



October 7, 2011

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*Re: Public Comments on the National Interest Determination of the Proposed
Keystone XL Project*

Dear Mr. Yuan:

On behalf of the Center for International Environmental Law, Earthjustice, and Greenpeace USA, we submit the following comments on the national interest determination for the proposed Keystone XL project. Under Executive Order 13337, the U.S. Department of State may not grant a Presidential Permit for the Keystone XL project unless it is determined to serve the national interest.

The Keystone XL project would contribute to substantial increases in greenhouse gas emissions and thus would have significant global climate impacts. As a result, the Keystone XL project is contrary to the United States' obligations and commitments to lead the international community in taking urgent action to mitigate climate change. In addition, the project would undermine key U.S. policy priorities in transitioning to a clean energy economy. The project would also facilitate Canada's violation of its own international climate obligations. For these reasons, the State Department must find that the Keystone XL project does not serve the national interest and reject TransCanada's application for a Presidential Permit to build the pipeline.

1) The Keystone XL Project would contribute to substantial increases in greenhouse gas emissions.

Extraction, upgrading, transportation and refining of tar sands oil is extremely energy- and greenhouse gas-intensive. The U.S. Department of Energy has found that the lifecycle greenhouse gas (GHG) emissions of tar sands crude oil are 2.3 times those of the lowest carbon-intensity domestic crude oil source.¹

The final environmental impact statement (FEIS) for the Keystone XL project prepared by the State Department states that, under at least one scenario, additional annual lifecycle GHG emissions associated with tar sands crude oil compared to Middle East Sour crude are 18 to 21 million metric tons of CO₂ equivalent (CO₂-e) annually at the proposed pipeline's full capacity.²

¹ Natural Resources Defense Council, *Setting the Record Straight: Lifecycle Emissions of Tar Sands*, (November 2010), at http://docs.nrdc.org/energy/files/ene_10110501a.pdf.

² FEIS at 3.14-55.

In comments on the draft EIS for the project, EPA's estimate was even higher: "annual well-to-tank emissions from the project would be 27 million metric tons carbon dioxide equivalent (MMTCO₂-e) greater than emissions from the U.S. 'average' crude."³ According to EPA, "27 million metric tons is roughly equivalent to annual CO₂ emissions of seven coal-fired power plants."⁴ Over the 50-year lifespan of the pipeline, assuming that the lifecycle analysis holds over time, the incremental GHG emissions associated with the project may range from 900 million to over 1 billion tons CO₂-e even using the low estimates in the FEIS.

It is important to note that the lifecycle GHG studies referenced in the FEIS do not include emissions associated with land use changes.⁵ The climate impacts associated with this project are compounded by the fact that tar sands extraction by strip-mining destroys hundreds of thousands of acres of an ecosystem that has provided some of the most effective natural carbon sequestration on the planet. The tar sands are located in the boreal regions of northern Alberta, an area covered with forest and peatbogs. Boreal forests make up 32 percent of the carbon stored in the world's forests, a majority of which is stored in the forest soil. Clear-cutting the trees and draining the bogs releases the stored carbon and eliminates the possibility of future carbon storage. Tar sands strip-mining has already destroyed 256 square miles of natural landscape, with 586 square miles under active development.⁶ Such destruction of one of the planet's most important locations of stored carbon compounds the extremely negative carbon equation of tar sands exploitation.

2) The Keystone XL Project is contrary to U.S. commitments to lead the international community in the fight against climate change.

The United States has made clear commitments to the American public and the international community that it will lead in the global transition to a low-carbon economy. However, if approved, the Keystone XL project will facilitate the extraction, production and use of one of the world's most GHG-intensive fuels. Approving Keystone XL would also lock the United States into an expanded and costly fossil fuel infrastructure, undermining our commitment and ability to show leadership on climate change.

As an Annex I Party to the UN Framework Convention on Climate Change ("UNFCCC"), the United States is obligated under Article 4.2(a) to adopt national policies and take corresponding measures to mitigate climate change that will demonstrate it is "taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention."⁷ As such, the United States must show progress towards achieving the UNFCCC's ultimate objective of stabilizing global greenhouse gas concentrations at a level that would prevent dangerous human interference with the climate system. For more than two

³ EPA Letter to Department of State on the Keystone XL DEIS, July 16, 2011, at 2.

⁴ *Id.* at 2-3.

⁵ *See* FEIS at 3.14-48.

⁶ Government of Alberta, *Alberta's Oil Sands: Facts About The Resource* (February 2011), available at http://www.oilsands.alberta.ca/FactSheets/About_Albertas_oil_sands.pdf.

⁷ UNFCCC Art. 4.2(a).

decades, the United States has failed to deliver on that commitment in any meaningful way. Approval of the Keystone XL project would continue and compound that failure.

The Obama Administration has stated its commitment to meet U.S. international obligations and lead on climate change in various forums. Speaking to the Bi-partisan Governors Climate Summit in November 2008, President-elect Obama called for urgent action on climate change and declared that his presidency would “mark a new chapter in America’s leadership on climate change.”⁸ In 2009, Secretary of State Hillary Clinton told the nations of the Major Economies Forum that

[c]limate change is a clear and present danger to our world that demands immediate attention. The United States is fully engaged and ready to lead and determined to make up for lost time, both at home and abroad.⁹

In addition, the United States has acknowledged that climate change “threaten[s] the security of regions and the health and safety of the American people.”¹⁰ The *2010 National Security Strategy* recognizes that climate change “is real, urgent, and severe,” and that the United States must transform its energy economy to protect our national security interests.¹¹

Most recently, the United States recognized the national security implications of climate change when U.S. Ambassador Susan Rice addressed the members of the UN Security Council, urging the Council to address climate change as a threat to international peace and security.¹² The United States was sharply critical of countries that argued that climate change does not fall within the Security Council’s mandate.

Unfortunately, the Administration’s statements and commitments have not translated into action. While we welcome the recent measures to improve fuel economy standards, the United States has not adopted a comprehensive national strategy to mitigate greenhouse gas emissions, and the prospects for doing so in the near future are not promising. In the absence of legislative action, the Obama Administration must make policy decisions that will effectively reduce emissions and enhance carbon sinks, consistent with the United States’ obligation to demonstrate leadership under the UNFCCC.

⁸ The Office of the President-Elect, “President-elect Barack Obama to deliver taped greeting to Bi-partisan Governors Climate Summit,” *available at* http://change.gov/newsroom/entry/president_elect_barack_obama_to_deliver_taped_greeting_to_bi_partisan_gover.

⁹ Remarks by Hilary Rodham Clinton, U.S. Secretary of State, at the Major Economies Forum on Energy and Climate, Washington DC, April 27, 2009, *available at* <http://www.state.gov/secretary/rm/2009a/04/122240.htm>.

¹⁰ White House National Security Strategy, May 2010, *available at* http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf at 8.

¹¹ *Id.* at 47.

¹² Remarks by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, at a Security Council Session on the Impact of Climate Change on the Maintenance of International Peace and Security, New York, NY, July 20, 2011, *available at* <http://usun.state.gov/briefing/statements/2011/168828.htm>.

By the State Department's own estimates, the Keystone XL project will cause the emission of approximately 1 billion additional tons of CO₂-e over its lifespan. The investment of billions of dollars in this infrastructure is directly contrary to the urgent need for investment in cleaner fuel sources, and will commit the United States to this dirty fuel source for the next 50 years. To satisfy its international obligations, make good on its commitments and reposition itself as a leader in the fight against climate change, the United States must take meaningful action to reduce greenhouse gas emissions and transition to a clean energy economy. Approving the Keystone XL pipeline is a step in the wrong direction.

3) The Keystone XL Project is contrary to U.S. commitments to accelerate the transition to a “clean energy, green economy.”

The United States has made a political commitment to accelerate the transition to a “clean energy, green economy,” which is critical to protecting our national interests in energy security and independence.

In March 2010, President Obama introduced the Administration's comprehensive energy security strategy, stating that, “for the sake of our planet and our energy independence, we need to begin the transition to cleaner fuels now.”¹³ This strategy was intended to move the United States “from an economy that runs on fossil fuels and foreign oil to one that relies more on homegrown fuels and clean energy.”¹⁴

The Obama Administration has taken steps to achieve these goals by issuing new national fuel economy standards and investing in renewable energy and energy conservation under the American Recovery and Reinvestment Act. The Keystone XL project would represent a step backwards by prolonging our dependency on non-renewable fossil fuels for another 50 years.

4) U.S. support for the tar sands industry facilitates Canada's violation of its own international obligations.

Increased U.S. importation of tar sands crude oil via the Keystone XL project facilitates the expansion of Canada's tar sands development. A 2010 report prepared for the U.S. Department of Energy (DOE) Office of Policy and International Affairs concludes that construction of the Keystone XL pipeline would allow tar sands production to increase by approximately 800,000 barrels per day between 2020 and 2030.¹⁵ The rapid expansion of tar sands development in Canada is causing widespread social, environmental and climate impacts and is impeding Canada's ability to comply with its international obligations. U.S. complicity in these activities is inconsistent with our commitment to show leadership on mitigating climate change.

¹³ The White House, “Remarks by The President on Energy Security at Andrews Air Force Base,” March 31, 2010, available at <http://www.whitehouse.gov/the-press-office/remarks-president-energy-security-andrews-air-force-base-3312010>.

¹⁴ *Id.*

¹⁵ EnSys Keystone XL Assessment, Final Report, 117 (Dec. 23, 2010).

Tar sands development could single-handedly prevent Canada from meeting its international obligations to reduce greenhouse gases. Canada committed under the Kyoto Protocol to a six percent reduction in greenhouse gas emissions from 1990 levels, equivalent to approximately 36 megatons of carbon dioxide. Carbon dioxide emissions from tar sands operations alone are expected to increase from 17 megatons in 1990 to over 100 megatons by 2012. By 2020 tar sands operations are expected to release over 141 megatons of CO₂. As the primary market for Canada's tar sands oil, the United States is supporting this industry and abetting Canada's breach of its international obligations. This is hardly the leadership that the Obama Administration has promised.

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The Keystone XL project would significantly increase greenhouse gas emissions, undermine U.S. commitments to lead the international community in the fight against climate change, hinder efforts to transition to a clean energy economy, and aid Canada's abrogation of its international obligations. Such an outcome is clearly not in the national interest.

The U.S. has repeatedly called for strong multilateral action on climate change. However, at the U.N. climate negotiations held in Panama this week, many countries expressed real and growing frustration with U.S. inaction at the national and international levels.¹⁶ Approving the Keystone XL pipeline would not only undermine the United States' ability to meet its international obligations and commitments on climate change, but it would also weaken our negotiating position in the climate negotiations.

As U.S. citizens gather today to express their opposition to the Keystone XL pipeline, the international community is watching. We remain hopeful that the Obama Administration will demonstrate the kind of leadership on climate change to which it has committed and reject the Keystone XL project as a matter of national interest.

Thank you for the opportunity to comment.

Respectfully submitted,

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¹⁶ See G77 Press Release, "G77 Pushes USA to be Honest: Inaction at home and at UN climate talks," October 4, 2011.

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