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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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10 Counsel for Plaintiffs Friends of the Earth, The Center for International Environmental Law, and
11 Corporate Ethics International

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 FRIENDS OF THE EARTH,
16 THE CENTER FOR INTERNATIONAL
17 ENVIRONMENTAL LAW, and CORPORATE
18 ETHICS INTERNATIONAL,

19 Plaintiffs,

20 v.

21 UNITED STATES DEPARTMENT OF STATE,
22 and HILLARY CLINTON, in her official capacity
23 as Secretary of State,

24 Defendants.

C11-02419 EDL

Civ. No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

(Freedom of Information Act, 5 U.S.C.
§ 552)

INTRODUCTION

1. This action is brought under the Freedom of Information Act, as amended, 5 U.S.C. §
552 ("FOIA"), seeking an expeditious determination from the United States Department of State
("State Department" or "Defendant") as to whether it has documents responsive to a FOIA request,
dated December 13, 2010, (the "FOIA Request") from Friends of the Earth, the Center for
International Environmental Law, and Corporate Ethics International (collectively, "Plaintiffs"); and
if so, for release of those documents to Plaintiffs. As detailed below, these documents relate to
communications between the State Department and Paul Elliott, presently a lobbyist for

COMPLAINT

1 TransCanada Pipelines Limited ("TransCanada") and formerly the national deputy director of
2 Secretary Clinton's presidential campaign. The information Plaintiffs seek directly relates to
3 whether the relationship between Mr. Elliott and Secretary Clinton raises the possibility of bias that
4 might influence the State Department's decision to grant or deny TransCanada a Presidential Permit
5 for the Keystone XL pipeline.

6
7 2. Plaintiffs seek declaratory and injunctive relief for the State Department's violations
8 of FOIA. These violations result from the State Department's failure to (i) comply with FOIA's 20-
9 day time limit to process a request, 5 U.S.C. § 552(a)(6)(A)(i); (ii) make responsive, non-exempt
10 documents promptly available, 5 U.S.C. § 552(a)(3)(A); (iii) comply with the 10-day time limit to
11 make a final determination on an appeal of denial of expedited processing, 5 U.S.C. §
12 552(a)(6)(E)(ii); 22 C.F.R. § 171.50(b); and (iv) expedite processing of the request, 5 U.S.C. §
13 552(a)(6)(E)(iii); 22 C.F.R. § 171.12(b).

14 JURISDICTION

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16 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (action
17 arising under the laws of the United States) and 5 U.S.C. §§ 552(a)(4)(B) and (a)(6)(E)(iii) (FOIA
18 citizen suit provisions).

19 VENUE AND INTRADISTRICT ASSIGNMENT

20
21 4. Venue lies in this judicial district under 28 U.S.C. § 1391(e) and 5 U.S.C. §
22 552(a)(4)(B) because Plaintiffs Corporate Ethics International and Friends of the Earth reside in this
23 district.

24 5. Assignment to the San Francisco Division of this judicial district is proper under Civil
25 Local Rule 3-2 (c)-(d) because Plaintiffs Corporate Ethics International and Friends of the Earth
26 reside in this judicial district.

PARTIES

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6. Plaintiff FRIENDS OF THE EARTH:

a. Plaintiff Friends of the Earth, Inc. ("FoE") is a national, non-profit

environmental advocacy organization founded in 1969 and incorporated in the District of Columbia, with its headquarters in Washington, D.C. and an office in San Francisco, California. FoE's mission is to defend the environment and champion a healthy and just world. FoE "seeks to change the perception of the public, media and policy makers – and effect policy change – with hard-hitting, well-reasoned policy analysis and advocacy campaigns that describe what needs to be done, rather than what is seen as politically feasible or politically correct."¹ FoE is the U.S. voice of the world's largest network of environmental groups – Friends of the Earth International – a federation of grassroots groups working in 76 countries on today's most urgent environmental and social issues.

b. FoE disseminates information to educate the public on current environmental policy issues. Almost all of FoE's staff members are engaged in disseminating information to the public. In addition to press releases, they disseminate information through press briefings, radio interviews, and television interviews. They have a regularly updated website that disseminates information about key environmental issues. They respond to questions from the public about environmental issues and disseminate their expertise. They distribute emails with information on environmental issues several times per week and letter mailings multiple times per year, release a quarterly "Newsmagazine," distribute information through multiple social networking sites and pages, and table at public events.

c. The information FoE seeks from the State Department through the FOIA request will further FoE's mission as a non-profit environmental advocacy organization. Such information is likely to contribute significantly to the public's understanding of the State Department's activities in the Keystone XL permitting process, and will not be used for commercial purposes.

¹ Friends of the Earth, Who We Are - Our Strategy, <http://foe.org/who-we-are> (last visited May 17, 2011).

1 7. Plaintiff THE CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW:

2 a. Plaintiff the Center for International Environmental Law ("CIEL") is a non-
3 profit organization founded in 1989 and incorporated in Washington, D.C. CIEL works to
4 strengthen and use international law and institutions to protect the environment, promote human
5 health, and ensure a just and sustainable society. With offices in Washington, D.C. and Geneva,
6 Switzerland, CIEL's attorneys provide legal counsel, policy research, analysis, education, training,
7 and capacity building on international environmental issues, including climate change, chemicals,
8 biodiversity, and human rights. As part of this work CIEL is active in efforts to negotiate new
9 international agreements on climate change, to reduce reliance on environmentally damaging energy
10 sources, and to promote public access to information and transparent democratic processes with
11 respect to decisions affecting the environment. The role of the United States both with respect to
12 domestic energy policy and democratic decision-making is highly relevant to CIEL's work.

13 b. CIEL communicates information to non-governmental organizations,
14 decision-makers and the public through a variety of mechanisms, including analytical reports, social
15 media, press releases, direct communications with journalists, and the CIEL website. In addition,
16 CIEL works with diverse coalitions of non-governmental organizations and other stakeholders with
17 whom CIEL anticipates sharing the information related to this request. CIEL participates in a
18 variety of email- and web-based lists and affinity groups that are active on issues related to North
19 American energy policy. CIEL will not use any information that results from this request for any
20 commercial purpose. It will be used to further CIEL's efforts to help build a coherent and
21 sustainable global energy policy based on open, transparent government processes.

22 8. Plaintiff CORPORATE ETHICS INTERNATIONAL:

23 a. Plaintiff Corporate Ethics International ("CEI") is a non-profit organization
24 founded and incorporated in 2003 in California, with its headquarters in San Francisco. CEI's
25 mission is to bring corporations back in service to, and under the control of, the citizenry. A central
26 focus of CEI's work is the Tar Sands Oil Campaign, a multi-million dollar, multi-year effort aimed
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1 at stopping the expansion of what CEI believes is "the most destructive energy project on
2 earth." CEI joined with a number of other organizations in the United States and Canada to launch
3 the international Tar Sands Oil Campaign in 2008. CEI staff works closely with nearly 100 different
4 organizations in Canada, Europe and the United States to coordinate strategy and run advocacy
5 campaigns aimed at ending oil dependency.

6 b. CEI disseminates reports, online resources and recent articles related to
7 corporate ethics issues, particularly in relation to energy and climate change. CEI runs the "Rethink
8 Alberta" campaign, including the RethinkAlberta.com and dirtyoilsands.org websites. CEI produces
9 original reports such as "Tar Sands Invasion" and reports analyzing oil markets and energy use. CEI
10 also manages the tar sands campaign listserv for approximately 275 tar sands activists in the United
11 States and Canada.

12 c. The information CEI seeks from the State Department through the FOIA
13 request will further CEI's mission as an organization dedicated to regaining citizens' control of
14 corporations by promoting transparency in corporations' interactions with the US government. Such
15 information is likely to contribute significantly to the public's understanding of the State
16 Department's activities in the Keystone XL permitting process, and will not be used for commercial
17 purposes.

18 9. Defendant UNITED STATES DEPARTMENT OF STATE is a federal agency within
19 the meaning of FOIA. The State Department processes requests for agency records under FOIA and,
20 in carrying out its responsibilities, must comply with applicable requirements of FOIA.

21 10. Defendant HILLARY CLINTON is head of the State Department and is sued in her
22 official capacity as the Secretary of State.
23
24

25 BACKGROUND

26 The State Department, TransCanada, and the Keystone XL Project

27 11. Plaintiffs seek disclosure of documents and information regarding State Department
28 communications involving Paul Elliott, a registered lobbyist for TransCanada. TransCanada

1 Pipelines is seeking to build a transboundary oil pipeline, the Keystone XL pipeline, to transport tar
2 sands crude oil from the Western Canadian Sedimentary Basin in Alberta, Canada to refineries in the
3 Texas Gulf Coast area.

4 12. Because the Keystone XL pipeline would involve construction on the US-Canada
5 border, TransCanada must obtain a Presidential Permit from the State Department. Exec. Order No.
6 13,337, 69 Fed. Reg. 25,299 (Apr. 30, 2004). Defendants are currently conducting the
7 environmental review of the project under the National Environmental Policy Act (NEPA) and
8 expect to decide whether to grant TransCanada a Presidential Permit before the end of 2011.

9 13. Prior to lobbying for TransCanada, Mr. Elliott served as the Hillary Clinton for
10 President campaign committee's national deputy director and chief of staff for delegate selection.

11 14. On October 15, Secretary of State Clinton made a public statement that she was
12 "inclined to approve" the Keystone XL project.² Secretary Clinton made this statement before the
13 State Department had completed its environmental review of the pipeline and despite the fact that
14 the Environmental Protection Agency had communicated to the State Department that its draft
15 environmental impact statement on the pipeline was inadequate. Several members of Congress and
16 the public wrote letters to Secretary Clinton expressing concern that the State Department had
17 "prejudge[d] the outcome" of the Keystone XL project based on her statement that the State
18 Department is "inclined to approve" the project.

19 15. The information Plaintiffs seek directly relates to whether the relationship between
20 Mr. Elliott and Secretary Clinton might inappropriately influence the State Department's decision to
21 grant or deny TransCanada a Presidential Permit for the Keystone XL pipeline. Plaintiffs seek this
22 information to enable them to (i) meaningfully participate in the NEPA process for the Keystone XL
23 project; (ii) educate the public and other agencies that must approve the State Department's
24 Presidential Permit about potential irregularities in the State Department's permitting decision; and
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26
27 ² See "Remarks on Innovation and American Leadership to the Commonwealth Club," Secretary of
28 State Hillary Rodham Clinton, Oct. 15, 2010, available at
<http://www.state.gov/secretary/rm/2010/10/149542.htm>.

1 (iii) influence the decision whether to grant the Presidential Permit for the Keystone XL pipeline
2 before the final permitting decision is made. Plaintiffs have a compelling need for this information
3 because the 45-day public comment period for the Supplemental Draft Environmental Impact
4 Statement ends on June 6, 2011, and the State Department plans to decide whether to issue the
5 Keystone XL permit before the end of 2011.

6 **History of Plaintiffs' FOIA Request**

7
8 16. On December 13, 2010, Plaintiffs submitted a FOIA request seeking copies of
9 documents and information regarding all State Department communications involving the State
10 Department and Paul Elliott and asking that the agency respond to their request "as soon as
11 possible."

12 17. On January 5, 2011, the State Department responded to Plaintiffs, denying processing
13 of their FOIA request. The State Department deemed the request "invalid" because Plaintiffs did not
14 specify a time frame for the request and because it interpreted Plaintiffs' request for a fee waiver as a
15 refusal to pay fees. Consequently, the State Department informed requestors that "the case ha[d]
16 been closed."

17 18. On January 31, 2011, Plaintiffs appealed the State Department's denial of their FOIA
18 request and denial of a fee waiver and provided additional information "to expedite the Department's
19 search for the records" sought.

20 19. In a letter-dated February 1, 2011, the State Department informed Plaintiffs that on
21 the basis of Plaintiffs' appeal letter, the agency would "open a new request for the records" instead
22 of opening an appeal.

23 20. On March 11, 2011, the State Department sent Plaintiffs a letter stating that "in
24 response to [their] request dated 1/31/11," the agency would begin processing the request but
25 denying expedited processing. The State Department noted that "unusual circumstances ... may arise
26 that would require additional time to process [the] request" and that it would notify them "as soon as
27 responsive material is retrieved and reviewed."
28

1 21. On April 11, 2011, Plaintiffs appealed the denial of their request for expedition.

2 22. As of the date of this filing, the State Department has not responded to that appeal
3 and has provided no further response to the FOIA request itself.
4

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

7 **Violation of FOIA: Failure to Respond within Twenty Days with**
8 **Determination Whether Agency Has Responsive Documents**

9 23. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as if
10 fully set forth herein.

11 24. Upon receiving a FOIA request, an agency must determine within twenty court days
12 of the date of receipt "whether to comply with such request" and must "immediately notify the
13 person making such request of such determination and the reasons therefor, and of the right of such
14 person to appeal to the head of the agency any adverse determination." 5 U.S.C. § 552(a)(6)(A)(i);
15 22 C.F.R. § 171.12(d).

16 25. The State Department's failure to determine within twenty days whether it has
17 documents responsive to Plaintiffs' request, and failure to immediately notify Plaintiffs whether it
18 intends to release such documents, violates section 552(a)(6)(A)(i) of FOIA and section 171.12(d) of
19 the State Department's implementing regulations.
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21 **SECOND CLAIM FOR RELIEF**

22 **Violation of FOIA: Failure to Make Responsive,**
23 **Non-Exempt Documents Promptly Available**

24 26. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as if
25 fully set forth herein.
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1 27. FOIA requires that upon receiving a request for records that "reasonably describes"
2 the records sought and complies with "published rules ... and procedures to be followed," the agency
3 "shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A).

4 28. The State Department's failure to make promptly available all non-exempt documents
5 responsive to Plaintiffs' FOIA request violates section 552(a)(3)(A) of FOIA.
6

7 **THIRD CLAIM FOR RELIEF**

8 **Violation of FOIA: Failure to Issue Final Decision**
9 **Within Ten Days of Appeal of Denial of Expedited Processing**

10 29. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as if
11 fully set forth herein.

12 30. FOIA requires that agencies "promulgate regulations ... providing for expedited
13 processing" of requests for records. 5 U.S.C. § 552(a)(6)(E)(i). These regulations "must ensure ...
14 expeditious consideration of administrative appeals of such determinations of whether to provide
15 expedited processing." *Id.* at § 552(a)(6)(E)(ii)(II).

16 31. Pursuant to the State Department's regulations, upon receiving an administrative
17 appeal of a denial of expedited processing, the State Department must "issue a final decision in
18 writing within ten (10) days from the date on which the office of the Information and Privacy
19 Coordinator receives the appeal." 22 C.F.R. § 171.50(b).

20 32. The ten-day period from the date of Plaintiffs' appeal of the State Department's
21 denial of their request for expedited processing expired on April 25, 2011. The State Department's
22 failure to respond within the ten-day period with a final determination on Plaintiffs' appeal of denial
23 of expedited processing of their FOIA request violates section 552(a)(6)(E)(ii)(II) of FOIA and
24 section 171.50 of the State Department's implementing regulations.
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FOURTH CLAIM FOR RELIEF

**Violation of FOIA: Failure to Expedite Processing of FOIA Request
Despite Plaintiffs' Compelling Need for the Records Requested**

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4 33. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as if
5 fully set forth herein.

6 34. FOIA requires that agencies expedite processing of requests for records when the
7 requestor "demonstrates a compelling need." 5 U.S.C. § 552(a)(6)(E)(i)(I). "With respect to a
8 request made by a person primarily engaged in disseminating information," FOIA defines
9 "compelling need" as "urgency to inform the public concerning actual or alleged Federal
10 Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). FOIA requires agencies to "process as soon
11 as practicable any [such] request." 5 U.S.C. § 552(a)(6)(E)(iii); *see also* 22 C.F.R. § 171.12(b).

12 35. Plaintiffs have a compelling need for the information described in their FOIA request
13 because they seek to (i) meaningfully participate in the NEPA process, which includes a 45-day
14 public comment period for the Supplemental Draft Environmental Impact Statement, ending on June
15 6, 2011; (ii) educate the public and other agencies that must approve the State Department's permit
16 about the agency's basis for its permitting decision, which it plans to make before the end of 2011;
17 and (iii) influence the permitting decision before the final decision is made.

18 36. The State Department's failure to expedite processing of Plaintiffs' FOIA request
19 violates section 552(a)(6)(E)(iii) of FOIA and section 171.12(b) of the State Department's
20 implementing regulations.
21

PRAYER FOR RELIEF

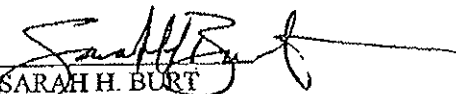
22
23 WHEREFORE, Plaintiffs respectfully request that this Court:

- 24 A. Declare that the State Department's failure to respond to Plaintiffs' FOIA request
25 within the twenty-day period with a determination as to whether it has responsive
26 documents, and failure to immediately notify Plaintiffs whether it intends to release
27 such documents, violates FOIA.
28

- 1 B. Order the State Department pursuant to 5 U.S.C. § 552(a)(4)(B) to determine whether
2 it has documents responsive to Plaintiffs' request and to produce, without charge and
3 within 10 days from the date of such order, all such responsive documents;
4
5 C. Declare that the State Department's failure to respond within the ten-day period with
6 a final determination on Plaintiffs' appeal of the State Department's denial of
7 expedited processing of their FOIA request and failure to expedite their FOIA request
8 violates FOIA and the State Department's implementing regulations.
9
10 D. Order the State Department pursuant to 5 U.S.C. § 552(a)(6)(E) to expedite
11 processing of this request;
12
13 E. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees; and
14
15 F. Grant Plaintiffs such further and additional relief as the Court may deem just and
16 proper.

17 Respectfully submitted,

18 Dated: May 18, 2011

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Verloop, Marja D

From: Paul Elliott [paul_elliott@transcanada.com]
 Sent: May 23, 2011 9:28 AM
 To: Paul Elliott
 Subject: BRIEFING: HOUSE HEARING -- "NORTH AMERICAN-MADE ENERGY ACT"
 Attachments: Briefing Alex Pourbaix Testimony to House Energy and Power May 23 2011.doc

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BRIEFING: HOUSE HEARING -- "NORTH AMERICAN-MADE ENERGY ACT" MAY 23, 2011

The House Energy and Commerce Subcommittee on Energy and Power chaired by Representative Ed Whitfield (R-KY) will today convene a hearing on the discussion draft of H.R. _____, the "North American-Made Energy Security Act", at 3:00 p.m. in room 2123 of the Rayburn House Office Building. TransCanada's President of Energy and Oil Pipelines Alex Pourbaix will deliver testimony at today's Energy and Power subcommittee hearing.

The draft legislation aims to bring more North American oil supplies online by expediting the consideration of the Presidential Permit for the Keystone XL pipeline expansion. The draft legislation requires the president to issue a Presidential Permit decision no later than November 1, 2011.

Highlights of testimony from Alex Pourbaix includes

U.S. Need for Additional Oil Supplies

- The U.S. has consumed approximately 18 million barrels per day of petroleum products per year over the last 10 years. Domestic U.S. crude oil production has averaged a little over 5 million barrels per day over that same time period and accounts for roughly 25% of U.S. demand.
- Crude oil imports from Mexico have declined from 1.7 million barrel per day in 2006 to approximately 1.3 million barrels per day currently, and are projected to significantly decline further. Over the same time period, Venezuelan imports to the U.S. have declined from 1.4 million barrels per day to approximately 1.0 million barrels per day.
- The need for this additional supply has been confirmed by a recent study prepared by a third party expert at the request of the Department of Energy and the State Department.

Keystone XL Pipeline Helps Meet U.S. Energy Supply Need

- The Keystone XL Project will deliver crude oil from Canada which has the third largest proven reserves of oil in the world, and which is the largest trading partner and supplier of crude oil to the United States.
- In addition, the Keystone XL Project would transport domestic crude oil from the Williston Basin producing region in North Dakota and Montana, and from local production in the Cushing, Oklahoma area.
- The \$13 billion Keystone Pipeline System will link secure and growing supplies of U.S. and Canadian crude oil with the largest refining markets in the United States, thereby significantly improving North American energy security supply.
- Keystone XL will meet the needs of U.S. crude oil refiners - and hence U.S. consumers -- for a reliable and sustainable source of crude oil to supplement or replace reliance on declining foreign supplies, particularly Mexico and Venezuela, without turning to greater reliance on Middle Eastern sources.

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Safety of Keystone XL Pipeline

- The Keystone Pipeline system is subject to comprehensive pipeline safety regulation under the jurisdiction of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). Keystone has agreed to comply with 57 additional Special Conditions developed by PHMSA for the Keystone XL Project.
- The State Department Supplemental Draft Environmental Impact Statement found that those conditions would result in a Project that would have a degree of safety over any other typically constructed domestic oil pipeline system under current code.
- To date, the Keystone XL Project has undergone a thorough and comprehensive 33-month review process - with multiple opportunities for public input -- as is appropriate for a project of this magnitude. Among many other issues, the safety of the Nebraska Sand Hills region and the Ogallala aquifer were fully considered in that process.

Impact on U.S. Gasoline Prices

- The Keystone XL Project could play a role in moderating high gasoline prices by: (i) providing capacity for North American production that is comparable in volume to nearly half of U.S. Persian Gulf imports; (ii) creating new crude oil supply access to Gulf Coast refiners who are vulnerable to OPEC supply disruptions; (iii) providing supply diversity that is comparable in size to recent supply disruption events; (iv) signalling domestic producers to continue to grow production by reducing the risk of constrained market access; (v) sending a powerful message to Canadian producers to continue to bring crude to the United States instead of to foreign countries; and (vi) reducing the risk of future United States supply uncertainty, which reduces the trading activity that puts upwards pressure on crude oil prices.

Economic Impact of the Keystone XL Pipeline

- An independent study found that the \$7 billion Keystone XL Project is expected to directly create more than 20,000 high-wage manufacturing jobs and construction jobs in 2011-2013 across the U.S. and 118,000 person-years of employment, stimulating significant additional economic activity.
- Once the pipeline is operational, the states along the pipeline route are expected to receive an additional \$5.2 billion in property taxes during the estimated operating life of the pipeline. Construction of the Project should provide contributions to U.S. energy security and the U.S. economy valued at over \$20 billion.

About TransCanada, the Operator of the Keystone XL Pipeline

- TransCanada has more than 60 years of experience in the responsible development and reliable operation of North American energy infrastructure.

Paul Elliott
Government Relations
TransCanada Corporation
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This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

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Verloop, Marja D

From: Yuan, Alexander W
Sent: May 24, 2011 6:41 PM
To: KeystoneEIS2
Subject: recent news
Attachments: image001.gif; Letter to EPA on KXL SDEIS May 24 2011 FINAL.pdf

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Categories: Working
AttachmentsClassification: UNCLASSIFIED
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Recent News from the various groups that send me emails:

- 1) Letter from 34 Environmental Orgs to Lisa Jackson requesting an for extension of the comment period and meetings along the pipeline route. We will probably get an official request from EPA soon. See Attached.
- 2) Short video about Keystone XL, Hillary Clinton, Paul Elliott, and the Koch Brothers:

<http://www.thenation.com/video/160862/koch-industries-tar-sands-pipeline-threatens-destroy-midwest-aquifer>

- 3) Most balanced article sent to me on the House hearings yesterday:

TransCanada defends pipeline project in Washington

Sheldon Alberts, Postmedia News: Tuesday, May 24, 2011

WASHINGTON — Calgary-based TransCanada Corp. courted its U.S. congressional allies — and confronted its foes — on Monday amid an effort by Republicans to pass legislation forcing the Obama administration to approve the controversial Keystone XL pipeline before the end of 2011.

In testimony before the House subcommittee on energy and power, TransCanada executive Alex Pourbaix dismissed as “completely false” allegations by environmental groups that diluted bitumen from Alberta’s oilsands is more dangerous and corrosive to transport than conventional heavy oil.

Pourbaix also rejected complaints, by some U.S. landowners, that his company is using bullying tactics to secure access to property along the proposed route of the 2,750-kilometre pipeline.

“Our opponents have gone so far as to describe the oil we transport as tar sludge,” said Pourbaix, TransCanada’s president of energy and oil pipelines.

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"To the people who make these allegations about corrosive and dangerous oil, I would respond by saying — why would we build a \$13-billion oil pipeline that will operate for decades, and then turn around and put product in that pipeline that would harm it and destroy it. That does not make any sense."

Pourbaix's testimony came amid growing frustration in the Canadian oil industry, and among members of the Alberta government, with the Obama administration over the time it is taking to approve or reject the 2,750-kilometre pipeline.

Last week in New York, Alberta Energy Minister Ron Liepert said the Obama administration should "get on with it" and approve the pipeline.

The Keystone XL would ship up to 700,000 barrels per day from northern Alberta to Gulf Coast refineries in Texas, crossing through Saskatchewan, Montana, South Dakota, Nebraska, Kansas and Oklahoma.

But it has run into stiff resistance from environmental groups and landowners along the proposed route.

Fears of a major spill heightened earlier this month when TransCanada's existing Keystone pipeline ruptured and spilled 20,000 gallons of oil in North Dakota.

The State Department, which has the authority to grant a permit for Keystone XL, is currently accepting public comments on a supplemental draft environmental impact study on the project.

Republican supporters of the pipeline tried to force the Obama administration's hand on Monday by introducing legislation — the North American-made Energy Security Act — that would require a decision on Keystone XL no later than Nov. 1.

"This is rather a simple bill that just says, let's move on with this," said Lee Terry, a Nebraska Republican who sponsored the legislation.

Pourbaix, in his written testimony, expressed TransCanada's "appreciation for the sentiment" behind the bill. He noted it has been 33 months since TransCanada applied for a presidential permit allowing Keystone XL to go forward and appealed for "prompt approval."

Still, he refused to specifically endorse the bill when pressed on the issue by a high-profile pipeline opponent, California's Henry Waxman.

"Do you think you need a special law?" asked Waxman, a Democrat. "And is Canada prepared to pass special laws for Americans when your government takes too long?"

Pourbaix said the U.S. government has conducted a "very exhaustive review, which I think is entirely appropriate given the magnitude" of the Keystone XL project.

Waxman called the pipeline a "lose-lose" proposition and said the proposed bill takes the "extraordinary step of interfering" in the State Department's review.

"The State Department should evaluate the proposal on its merits, not be ramrodded by Congress into approving a boondoggle for the oil industry," Waxman said.

The hearing included written testimony from a Nebraska farmer, Randy Thompson, who said TransCanada has tried to "bully and intimidate" landowners to grant land easements along the Keystone XL route. The company has threatened some landowners with the use of eminent domain, "even though their project is still in the permitting process," Thompson wrote.

"They are threatening American landowners," said Jeremy Symons, a senior vice president with the National Wildlife Federation. Symons called Keystone XL "a big oil wolf hiding in Canadian sheepskin."

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But Pourbaix denied the use of strong-arm tactics, saying that TransCanada had reached agreement with 99 per cent of landowners prior to construction of the earlier phase of the Keystone pipeline system.

"We treat our landowners with respect and we treat them fairly," Pourbaix said. "We have always viewed (eminent domain) as a last resort."

Lawmakers and panellists at the hearing quarrelled over the impact approval of Keystone XL might have on U.S. gas prices, which have risen well above \$4 a gallon in recent months.

Democrats on the panel cited statements made by TransCanada that approval of the pipeline might force up prices of crude in the U.S. Midwest by diverting Alberta oil to Texas, thereby reducing the oversupply of Canadian oil at refineries in Illinois.

Pourbaix said it was possible crude prices in the Midwest might rise. But he said U.S. gasoline prices should drop because of additional supply to Texas refineries.

"You will see downward pressure on refined product prices," Pourbaix said.

TransCanada's appearance before the House subcommittee kicked off a three-day Canadian oil industry blitz in the U.S. capital, aimed at building support for both Keystone XL and Alberta's oilsands.

"Are we surprised at the fight we have got on our hands? Not at all," said David MacLean, a vice-president for the Alberta Enterprise Group, an advocacy organization representing companies including TransCanada.

"Anytime you are going this big and when there is so much at stake, there is going to be conflict," MacLean said. "We are not here to make threats, or to rail against the administration. We are here to build networks and to build relationships and understanding."

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 Center for International Environmental Law • Chesapeake Climate Action Network
 Clean Air & Water, Inc. • Corporate Ethics International • Dakota Resource Council
 Dakota Rural Action • Earthjustice • Environment America
 Environmental Defence Canada • Friends of the Earth • Global Community Monitor
 Golden Triangle Group Sierra Club • Greenpeace USA • Honor the Earth
 League of Conservation Voters • Lincoln 350.org • Natural Resources Defense Council
 Nebraska Farmers Union • Nebraska Green Party • Nebraskans for Peace
 Public Citizen Texas • Rainforest Action Network • Safe Climate Campaign • Sierra Club
 Southern Alliance for Clean Energy • Stop Tarsands Oil Pipelines
 US Climate Action Network • Western Organization of Resource Councils

Tuesday, May 24, 2011

Dear Administrator Jackson,

Thank you for your personal engagement and the involvement of the Environmental Protection Agency in the environmental review of the Keystone XL tar sands pipeline. We are pleased that the State Department agreed to issue a Supplemental Draft Environmental Impact Statement (SDEIS), but we have significant concerns about the inadequacy of the analysis undertaken and conclusions drawn in this SDEIS. We ask for your continued support in holding the State Department to a thorough assessment of the environmental impacts of the proposed Keystone XL tar sands pipeline.

In the Agency's comment letter of July 16, 2010, the EPA asked that the State Department assess in greater detail the need for the pipeline and alternatives to deepening our dependence on tar sands oil, the impact of the pipeline on upstream production of greenhouse gases, pipeline safety and spill response, pipeline routing and impacts on groundwater, wetlands, and migratory birds, and impacts of the project on minority and low income communities. Because it gives superficial treatment to or dismisses the issues mentioned above, we believe that the EPA has little choice but to issue a Category 3 rating to this SDEIS and ask that a new SDEIS be generated.

In spite of the Ensys analysis, contracted by the Department of Energy and included in the SDEIS, which found there is sufficient pipeline capacity for years to come, the SDEIS still argues there is a need for the pipeline. Despite the ICF analysis, contracted by the State Department and included in the SDEIS, which finds that tar sands oil has higher lifecycle greenhouse gas emissions than other sources of oil, the SDEIS dismisses the integral link between the pipeline and the upstream production emissions and other environmental impacts. In spite of the many pipeline ruptures and spills in the last year, the SDEIS fails to look at pipeline safety issues related specifically to diluted bitumen pipelines. It dismisses alternative routes without looking at the shortest routes in the U.S. and it includes only minimal analysis of wetland and migratory bird impacts. Finally, it fails to consider environmental justice concerns based on the false premise the project will have no additional air quality or community impacts in the areas surrounding the refineries accepting the pipeline's oil.

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We ask that the EPA request the State Department to hold field hearings in every state through which the pipeline would pass, in order to publicly present the information contained in the review and give the public a forum to voice their concern for this major project. The timeframe for public comments should be adjusted as necessary to allow these field hearings to take place with sufficient notice. Given the many issues of local concern, communities and land owners along the proposed pipeline right of way and in refinery communities deserve an opportunity to officially voice their concerns.

The U.S. does not need another tar sands pipeline or expanded tar sands imports. In fact, adding the new tar sands capacity of Keystone XL to the recently built Alberta Clipper and Keystone 1 tar sands pipelines could increase the carbon in our fuel supply by at least 2% which would effectively offset all the gains made by EPA's proposed truck rule by 2030. We can do better with clean energy and efficiency alternatives to meet our transportation needs. We appreciate your continued vigilance in protecting the American public and our environment from the significant risks posed by this massive dirty fuels pipeline proposal.

Sincerely,

Alliance for Climate Protection	Golden Triangle Group Sierra Club
Audubon Nebraska	Greenpeace USA
Big Thicket Association	Honor the Earth
Bold Nebraska	League of Conservation Voters
Calumet Project	Lincoln 350.org
Center for Biological Diversity	Natural Resources Defense Council
Center for International Environmental Law	Nebraska Farmers Union
Chesapeake Climate Action Network	Nebraska Green Party
Clean Air & Water, Inc.	Nebraskans for Peace
Corporate Ethics International	Public Citizen Texas
Dakota Resource Council	Rainforest Action Network
Dakota Rural Action	Safe Climate Campaign
Earthjustice	Sierra Club
Environment America	Southern Alliance for Clean Energy
Environmental Defence Canada	Stop Tarsands Oil Pipelines
Friends of the Earth	US Climate Action Network
Global Community Monitor	Western Organization of Resource Councils

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