WORC

Western Organization of Resource Councils

April 15, 2009

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 Dakota Resource Council appreciate the opportunity to submit comments on the scope of the Environmental Impact Statement to be 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, depending on the alternative routes and methods of construction, operation, and decommissioning of the pipeline. The Northern Plains Resource Council is submitting comments in a separate letter.

In addition to the issues to be addressed as outlined in the notice inviting comment on the scope of the EIS, we request that the EIS provide and analyze information on issues and questions raised in these comments.

The EIS must 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, with or without

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consent of the landowners. 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 must evaluate the applicant's claims about the potential benefits of the oil that would flow through the pipeline, and it must evaluate alternative means of meeting the nation's energy needs, alternative investments of the funds that would be needed to build the line, and 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, are 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.

We are very concerned that State is uncertain about its policies and procedures for issuing presidential permits and for functioning as the lead agency in preparation of an EIS with other federal agencies. It is not clear to us – from the agency's formal notices in the Federal Register, statements at public meetings, or in our informal meetings and communications with State Department representatives – that the agency understands that as lead agency, it is responsible for preparing an EIS that analyzes the impacts of other agencies' major federal actions concerning this pipeline that will significantly affect the human environment, before those other agency decisions are made.

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 Maximum Operating Pressure of the pipe it uses, 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 this EIS. The EIS should analyze 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 analysis of potential leaks and spills and alternative safety requirements by PHMSA would be meaningless if PHMSA has already made its decision on the special permit prior to release of a draft EIS, public comment, and consideration of the EIS and public comments by PHMSA, State, and other responsible agencies.

We have these further comments on topics for research and analysis in the EIS.

1. <u>The EIS must evaluate the applicant's claims that the pipeline is in the national interest</u>, 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. The EIS should enable the public and the State Department to compare the impacts of the proposed project with the impacts of reasonable alternatives on the natural and human environment.

2. In addition to alternative routes, the EIS must fully evaluate these alternatives:
    a. Taking no action. 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. It should also include alternative methods of transporting the tar sands oil, such as by rail[1] (footnote see CN plans "pipeline on rail to oil sands, Financial Post, April 8, 2009).
    b. 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.

3. The 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, that the U.S. demand for oil will continue to increase, and that shipper support will be sufficient to fill the pipeline's capacity. It is possible that, as a result of the drastic changes in the world price of oil since the project's conception, the need for the project, and its impacts to landowners and the environment, has disappeared.

4. The EIS must analyze all of the impacts of construction and operation of the pipeline and all associated facilities on the physical and human environment, including:
    a. The cost to agricultural operations from interruptions caused by changes to or lack of access to fields, equipment, farm roads, and farm buildings.
    b. The loss of agricultural production caused by land put out of production, loss of access, dust, weeds, fire, and the use of hazardous materials.
    c. The impacts to wildlife and livestock from disturbance to habitat, migration corridors, breeding areas, loss of access to water and food, and noise.
    d. 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.
    e. The impacts of construction noise and pumps and other operating equipment on human health.
    f. Damage to surface and groundwater from construction and alternatives to mitigate that damage, including reconstruction of shallow aquifers through selective removal and replacement of topsoil, subsoil, gravel and clay.

[1] See plans of the Canadian National Railway , "Pipeline on rail to oil sands," *Financial Post*, Apr. 8, 2009.

g. Damage to surface and groundwater from operation of the pipeline including leaks, spills, and accidents. The EIS should analyze worst-case scenarios, and the likelihood of leaks, spills and accidents of varying size and seriousness.
h. Cost of fully reclaiming agricultural land and wildlife habitat as well as water supplies from damage during construction.
i. The merits of assessing bonds or other financial assurance so that all activities needed to fully and timely reclaim disturbed areas will be done after construction, after leaks or spills, and after the pipeline goes out of service.

5. The EIS must analyze 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 in the last few months. Premature abandonment of the pipeline would harm not just investors and shareholders, but could also harm affected landowners, nearby communities, and the natural environment.

6. The EIS must 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. 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 Keystone defaults on its obligations? The EIS should analyze the environmental impacts of letting the pipe rust and collapse if it is not removed on decommissioning. What kind of hazard is it likely to be in farming and ranching areas? The pipeline would become, in effect, a 1,300 mile leaking underground storage tank. Who or what would be liable for the costs of cleanup? Does any agency have authority to require, condition, or review plans for decommissioning, or to ensure that plans are carried out? Is the pipeline operator responsible? Does any agency have 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?

7. The EIS must 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 be 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. Will rates charged to TransCanada pay the full costs of the added capacity, or will other residential, agricultural and commercial ratepayers foot part of the bill?

8. The EIS must 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, in the EIS, and in determining whether the pipeline is in the national interest and serves the public convenience and necessity.

9. The EIS must analyze the risks and the potential impacts of leaks and spills in the event that the Department of Transportation grants the waiver for which TransCanada has applied from maximum operating pressure regulations. As noted above, the Department of Transportation should not issue any permit or waiver prior to analysis of the impacts of issuance of a permit or waiver in this EIS. It is particularly important to do this analysis in 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 analyze 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. Of course, leaks, spills and accidents have serious long-term impacts to land, surface water, and groundwater.

10. The EIS should analyze the impacts of the alternative route through North Dakota as described in the application to the Montana Department of Environmental Quality. Landowners, other effected residents and local officials in North Dakota have not been notified of the potential route by the applicant or by public officials, or advised of the potential impacts on their property and livelihoods.

11. The EIS should analyze the impacts of construction and operation of the proposed pipeline on traffic. The EIS should answer the following questions so that citizens, counties, state, tribes and others can have a better perspective on what is to be expected in relation to the construction of the Keystone XL pipeline:
    - What is the maximum weight of vehicles associated with the construction of the Keystone XL pipeline? What will be done to mitigate the impacts of these vehicles on rural county roads? Recent reports from townships in North Dakota

complain of TransCanada equipment damaging local roads because of their extreme weight.

- What can landowners expect when TransCanada utilizes access routes across private property to haul pipe and construction equipment to the pipeline site?
- How many roads will need to be built to access the pipeline route?
- What kind of equipment will two-track farm roads have to support?
- What mitigation measures will TransCanada take in order to insure useable roads?
- What will be the impact of the increase in traffic and the destruction of existing vegetation on the spread of noxious weeds? Noxious weeds tend to thrive in disturbed soils. While weeds are a nuisance in a garden or lawn, they are a very serious threat to agricultural operations in our rural states. There is no doubt that TransCanada's project will facilitate the propagation and subsequent spread of weeds. Judging by its track record with Keystone I, TransCanada has not proven willing to fairly compensate landowners for this disturbance. How will the State Department protect landowners from this threat to their livelihoods?
- How many workers can our states expect to be using rural county roads? Additional traffic on these roads near the construction site will have impacts to the road system that rural communities depend on.

12. The EIS should analyze the adequacy of the applicants' plans for response to accidents, spills, and other emergencies. 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. How will the applicant 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?

13. The EIS should analyze the impacts of manufacturing and transporting steel pipe. According to press reports, most of the pipe used in ongoing construction of the Keystone I Pipeline is being 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 be compared to the impacts of manufacturing the pipe in the U.S.

We appreciate your consideration of these suggestions on the scope of the Environmental Impact Statement on the proposed Keystone XL Pipeline.

Sincerely,

John D. Smillie
Campaign Director