

**TESTIMONY OF  
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**BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER OF THE COMMITTEE  
ON ENERGY AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES**

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Good morning Chairman Whitfield, Ranking Member Rush and other Members of the Subcommittee on Energy and Power; I appreciate the opportunity to appear before you today.

The Keystone XL project is a proposed seven billion dollar, 1,700-mile pipeline that TransCanada Keystone Pipeline LP applied to build and operate. It would transport up to 830,000 barrels per day of crude oil from Alberta, Canada to refineries in the U.S. Gulf Coast Region. Most of the oil would originate from the oil sands of Alberta, although as much as 100,000 barrels per day might have come from the Bakken formation in Montana and North Dakota and up to 150,000 barrels per day could have been transported from Cushing, Oklahoma to the Gulf Coast. The U.S. Department of State received the application for this project in September 2008. We began a thorough, rigorous and transparent process to determine whether issuance of a Presidential Permit for this pipeline was in the national interest. Congress passed the Temporary Payroll Tax Cut Continuation Act of 2011, which required a determination by the President, within 60 days, of whether the Keystone XL pipeline project would serve the national interest. On January 18, 2012 the Department of State recommended to the President that the application for a Presidential Permit be denied, due to insufficient time to conduct the necessary

analysis, and the President accepted our recommendation and determined that the Keystone XL pipeline project, as presented and analyzed at that time, would not serve the national interest.

I would now like to fill in some further details about our authority to conduct such a process, about the way in which we did so, and about the events that led to our final recommendation. I will also comment briefly on the Administration's view of H.R. 3548, the bill that Congressman Terry and others have introduced seeking to provide an expedited approval of the pipeline by the Federal Energy Regulatory Commission, or FERC.

On April 30, 2004, President George W. Bush issued Executive Order 13337, which amended Executive Order 11423, originally issued in 1968. Executive Order 13337 designated and empowered the Department of State to receive the applications for Presidential Permits for all oil infrastructure projects that cross a U.S. border. The Executive Order indicates that the permit should be granted based on whether it is in the national interest. The Executive Order also states that the Secretary shall consult with eight other agencies: the Departments of Commerce, Defense, Energy, Homeland Security, Interior, Justice, and Transportation, and the Environmental Protection Agency. Executive Order 13337 also envisions broader consultations to include state, tribal and local government officials and foreign governments. The Department's national interest determination factors in a full range of issues, including energy security, foreign policy, economic effects, health, safety, and environmental considerations, including climate change, as well as any other factor the Department believes is relevant to the national interest. To make an informed decision, the Department is directed in the Executive Order to request additional information as needed from the applicant.

In order to analyze the potential environmental impacts of the project, as required by Executive Order 13337, the Department of State determined that it would prepare an Environmental Impact Statement, or EIS, consistent with the National Environmental Policy Act of 1969.

Preparation of an EIS requires significant technical expertise. In a project of this complexity, it requires a great deal of scientific input, including from geologists, hydrologists, ecologists and botanists, to name a few. It requires engineers that understand fluid dynamics and material strength and pipe-welding specifications. It requires statisticians and economists; it requires experts in oil spills and emergency oil spill response. In preparing the EIS for the Keystone pipeline, we consulted extensively with other federal agencies that have substantial direct expertise in these areas.

We followed the provisions of the NEPA regulations, and the example of other federal agencies in engaging a technical contractor to assist in developing the EIS. ENTRIX (now Cardno ENTRIX) was selected. The applicant paid the costs of preparing the EIS. We directed the work of ENTRIX and ensured the quality of all information and analysis in the EIS.

At the same time, we conducted two parallel processes mandated by law. Section 106 of the National Historic Preservation Act of 1966 requires agencies to consider the effects of their actions on properties that may have religious or cultural importance and to engage the Advisory Council on Historic Preservation. In addition, Section 7 of the Endangered Species Act requires

Federal agencies to consult with the Fish and Wildlife Service to ensure that the proposed action will not jeopardize the continued existence of any federally listed endangered or threatened species.

Following NEPA requirements, we engaged in a robust public outreach effort. We carried out our consultation on many different levels, including Government-to-Government consultations with over 95 Indian tribes. In 2009, we conducted 20 scoping meetings in communities along the pipeline route. In April of 2010 we issued a Draft EIS and held 21 public comment meetings during a 45-day period including meetings in Kansas, Montana, Nebraska, Oklahoma, South Dakota, Texas, and Washington, DC. As a result of these comments and consultations, we issued a Supplemental Draft EIS in April 2011. In the subsequent 45-day period, we received over 280,000 comments. On August 26, 2011, we issued the Final EIS. Following its issuance we began an interagency review period for the national interest determination required by Executive Order 13337 and conducted an additional public comment period that closed on October 9, 2011. During this period we again held public meetings in Washington, DC and along the pipeline route, including in the Sand Hills of Nebraska.

These meetings were passionate. We heard voices urging diametrically opposite actions and providing solid rationales on both sides. In Nebraska particularly, we again heard concerns, clearly and repeatedly, about the fragile and unique Sand Hills of Nebraska and their importance to the nation and to the people of Nebraska. We listened to these views, many actually supportive of the pipeline, but stressing that the route needed to be moved. Indeed, the people of Nebraska felt so strongly about this issue that their legislators met in special session to draft a

law to ensure the Sand Hills would be protected. That is why we paused the process in November 2011, and based on experience with pipelines of similar length we estimated that it would take until early 2013 to complete our assessment.

In December 2011, as we were cooperating with Nebraska's Department of Environmental Quality to develop a process to evaluate any potential new route, the Temporary Payroll Tax Cut Continuation Act (H.R. 3765) was enacted into law imposing a 60-day clock on a decision about the Keystone XL pipeline permit; at that time, the requested permit lacked critical information, including the exact route of the pipeline. We knew that 60 days was not enough time to complete the work and the analysis needed relevant to the national interest determination, especially given that the route had not been finalized. We have been committed to carrying out a thorough, rigorous, inclusive and transparent review of this application and this was not possible within the timeline imposed. We decided – based not on the merits but on the inadequate time period and incomplete review – to recommend that the President deny the permit.

This brings us to H.R. 3548. Last week the President concurred with our recommendation that the Keystone XL project would not serve the national interest at this time. That decision was based on the fact that the exact route of the pipeline has yet to be identified in critical areas. As a result, there are unresolved concerns for a full range of issues, including energy security, foreign policy, economic effects, health, safety, and environmental impacts, among other considerations. This new legislation would not resolve any of these concerns; it just imposes narrow time constraints and creates automatic mandates that prevent an informed

decision. The legislation raises serious questions about existing legal authorities, questions the continuing force of much of the federal and all of the state and local environmental and land use management authority over the pipeline, and overrides foreign policy and national security considerations implicated by a cross border permit, which are properly assessed by the State Department.

I know that each and every Member of this Committee is concerned about our nation's energy security, and I can assure you that Secretary Clinton and the Department of State share that concern. Internationally, we remain fully engaged with all our key suppliers, including Canada, as we work on issues of energy diplomacy while at the same time transitioning to cleaner sources of energy. As we do so, the Department of State remains committed to carrying out its responsibilities under Executive Order 13337 with diligence and fairness to the applicants but with ultimate concern for the best interests of the American people.

Thank you again for this opportunity to testify before this Subcommittee and I would be pleased to answer any questions the subcommittee might have.