

United States Senate

WASHINGTON, DC 20510

October 14, 2011

The Honorable Hillary Clinton
Secretary
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Dear Secretary Clinton:

We write to express our serious concern with recent reports that the Department of State allowed a contractor with a financial relationship with TransCanada, which seeks to build the Keystone XL pipeline, to conduct the Department's environmental review mandated under federal law as part of its consideration of TransCanada's proposed pipeline. Based on the apparent conflict of interest this presents, and the deficiencies of the final environmental impact statement (EIS) itself, we urge the Department to conduct a new and objective environmental review so the government and the public can fully and fairly evaluate the impacts associated with the proposed Keystone XL pipeline.

On October 7, 2011, the *New York Times* reported that TransCanada was permitted by the Department of State to screen possible contractors and, for all intents and purposes, to select the one that would prepare the EIS mandated by the National Environmental Policy Act. The article states that TransCanada successfully recommended to the Department of State that it select Cardno Entrix to conduct the environmental review, despite the fact that Cardno Entrix lists TransCanada as a "major client". The article goes on to state that Cardno Entrix may not have fully disclosed all of its work for TransCanada in the conflict of interest affidavit required in the EIS, despite the conflict its relationship with TransCanada presents in this case. Cardno Entrix also apparently played a significant role in organizing public hearings on the pipeline proposal.

We find it inappropriate that a contractor with financial ties to TransCanada, which publicly promotes itself by identifying TransCanada as a "major client", was selected to conduct what is intended to be an objective government review. It is also troubling that the EIS has been criticized at several steps in the process by the Environmental Protection Agency for underestimating the proposed Keystone XL pipeline's potential to increase greenhouse gas emissions and the risk of harmful oil spills, and for failing to fully evaluate opportunities to mitigate the impact of the proposed project. The *New York Times* article points out that the final EIS downplays the possibility of unique cleanup measures being necessary in the event of a spill, despite the fact that a recent tar sands pipeline spill in Michigan has left a portion of the Kalamazoo River closed for more than

a year, with the cleanup tab running over \$500 million and no certainty that the cleanup efforts underway will be successful.

The Department of State, based on the Cardno Entrix EIS, finds that the tar sands Keystone XL pipeline will have "no significant impact on most resources." We have little confidence in that assessment given the impact of past oil spills and the financial ties the contractor that prepared the environmental review has with TransCanada.

This is a critically important issue for our environment and the energy future of our country. At a time when all credible scientific evidence and opinion indicate that we are losing the battle against global warming, it is imperative that we have objective environmental assessments of major carbon-dependent energy projects. An entity with a financial stake in the success or failure of a developer's project proposal is not in a position to provide such an assessment. It is our strong opinion that the only satisfactory remedy is for the Department to conduct a new, objective, and comprehensive environmental review, either directly or through a contractor with no financial ties to TransCanada.

We also would appreciate the Department's response to the questions attached to this letter, some of which have been raised in previous correspondence from Congress, and all of which deserve a thorough response.

Thank you for your consideration.

Sincerely,



BERNARD SANDERS
United States Senator



PATRICK LEAHY
United States Senator



RON WYDEN
United States Senator

1. The final EIS finds that there would be “no significant impact” from the project, yet it does not include the very significant emissions from extraction of tar sands oil to fill the pipeline. At the same time, the FEIS found that tar sands oil produces significantly greater emissions than conventional oil and that the additional emissions from the oil transported by the pipeline would equal up to 21 million metric tons.
 - Why does the FEIS fail to incorporate the greenhouse gas emissions that logically proceed from filling a pipeline with tar sands oil, especially given the statements of the oil industry about the importance of the Keystone XL pipeline to its upstream expansion?
 - Given that Canada has not succeeded in building additional pipelines to its own coasts, on what basis does the FEIS conclude that there will be access to international markets, thus enabling expansion, apart from Keystone XL access to the Gulf?
2. TransCanada has argued that the pipeline will enhance U.S. energy security, yet Keystone XL creates the first major access to a global port for tar sands producers. Valero and other Gulf refiners have indicated that they will export refined products depending on market conditions.
 - How does creating access to a global port for tar sands oil enhance U.S. energy security?
 - Will an investigation be conducted to determine how much oil will remain in the U.S. and how much will be exported?
3. The pipeline would commit the U.S. to a high carbon source of oil for many decades.
 - Why did the FEIS fail to analyze how the wider use of fuel efficient technologies, advanced biofuels, and electric vehicles could offset the need for the pipeline?
 - What types of disincentives would expansion of tar sands imports into the U.S. pose to achieving reductions in U.S. oil use?
4. EPA and local U.S. communities have raised concerns about the impacts on communities and water supplies if there were a leak from the pipeline. As indicated in the letter, the Kalamazoo River remains closed after a spill there. And EPA has raised concerns about the lack of information on the chemical composition of the diluted tar sands bitumen.
 - What is the chemical composition of the diluted bitumen to be transported through the pipeline? Without this information, how is it possible for the FEIS to have evaluated the risk of the pipeline and come to the conclusion that there is “no significant risk”?
 - How will the U.S. government protect the health and livelihood of people living along the pipeline route if spills, like Kalamazoo, exceed the \$350 million limit on liability under the Oil Pollution Act?
5. The pipeline would cross over the deepest part of the Ogallala Aquifer, putting at risk the source of drinking water for millions of Americans and agricultural water for eight

states. In Canada, extraction to fill the pipeline poses increased threats to the Athabasca watershed, which has already suffered from contamination from tar sands oil production.

- Why did the FEIS fail to evaluate alternative routes that would avoid the Ogallala Aquifer and the Nebraska Sandhills?
 - How does the lack of upstream impact analysis square with the Council on Environmental Quality (CEQ) guidance on trans-boundary impacts and climate change?
 - Why did the FEIS fail to review the impact on migratory birds, given U.S. obligations under the Migratory Bird Treaty Act?
6. EPA raised concerns about the impact on communities on the Gulf Coast already experiencing high levels of air and water pollution surrounding the refineries that would refine tar sands oil from the Keystone XL pipeline.
- Why did the FEIS fail to analyze the local impact on communities most likely to be effected by refining of tar sands oil?
7. We understand that EPA plans to comment on the FEIS and that the State Department just concluded two weeks of public hearings along the pipeline route. Additionally, the State Department has said it would conduct an independent risk assessment with input from EPA. Yet we also understand that the 90-day clock on the National Interest Determination under Executive Order 13337 has been running since August 26th, the date of the FEIS release.
- How can Cooperating Agencies deliberate with full information if comments and analysis are still outstanding? Will you stop the clock until comments are received and responded to?
 - What are the criteria and procedures for making the National Interest Determination?
 - Will the independent review of the risk assessment be conducted prior to a decision and give an opportunity for public comment of that review?
8. The State Department says that it intends to make a decision by the end of the year. There are many outstanding questions, such as the above, that should be answered before a decision is made because of an arbitrary deadline.
- Given that there are serious questions about the legitimacy of the FEIS and relationship with TransCanada, shouldn't the State Department either recuse itself from this decision or ensure that alternative routing and safety and risk studies are completed before a decision is made?