response Plan for this pipeline available with the EIS leaves landowners, emergency personnel, and local officials without any useful information about whether or how TransCanada will assist, equip, train, and fund local first responders to be ready and able to act in the event of accidents threatening the environment or public health. Failure to include this information in the EIS prevents local citizens from making comments that could improve the plan, such as identifying roads that are impassable during summer storms or winter blizzards and should not be relied on for access to remote spills, or providing information about the number of volunteers and the equipment that may be available along the pipeline route. The apparent uselessness of BP's emergency response plan for deepwater drilling in the Gulf illustrates the importance of a well-prepared plan vetted thoroughly by public review and disclosure.

- The EIS failed to analyze the impacts of manufacturing and transporting steel pipe. According to press reports, most of the pipe used in construction of the Keystone I Pipeline was manufactured in and imported from a facility in India. The energy consumption, emission of greenhouse gases, and other impacts of manufacturing sections of steel pipe in India and shipping them to the U.S. should have been compared to the impacts of manufacturing the pipe in the U.S.

Subsequent to the end of the public comment period on the scope of the EIS, TransCanada and oil producers from Montana and North Dakota announced that they were in negotiations that could lead to construction and operation of an "onramp" to allow domestic light sweet crude on to the Keystone XL pipeline. The impacts of this onramp should be analyzed in this EIS. In addition to the impacts of the infrastructure required and potential increases in drilling impacts, PHMSA needs to analyze the potential safety impacts of an onramp. Alternating batches of light sweet crude and tar sands oil poses an extra risk of surges and overpressure events, which must be taken into account in any decision by PHMSA on TransCanada's application for a special permit waiving standard operating pressure limits on the pipeline.

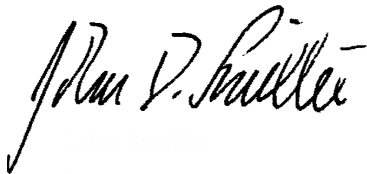
Conditions to attach to Presidential and Major Facility Siting Act Permits

The defects in permitting processes and the draft EIS analysis enumerated above should be corrected before permits are issued for the Keystone XL pipeline. If a Presidential Permit or a certificate under Montana's Major Facility Siting Act is issued, such a permit should be require the following, among other conditions:

1. Maximum operating pressure should not exceed 72% of specified minimum yield strength of the pipe.
2. TransCanada must conduct radiological or ultrasonic inspection of all girth welds, and retain records of such inspections for the life of the pipeline.
3. Temperature of tar sands oil or other product in the pipe should not exceed 150 degrees F.
4. All overpressure events must be reported and reports available for public inspection, regardless of whether they led to spills, leaks, or citations or penalties.
5. The Emergency Response Plan submitted to DOT must be disclosed to and approved by landowners on and near the pipeline right of way, local emergency responders, and county commissioners or supervisors in each county crossed by the pipeline.
6. TransCanada should post a bond adequate to ensure reclamation of lands and water resources damaged during construction, and to ensure reclamation of the right of way upon abandonment.
7. TransCanada should post and maintain a bond adequate to ensure clean up of a worst-case leak or spill, for as long as the pipeline is operating and through abandonment.
8. TransCanada should post bonds adequate to ensure reclamation and/or rebuilding of all roads and bridges affected by construction and damaged by construction equipment traffic with the County Commission of each affected county, and with state highway authorities, as appropriate.
9. No tar sands oil, product refined from tar sands oil, or other fuel transported through the pipeline may be exported from the Gulf Coast to any market outside the United States.
10. TransCanada must develop an Agriculture Mitigation Plan with the Department of Agriculture of each state crossed by the pipeline.

Once again, we thank you for the opportunity to comment on the draft EIS for the Keystone XL Pipeline.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Smillie". The signature is written in a cursive, flowing style.

John D. Smillie
Campaign Director