

**UNITED STATES OF AMERICA
DEPARTMENT OF STATE**

TRANSCANADA KEYSTONE PIPELINE, L.P.) **No.** _____

**APPLICATION OF TRANSCANADA KEYSTONE PIPELINE, L.P.
FOR A PRESIDENTIAL PERMIT AUTHORIZING THE
CONSTRUCTION, CONNECTION, OPERATION, AND MAINTENANCE
OF PIPELINE FACILITIES FOR THE IMPORTATION OF
CRUDE OIL TO BE LOCATED AT THE UNITED STATES-CANADA BORDER**

Pursuant to Executive Order 11423, 33 Fed. Reg. 11714 (Aug. 16, 1968), as amended, and Executive Order 13337, 69 Fed. Reg. 25229 (Apr. 30, 2004), TransCanada Keystone Pipeline, L.P. (“Keystone”) hereby submits its application to the United States Department of State (“Department”) for a Presidential Permit authorizing the construction, connection, operation, and maintenance of certain pipeline facilities for the importation of crude oil, to be located at the international border between the United States and Canada, at Phillips County, Montana (the “border crossing facilities”), as more fully described herein. Authorization to construct, connect, operate, and maintain the border crossing facilities is being requested in connection with Keystone’s proposed international pipeline project – the Keystone XL Project (“Project”). If this application is approved, the Project will transport crude oil production from the Western Canadian Sedimentary Basin (“WCSB”) and the Bakken supply basin in Montana and North Dakota, to a point located on the existing Keystone Pipeline system at Steele City, Nebraska, which will allow for the delivery of that production to existing refinery markets in the Texas Gulf Coast area.

The Project will serve the national interest of the United States by providing a secure and reliable source of Canadian crude oil to meet the demand from refineries and

markets in the United States, by providing critically important market access to developing domestic oil supplies in the Bakken formation in Montana and North Dakota, and by reducing U.S. reliance on crude oil supplies from Venezuela, Mexico, the Middle East, and Africa. The project also will provide significant economic and employment benefits to the United States, with minimal impacts on the environment.

I. BACKGROUND

Keystone submitted an application for a Presidential Permit for the Keystone XL Pipeline Project on September 19, 2008. The Department reviewed that application for over three years and issued a Final Environmental Impact Statement (FEIS) on August 26, 2011, finding that the potential impacts associated with construction and normal operation of the project suggest there would be no significant impacts to most resources along the project corridor. On November 10, 2011, the Department announced that it was delaying its decision on the Presidential Permit application in order to allow additional time to gather information regarding potential alternative routing in Nebraska. In late December 2011, Congress included a provision in the Payroll Tax Cut Extension Act requiring the President to make a decision on the Presidential Permit within 60 days. On January 18, 2012, the Department announced its determination that the project – as presented and analyzed at that time – did not serve the national interest. The determination was based solely on the rationale that the time provided for a decision was not adequate to complete the national interest review of the project, including specifically the assessment of potential alternative pipeline routes that avoid the Sandhills region in Nebraska. The President's acceptance of the Department's recommendation to deny the Permit rested on the same reasoning. In announcing the denial of Keystone's application,

the Department expressly stated that the denial does not preclude any subsequent permit application or applications for similar projects

By letter dated February 27, 2012, Keystone advised the Department that it intended to file a Presidential Permit application in the near future and subsequently to supplement that application with an alternative route in Nebraska, as soon as that route is selected by that State. Keystone stated that it has been working on developing alternative routing in Nebraska that avoids the Sandhills region since November 2011, following the Department's notice that it was delaying a decision on the application.

Keystone's February 27, 2012 letter further advised the Department that Keystone had concluded the portion of the previously proposed Keystone XL Project that will directly serve the Gulf Coast has its own independent utility as the stand-alone Gulf Coast Project.¹ Keystone stated that it intends to continue to seek any remaining required permits from federal, state, and local entities for the Gulf Coast Project and that Keystone will proceed to begin construction of that project as soon as any permits necessary to specific construction activities are in place. The Gulf Coast Project will provide the capacity to deliver up to 830,000 bpd of crude oil from Cushing, Oklahoma to the Gulf Coast refinery market.

The instant filing contains the non-environmental information required to support a Presidential Permit application for the more limited Keystone XL Project, which now includes the former "Steele City Segment" of the original project and a commitment to incorporate the new route in Nebraska, when selected. Moreover, Keystone incorporates

¹ Keystone's February 27, 2012 letter includes a detailed appendix setting forth the basis for the independent utility of the Gulf Coast Project. The February 27, 2012 letter and appendix are incorporated herein by reference, to the extent deemed necessary.

by reference the FEIS prepared by the Department for the original proposed Keystone XL Project, which provides a comprehensive record assessing the environmental impacts of the proposed Project. The FEIS was developed by the Department over the course of three years with the participation of numerous affected agencies and satisfies any applicable environmental review that may be required under the National Environmental Policy Act (“NEPA”) 42 U.S.C. §§ 4321, et seq.

In addition, on April 17, 2012, the Governor of Nebraska signed into law a statute authorizing the Nebraska Department of Environmental Quality (NDEQ) to review alternative routing in the State, including collaboration with a federal agency.² Keystone submitted an initial alternative routing report to the NDEQ on April 18, 2012. Keystone expects the Nebraska alternative route selection process to be complete later this year. Keystone will supplement this application with the revised routing in Nebraska as soon the Nebraska alternative route selection process is complete. Keystone will provide any information necessary to update the FEIS during the course of the Nebraska alternative route review.

II. IDENTIFYING INFORMATION

Communications and correspondence with respect to this application should be directed to the following persons:

² Nebraska Legislative Bill 1161, One Hundred Second Legislature, Second Session.

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The identity of the applicant is TransCanada Keystone Pipeline, L.P., a limited partnership, organized under the laws of the State of Delaware and owned by affiliates of TransCanada Corporation, a Canadian public company organized under the laws of Canada. Keystone's primary business address is 717 Texas Avenue, Houston, Texas, 77002-2761

TransCanada Pipelines Limited ("TransCanada") will be the operator of the Project. TransCanada has more than 60 years' experience in the responsible development and reliable and safe operation of North American energy infrastructure including oil and natural gas pipelines, power generation, gas storage facilities, and projects related to liquefied natural gas facilities. TransCanada currently operates the 1171-mile Keystone Pipeline system, which currently has the capacity to deliver up to 590,000 bpd of Canadian crude oil into US refining and terminalling markets. The U.S. mainline segment of the Keystone Pipeline system extends from the North Dakota-Canada border to Wood River and Patoka, Illinois. The Keystone Cushing Extension extends from Steele City, Nebraska, to Cushing, Oklahoma. TransCanada currently is developing the Gulf Coast Project, which will connect with the Keystone Pipeline system at Cushing and deliver oil to US Gulf Coast refineries. Construction of the Gulf Coast Project is expected to commence later this year, with an in-service date in 2013.

In addition to its oil pipeline operations and projects, TransCanada owns and operates a natural gas pipeline network of more than 36,500 miles, which taps into virtually all major natural gas supply basins in North America. TransCanada transports the majority of western Canada's natural gas production across the North American continent to markets in the United States and Canada. TransCanada is also North America's second largest natural gas storage operator with 380 bcf of storage capacity and Canada's largest private sector power generator with 20 power plants totalling 11,700 MW of generation capacity.

TransCanada has total assets of approximately U.S. \$49.0 billion. For the year ended December 31, 2011, TransCanada had a net income from continuing operations of approximately U.S. \$1.5 billion and cash flow of approximately U.S. \$4.0 billion. Attached as Exhibit A is a summary document demonstrating TransCanada's fitness to develop, construct, connect, operate, and maintain the Project as a major cross-border pipeline system.

III. DESCRIPTION OF FACILITY

Keystone requests a Presidential Permit authorizing it to construct, connect, operate, and maintain the specific border crossing facilities associated with the proposed Keystone XL Project, as shown on Exhibit B hereto. Consistent with Department policy, the border crossing facilities are defined as a 1.2 mile segment of 36-inch diameter pipeline extending downstream from the United States border, in Phillips County, Montana up to and including the first pipeline isolation valve, located at Milepost 1.2, where the first pump station in the United States is proposed to be located. Exhibit B shows: (i) a pipeline route map reflecting the location of the border crossing facilities; (ii)

an engineering drawing depicting the border crossing; and, (iii) photos of the proposed construction site.

The portion of the border crossing facilities from Milepost 0.0 to Milepost 0.93 will be located on lands administered by the U.S. Bureau of Land Management (BLM). Keystone is in the process of obtaining authorization from BLM under the Mineral Leasing Act of 1920, as amended (30 USC 181 et seq.) and the Federal Land Policy and Management Act, as amended (43 USC 1701), to permit construction and operation of the proposed facilities at those locations. The portion of the border crossing facilities from Milepost 0.93 to Milepost 1.2 will be located on land owned by the State of Montana. Keystone is in the process of acquiring a lease for that land from the State.

The technical specifications of the line pipe to be utilized for the border crossing facilities, and the Project as a whole, are set forth in Exhibit C hereto. The pipeline will be constructed and operated in compliance with the regulations of the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) as set forth at 49 CFR Parts 194 and 195. In addition, Keystone has agreed to adopt and comply with 57 Special Conditions developed by PHMSA and included at Appendix U to the Department's FEIS prepared for the original Keystone XL Project.

The border crossing facilities are intended to transport crude oil as an integral part of the proposed Project -- an international project designed to transport Canadian oil from the WCSB, and domestic U.S. crude oil production from the Bakken supply basin in Montana and North Dakota, to refinery markets in the Gulf Coast region. Specifically, Keystone proposes to construct and operate a crude oil pipeline and related facilities from an oil supply hub near Hardisty, Alberta, Canada to the northernmost point of the existing

Keystone Pipeline Cushing Extension at Steele City, Nebraska, which will provide access to existing refinery markets in the Texas Gulf Coast area. The related Bakken Market Link Project will include the construction of “on-ramp” facilities in Fallon County, Montana to allow Bakken crude oil to access the pipeline system for delivery to Steele City and then to the Gulf Coast. Maps depicting the previously approved Keystone XL Pipeline route in Montana and South Dakota are provided in the FEIS (Figures 2.1-1 and 2.1-2).⁴ The Bakken Marketlink Project is described as a connected action to the Keystone XL Project at Section 2.5.3 and Figure 2.5.3-1 of the FEIS.

In cooperation with the Nebraska Department of Environmental Quality (NDEQ), Keystone has initiated the identification and development of alternative routing in Nebraska that will avoid the “Sandhills” region. On December 29, 2011, NDEQ issued a map depicting the Sandhills region to be avoided. Keystone has completed a desk top alternatives analysis and ground reconnaissance to identify suitable alternative routes around the Sandhills. As noted, Keystone has submitted its proposed alternative routing across Nebraska to the NDEQ. Keystone expects the Nebraska alternative route selection process to be complete later this year. Keystone will supplement this application with the revised routing in Nebraska as soon the Nebraska re-route selection process is complete.

There will be 18 pump stations along the pipeline route in the U.S. Depending on the route selected in Nebraska, one additional pump station could be required. The

⁴ The portion of the proposed route through Montana was approved by the Montana Department of Environmental Quality (MDEQ) in the Certificate of Compliance issued to Keystone on March 30, 2012 under the Montana Major Facilities Siting Act. The MDEQ was a cooperating agency in the DOS NEPA review of the original Keystone XL application. The MDEQ approved route is included as part of the preferred route selected in the FEIS. See FEIS at p. 4-75. The portion of the proposed route through South Dakota was approved by the South Dakota Public Utilities Commission in a Final Decision and Order issued in March 2010 (and an amended Final Decision and Order in June 2010), approving construction of the Project in the state.

project will also include additional pumping capacity at existing pump stations and at two (2) new pump stations along the Keystone Cushing Extension in Kansas.

The Project will have an initial capacity of approximately 830,000 barrels per day (bpd). Construction of the proposed Project is expected to commence in early 2013 and the Project is planned to be placed into service by late 2014.

In Canada, approximately 329 miles of new 36-inch pipeline will be constructed from Hardisty, Alberta to Monchy, Saskatchewan where it will cross into Phillips County, Montana. Review, approval, and construction of the proposed Canadian facilities are discussed below at Section X.

IV. NATIONAL INTEREST

The proposed Keystone XL Project is clearly in the national interest of the United States. Each of the criteria that the Department typically considers in weighing national interest determinations are fully satisfied by the extensive record developed in the review of the original Keystone XL Pipeline Project application. Moreover, a national interest finding is supported by recent Department decisions granting Presidential Permits to similar cross-border crude oil pipeline projects. Current circumstances also amplify the basis for a national interest finding.

A. The Department's National Interest Criteria are Fully Satisfied by the Extensive Record Developed in the Review of the Original Keystone XL Project

The Supplemental Draft EIS issued by the Department for the original Keystone XL Project addressed the criteria that the Department may consider when making a National Interest Determination. The SDEIS stated:

Consistent with the President's broad discretion in the conduct of foreign affairs, DOS has significant discretion in the factors it examines in making a National Interest Determination (NID). The factors examined and the approaches to their examination are not necessarily the same from project to project. However, previous NID processes can provide insights into the factors DOS is likely to consider in evaluating the present application.⁵

The SDEIS then listed some of the key factors considered in past national interest decisions as follows:⁶

1. Environmental impacts of the proposed projects
2. Impacts of the proposed projects on the diversity of supply to meet U.S. crude oil demand and energy needs
3. The security of transport pathways for crude oil supplies to the U.S. through import facilities constructed at the border relative to other modes of transport
4. Stability of trading partners from whom the U.S. obtains crude oil
5. Impact of a cross-border facility on the relations with the country to which it connects
6. Relationship between the U.S. and various foreign suppliers of crude oil and the ability of the U.S. to work with those countries to meet overall environmental and energy security goals
7. Impact of proposed projects on broader foreign policy objectives, including a comprehensive strategy to address climate change
8. Economic benefits to the U.S. of constructing and operating proposed projects

⁵ Supplemental DEIS at p. 1-6.

⁶ *Id.*

9. Relationships between proposed projects and goals to reduce reliance on fossil fuels and to increase use of alternative and renewable energy sources

Keystone submits that each of these criteria are exhaustively and positively addressed and satisfied in the extensive record that was amassed in the Department's review of the original Keystone XL Project. Without restating the entirety of that record, Keystone will address these criteria in summary fashion. Some closely related or overlapping criteria are combined for discussion.

- 1. Environmental impacts of the proposed Project**

The lengthy, exhaustive, and comprehensive environmental review conducted by the Department and the cooperating and assisting agencies under NEPA, and the conclusions drawn from that review, make clear that the environmental impacts of the proposed Project support a national interest finding.

The Department's NEPA review consisted of a vigorous analysis of the potential environmental impacts of the proposed Project. The Department's robust environmental review went far beyond the judicially-mandated minimum of a "hard look." In addition to the Department, numerous cooperating agencies were involved in the environmental review:

- U.S. Army Corps of Engineers
- U.S. Department of Agriculture – Farm Service Agency
- U.S. Department of Agriculture – Natural Resources Conservation Service
- U.S. Department of Agriculture – Rural Utilities Service
- U.S. Department of Energy – Office of Policy and International Affairs

- U.S. Department of Energy – Western Area Power Administration
- U.S. Department of Interior - Bureau of Land Management
- U.S. Department of Interior – National Park Service
- U.S. Department of Interior – U.S. Fish & Wildlife Service
- U.S. Department of Transportation - Pipeline and Hazardous Materials Safety Administration
- U.S. Environmental Protection Agency
- Montana Department of Environmental Quality.

In addition, several Assisting Agencies participated:

- U.S. Department of Interior – Bureau of Reclamation
- Filmore, Greeley, Holt, Merrick, Nance, Saline, and Wheeler Counties, Nebraska
- Lower Big Blue Natural Resources and Upper Elkhorn Natural Resources Districts, Nebraska

The environmental review covered a broad scope of potential impacts, including potential impacts to the relevant geology, paleontological resources, geologic hazards; soils and sediments, potential erosion and impacts to soil productivity; water resources including groundwater and surface water; wetlands; terrestrial vegetation; wildlife; fisheries; threatened and endangered species (in consultation with the Fish and Wildlife Service and relevant state agencies); land use, recreation, and visual resources; socioeconomics; environmental justice; cultural resources (in consultation with the

Advisory Council on Historic Preservation and state historic preservation offices); air quality and noise; potential releases from Project construction and operations and environmental consequences (in conjunction with PHMSA and the EPA); and cumulative impacts. In addition to potential impacts, the FEIS considered Keystone's proposed mitigation measures to address these potential impacts and developed additional mitigation measures with public and agency input.

Consistent with NEPA, the Department and the cooperating agencies also conducted an analysis of alternatives to the proposed Project. The alternatives analysis included consideration of (i) the No Action Alternative, which addressed projected beneficial and adverse environmental, social, and economic impacts that could be expected if the proposed Project were not implemented; (ii) System Alternatives, which addressed the use of other pipeline systems or other methods of providing heavy crude oil to the relevant markets; (iii) Alternative Pipeline Designs, which considered aboveground installation of the pipeline and alternate pipeline diameters; and (iv) Alternative Sites for Aboveground Facilities, which looked at alternative sites for pump stations, valves, and other facilities.

In addition, the FEIS considered potential alternative routes to determine whether there were route alternatives that would avoid or reduce impacts to environmentally sensitive resources as compared to the impacts of the proposed Project while meeting the objectives of the proposed Project. In identifying route alternatives, consideration was given to suggestions received from tribes, agencies, and the public during the scoping

period and in comments on the draft EIS. Variations to the proposed route were also considered.⁷

After three years of study, the FEIS concluded that “[t]he analyses of potential impacts associated with construction and normal operation of the proposed Project suggest that there would be no significant impacts to most resources along the proposed Project corridor . . .”.⁸ Further, the FEIS found that neither the “no action” alternative nor any of the system alternatives, alternative pipeline designs, alternative sites, or alternative routes or route variations was environmentally preferable to the proposed route. Taking account of the exhaustive environmental review of the proposed Keystone XL Project, it is clear that the determination of no significant environmental impacts made in the FEIS supports a finding that the Project is in the national interest.

2. Impacts of the proposed projects on the diversity of supply to meet U.S. crude oil demand and energy needs

By any measure, the impacts of the proposed Keystone XL Project on the diversity of supply to meet U.S. crude oil demand and energy needs are clear and positive. As recognized in the FEIS, the primary purpose and need of the Keystone XL Project, as originally proposed, is to provide the infrastructure necessary to transport WCSB heavy crude oil from the border with Canada to delivery points in the Gulf Coast region (Petroleum Administration for Defense District (PADD) III, in response to the market demand of refineries in PADD III for heavy crude oil. The FEIS found that this market demand is driven by the need of refiners in PADD III to replace declining feed

⁷ “Variations” are relatively short deviations from a proposed route that are developed to resolve or reduce construction impacts to localized, specific resources such as cultural resource sites, wetlands, recreational lands, residences, and terrain conditions.

⁸ FEIS at 3.15-1 (emphasis added).

stocks of heavy crude oil obtained from other foreign sources with crude oil from a more stable and reliable source.

As currently proposed, the Keystone XL Project would meet that demand. The Project will terminate at the point of origin of the existing Keystone Pipeline Cushing Extension, at Steele City, Nebraska. At that point, the crude oil transported on the Keystone XL Pipeline would be transported to Cushing, Oklahoma on the Keystone Cushing Extension. At Cushing, the oil would have access to the TransCanada Keystone Gulf Coast Project, which will provide transportation service to Gulf Coast refineries.⁹

The FEIS found that the 58 refineries in the Gulf Coast region provide a total refining capacity of approximately 8.4 million bpd, or nearly half of U.S. refining capacity. These refineries provide substantial volumes of refined petroleum products, such as gasoline and jet fuel, via pipeline to the Gulf Coast region as well as the East Coast and the Midwest. According to the FEIS, in 2009, PADD III refineries imported approximately 5.1 million bpd of crude oil from more than 40 countries, and the top four suppliers were Mexico (21 percent), Venezuela (17 percent), Saudi Arabia (12 percent), and Nigeria (11 percent). Of this amount, approximately 2.9 million bpd was heavy crude oil. In addition, PADD III refinery runs are projected to grow by at least 500,000 bpd by 2020. However, as noted by the EnSys report, presented at Appendix A of the Supplemental FEIS, crude oil imports from Mexico and Venezuela, which flow

⁹As noted above, by letter dated February 27, 2012, Keystone advised the Department that it had concluded that the portion of the previously proposed Keystone XL Project that will serve the Gulf Coast has its own independent utility as the stand-alone Gulf Coast Project, that that Keystone intends to continue to seek any remaining required permits from federal, state, and local entities for the Gulf Coast Project, and that Keystone will proceed to begin construction of that project as soon as any permits necessary to specific construction activities are in place. The Gulf Coast Project will provide the capacity to deliver up to 830,000 bpd of crude oil from Cushing to the Gulf Coast refinery market. Keystone has committed to develop and construct the Gulf Coast Project regardless of whether this Presidential Permit application is granted.

predominantly into Gulf Coast refineries, have been in steady decline and are projected to continue to drop over the next several years, from 2.9 million bpd in 2004 to about 0.8 million bpd by 2020. Although the supply of crude oil from Saudi Arabia to the U.S. appears to be fairly stable, the remaining major PADD III suppliers face declining or uncertain production.⁹

The proposed Project would provide an initial capacity of 830,000 bpd. Keystone currently has firm, long-term contracts to transport in excess of 500,000 bpd of WCSB crude oil to existing PADD III delivery points. Bakken Marketlink, using facilities which form part of the proposed Project, currently has firm, long-term contracts to transport 65,000 bpd of the 100,000 bpd set aside to transport Bakken crude oil from the Williston Basin in North Dakota and Montana.

In all domestic pipeline scenarios considered by the EnSys report, increased U.S. imports of Canadian crude oil would reduce U.S. imports of foreign oil from sources outside of North America. Reductions in U.S. oil demand would result in reductions of oil imports from non-Canadian foreign sources, with no material reduction in imports of WCSB crude oil. Additionally, the firm, long-term commitment of shippers to transport 380,000 bpd of WCSB crude oil to PADD III destinations through the proposed Project indicates a market preference for WCSB heavy crude oil. While there is existing transboundary pipeline capacity to accommodate projected additional imports of WCSB crude in the short to medium term, there is extremely limited pipeline transport capacity to move such crude oils to PADD III refineries.

⁹ FEIS at pp. 1-9 to 1-10.

An additional purpose of the proposed Project, as recognized in the FEIS, is to transport WCSB heavy crude oil to the proposed Cushing tank farm in response to the market demand of refineries in PADD II for heavy crude oil. If the proposed Project is approved and implemented, Keystone would transfer shipment of crude oil under those contracts to the proposed Project.

Further, since the time of the Presidential Permit application for the original Keystone XL Project, Keystone has provided the opportunity to shippers to access the proposed Project to transport crude oil from the Williston Basin and from portions of PADD II to delivery points in PADDs II and III. To date, shippers in those areas have committed to transport 65,000 bpd of the 100,000 bpd set aside for Bakken production on the proposed Project.

All of these factors and considerations support a finding that the impacts of the proposed Keystone XL Project on the diversity of supply to meet U.S. crude oil demand and energy needs weigh heavily in favor of a positive national interest finding and issuance of a Presidential Permit for the Keystone XL Project.

3. The security of transport pathways for crude oil supplies to the U.S. through import facilities constructed at the border relative to other modes of transport

During the review of the original Keystone XL Project application, the security and safety of the proposed Project received an unprecedented level of scrutiny and input from PHMSA – the government agency with specific expertise in matters of pipeline safety -- in the review process, as well as from the Department, EPA, and the public.

At the time of publication of the DEIS, Keystone had applied to the PHMSA for a Special Permit to operate the proposed Project at a slightly higher pressure than would be

allowed using the standard design factor in the regulations. That would have resulted in a maximum crude oil throughput of approximately 900,000 bpd. The Department worked with PHMSA to develop Project-specific Special Conditions that would have been incorporated into the Special Permit. On August 5, 2010, Keystone withdrew its application to PHMSA for a Special Permit.

Notwithstanding that withdrawal, however, and to enhance the overall safety of the proposed Project, the Department and PHMSA continued working on Special Conditions specific to the proposed Project and ultimately developed 57 Project-specific Special Conditions. Keystone then voluntarily agreed to design, construct, operate, maintain, and monitor the proposed Project in accordance not only with the generally applicable PHMSA regulatory requirements at 49 CFR Parts 194 and 195, but also in compliance with the more stringent set of 57 Project-specific Special Conditions as presented in Appendix U to the FEIS. Keystone specifically agreed to incorporate those conditions in its manual of operations, maintenance, and emergencies. PHMSA has the legal authority to inspect and enforce any items contained in a pipeline operator's operations, maintenance, and emergencies manual, and, therefore, has the legal authority to inspect and enforce the 57 Project-specific Special Conditions if the proposed Project is approved.

The Department, in consultation with PHMSA, determined that incorporation of 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 and a degree*

of safety along the entire length of the pipeline system similar to that which is required in High Consequence Areas (HCAs) as defined in 49 CFR 195.450.”¹¹

The Final EIS also considered three alternative modes of transporting crude oil from the U.S./Canada border to the relevant markets at Cushing, Oklahoma, Nederland, and Port Arthur, Texas. The modes considered included truck transport, rail car transport, and barge and marine tanker transport.¹²

The FEIS summarized accident statistics by method of transport and found that transport of oil by pipeline is substantially safer than transport by trucking. The Association of Oil Pipelines reported that trucking is 87 times more likely than pipeline transport to result in a human fatality. In similar findings, fire and/or explosions are 35 times more likely when transporting crude oil via truck. Vehicle accidents and accidental releases are also concerns with surface transportation crude oil delivery. The Bureau of Transportation Statistics reported that the transport of hazardous liquids (including crude oil) on highways resulted in five times as many fatalities as transportation of hazardous liquids by pipeline between 1975 and 2007.

The FEIS found further that the trucking alternative would add substantial congestion to highways in all states along the route selected, particularly at and near the border crossing and in the vicinity of the delivery points. At those locations it is likely that there would be significant impacts to the existing transportation systems. Trucks would consume millions of gallons of fuel per year, with subsequent exhaust emissions (including GHG) and other negative environmental effects. Trucking would likely be

¹¹ FEIS at p. 3.13-4 (Emphasis added).

¹² FEIS at Section 4.2.3.

subject to interruptions due to unfavorable weather and road conditions, especially in Montana and other northern states. At the Gulf Coast delivery points, surface transportation would necessitate substantial new transfer facilities and personnel. Accordingly, truck transportation was not considered a reasonable alternative to meeting the Project objectives and was not further evaluated.

With respect to the potential rail alternative, the FEIS found that there would likely be greater safety concerns and greater impacts during operation, including higher energy use and GHG emissions, greater noise impacts, and greater direct and indirect effects on many more communities than the proposed Project. Rail transportation would also be subject to more frequent delivery interruptions than the proposed Project. As a result, the FEIS found that transportation of the volume of crude oil that would be transported by the proposed Project entirely by rail tank car would not offer an overall environmental or safety advantage over the proposed Project.

The FEIS found that transport of crude oil by marine tanker or barge would result in substantially more energy consumption than transport by the proposed Project and would result in substantially more GHG emissions than during operation of the proposed Project. Both marine tanker and barge transport of hazardous liquids have greater safety concerns than transport by pipeline. Additionally, this method of transport to the Gulf Coast would be more costly than transport by pipeline. In summary, the FEIS found that marine transport of WCSB crude oil would not meet the proposed Project objectives, would result in greater energy consumption and GHG emissions, would increase the cost of delivered crude oil to the Gulf Coast refineries, and would have greater safety

concerns than the proposed Project. Therefore, marine transport of WCSB crude oil was not further considered as a system alternative to the proposed Project.

Finally, the FEIS considered the potential use of an intermodal crude oil transportation system that comprised some combination of new or expanded pipelines, railroad tank cars, trucks, and barges that could potentially deliver a volume of WCSB crude oil and other crude oils to the Gulf Coast similar to or greater than the volume that would be transported by the proposed Project. However, the FEIS found that, in combination, the construction of additional pipeline capacity and additional railroad, barge and truck loading and unloading facilities would likely result in impacts similar to or greater than those of the proposed Gulf Coast segment of the original Keystone XL project. Additionally, during operations, rail, barge and truck transport of substantial quantities of crude oil would not offer a similar level of safety as that of the proposed Project, and these combined transport modes would not offer an environmental advantage over the proposed Project

4. Stability of trading partners from whom the U.S. obtains crude oil; impact of a cross-border facility on the relations with the country to which it connects and with other nations

Canada is the United States' largest trading partner. The stability of the trade relationship between these two neighbors is beyond question. As the Department expressly found in its Record of Decision and National Interest Determination (ROD/NID) leading up to the granting of a Presidential Permit for the Keystone Pipeline

Project in 2008, the granting of such a permit “increases crude oil supplies from a source region that has been a stable and reliable trading partner of the United States . . .”¹³

Similarly, in issuing the ROD/NID leading up to the grant of a Presidential Permit for the Alberta Clipper project in 2009, the Department found that the addition of crude oil pipeline capacity between Canada and the United States would advance a number of strategic interests of the United States. These included increasing the diversity of available supplies among the United States’ worldwide crude oil sources in a time of considerable political tension in other major oil producing countries and regions; shortening the transportation pathway for crude oil supplies; and increasing crude oil supplies from a major non-Organization of Petroleum Exporting Countries producer. The Department found that granting the Permit “increases crude oil supplies from a major non-Organization of Petroleum Exporting Countries producer which is a stable and reliable ally and trading partner of the United States, with which we have free trade agreements which augment the security of this energy supply.”¹⁴ The Department concluded that approval of that permit sent a positive economic signal, in a difficult economic period, about the future reliability and availability of a portion of United States’ energy imports.

Construction of the Keystone XL Project will clearly facilitate the strong trade relationship between the U.S and Canada. On the other hand, denial of the pending Presidential Permit application would have a deleterious effect on the countries’ trade relationship. In addition, it is in the United States’ interest to affect positively how others

¹³ Department of State, Record of Decision and National Interest Determination (ROD/NID), TransCanada Keystone Pipeline, LP, Feb. 28, 2008, p. 22

¹⁴ Department of State, Record of Decision and National Interest Determination (ROD/NID), Enbridge Energy Limited Partnership – Alberta Clipper Pipeline, Aug. 3, 2009, p. 25.

may perceive its relative dependence on imported oil as those nations make strategic decisions that could impact world oil markets. To the extent that the Project could result in recognition by adversaries that they do not hold the keys to the United States' economic future, those nations may be less emboldened to take actions hostile to the U.S. national interests. Accordingly, this factor clearly weighs in favor of granting the requested Presidential Permit for the Keystone XL Project.

5. Relationship between the U.S. and various foreign suppliers of crude oil and the ability of the U.S. to work with those countries to meet overall environmental and energy security goals; impact of proposed projects on broader foreign policy objectives, including a comprehensive strategy to address climate change

In its 2009 ROD/NID for the Alberta Clipper project, the Department of State indicated that the United States and Canada are working across their respective energy sectors to cooperate on best practices and technology, including carbon sequestration and storage, so as to lower the overall environmental footprint of their respective energy sectors, and that the Government of Canada and the Province of Alberta had also set greenhouse gas reduction targets and implementation programs to help them achieve them. The Department further took the position that it had considered concerns with respect to foreign policy objectives related to comprehensive climate change strategy, and concluded that they are best addressed in the context of the overall set of domestic policies that Canada and the United States will take to address their respective greenhouse gas emissions.

The Department found that the United States will continue to reduce reliance on oil through conservation and energy efficiency measures, as well as through the pursuit of comprehensive climate legislation and an ambitious global agreement on climate change

that includes substantial emission reductions for both the United States and Canada. According to the ROD/NID for the Alberta Clipper project, the Department, on behalf of the Administration, will urge ambitious action by Canada, and will cooperate with the Canadian government through the U.S.-Canada Clean Energy Dialogue and other processes to promote the deployment of technologies that reduce our respective GHG emissions.

Clearly, by expanding its crude oil trade relationship with Canada -- rather than with other foreign crude oil suppliers -- the United States is in a far better position to work to meet overall environmental and energy security goals and broader foreign policy objectives, including a comprehensive strategy to address climate change. In that regard, it is notable that the Canadian Federal government and the Province of Alberta have committed to reduce Greenhouse Gas emissions.

- The province of Alberta is actively regulating and reducing emissions from large industrial emitters. Alberta was the first jurisdiction in North America (in 2007) to develop legislation regulating greenhouse gas emissions that require large industrial emitters to report their emissions and take actions to make mandatory reductions. The program also puts a price on carbon and regulates an Alberta-based carbon offset system. Oil sands facilities and pipelines in Alberta are directly regulated by this program.
- The Government of Canada is committed to reducing Canada's total greenhouse gas emissions by 17 per cent from 2005 levels by 2020 - a target that is inscribed in the Copenhagen Accord and aligned with the United States.

Further, in Canada, Government regulation and oversight do not allow for oil sands projects to have significant adverse effects on the environment. This is accomplished through:

- Comprehensive federal and provincial regulations that protect air, water, land, wildlife and the people who live in nearby communities;
- A comprehensive federal and provincial environmental review process for new oil sands developments;
- Transparency in regulatory decision making, permitting, monitoring and reporting;
- Mandatory processes for meaningful public consultation and Aboriginal involvement;
- Continuous improvement of regulations to ensure protection of the environment; and
- Continuous innovation, with the goal of sustainable production of oil sands, either independently or through industry partnerships such as Canada's Oil Sands Innovation Alliance (COSIA – www.cosia.ca).

Oil sands projects undergo thorough environmental assessment under Canadian environmental laws and regulations. In Canada, the requirement for environmental assessment is either triggered by the magnitude of a proposed project or the activities (e.g., taking of water, use of public land, release of contaminants to air, water, land, etc.). Oil sands projects typically require environmental assessment. Some of the key statutes that require oil sands projects to undergo environmental assessment include:

- The Canadian Environmental Assessment Act (CEA Act)

- Alberta's Environmental Protection and Enhancement Act (EPEA)
- Alberta's Oil and Gas Conservation Act (OGCA)
- Alberta's Pipelines Act (PLA)
- Oil Sands Conservation Act (OSCA)

Moreover, Canadian regulatory requirements provide transparent processes for project permitting, monitoring and reporting to ensure environmental protection. Some of the key features of these regulations that result in environmental protection are set forth below:

- projects undergo extensive environmental assessment with required public comment and aboriginal consultation to obtain environmental permits;
- projects need to meet extensive regulatory requirements that specify engineering, environmental planning, mitigation and/or compensation, efficient resource use, facility operation, etc., to obtain approval;
- project permits detail the requirements for regulatory compliance including terms and conditions for construction and operation, monitoring and reporting requirements, and reclamation (life cycle permitting);
- cumulative environmental effects (e.g., air pollution, socio-economic impacts, land use) are routinely considered;
- projects are not allowed to proceed where significant adverse effects are identified;
- public consultation and aboriginal engagement on projects must be meaningful and is documented and considered when determining if and how a project is permitted;

- adversely affected parties are allowed to participate in both public interest and environmental assessment hearings;
- oil sands operations are required to monitor emissions from stacks, discharges to water bodies/tailings ponds, etc.;
- oil sands operations are required to report changes in operations and equipment;
- oil sands operations are required to report environmental incidents (wildlife, discharges, spills, malfunctions, complaints, non-compliances);
- incidents are investigated, when warranted, by environmental authorities who may require industry to take action to repair or remediate issues or pay substantial fines;
- environmental and engineering compliance is determined through evaluation of industry reporting, regulatory audits and environmental monitoring (e.g., regional air quality);
- industry regulations provide sanctions to deter non-compliance (e.g., Syncrude was fined approximately \$3,000,000 when it failed to operate mitigation equipment designed for when avian deterrents failed);
- environmental approvals are subject to regular renewal and revision; renewals routinely require improvements to technology and operations (as technology improves);
- regulatory agencies must address ongoing public concerns with operations;
- and

- public scrutiny also drives improvement with respect to environmental performance.

Oil sands operators also collaboratively contribute to cumulative/regional effects monitoring projects -- key oil sands monitoring programs include:

- Water - Regional Aquatics Management Plan (RAMP) <http://www.ramp-alberta.org/RAMP.aspx>
- Air - Wood Buffalo Environmental Association (WBEA) <http://www.wbea.org/>

Reclamation and remediation also have become important components of oil sands permitting. Since 2009 the Alberta Energy Resources Conservation Board has required oil sands operations to establish short and long-term plans for the reclamation of tailings ponds.

The national interest in this area is measured by focusing not solely on the environmental practices of Canada but, more properly, by comparing Canada's attributes with those of other nations whose imported oil the Project would replace with Canadian oil. The comprehensive environmental statutes, regulations, and enforcement efforts outlined above contrast markedly with the much less stringent – if existent at all – environmental regulation in other foreign nations serving as sources of imported crude oil to the United States.

6. Economic benefits to the U.S. of constructing and operating proposed projects

The FEIS recognized that the Keystone XL Project has the potential to generate substantial direct and indirect economic benefits for local and regional economies along

the pipeline route. During construction, these benefits are derived from the construction labor requirements of the proposed Project and spending on construction goods and services that would not otherwise have occurred if the pipeline were not built. At the local level, these benefits would be in the form of employment of local labor as part of the construction work force and related income benefits from wage earnings, construction expenditures made at local businesses, and construction worker spending in the local economy.

The FEIS described a number of economic benefits, including payroll spending and substantial expenditures on construction materials (e.g., pipe, valves, and pump stations), equipment and equipment rentals (see Table 2.3.2-1), and goods and services, both inside and outside of the region of influence. Keystone will provide updated economic impact information shortly, modified to reflect the scale of the Project as proposed in this application. Clearly, however, there will continue to be a solid basis to conclude that construction of the proposed Project would result in a positive impact on the local economies in the region of influence.

The FEIS further found that construction would generate indirect local economic benefits from secondary activity spurred by the direct effects. This would include short-term benefits of increased business to local and state-wide businesses providing supplies and services to proposed Project workers. Such businesses would include equipment suppliers, restaurants, gas stations and hotels. Spending by the non-local construction work force within local economies during the construction period could include expenditures on food, clothing, lodging, gasoline, and entertainment. The extent of local spending by non-local workers would be tied to labor earnings and individual spending

patterns. Construction worker spending, in conjunction with outlays for construction goods and services, also would generate indirect economic benefits as these monetary flows circulated throughout the economy, based upon economic linkages among industries. These ripple effects or multiplier effects would result from businesses buying from other businesses and could generate additional economic benefits within the region of influence.

The FEIS further found that labor and income benefits also would extend outside of the region of influence, based upon the employment of non-local labor for the proposed Project and expenditures on construction materials and services that would be imported into the area. Although these benefits would not be realized locally, they would represent a positive economic impact.

In addition to these important benefits, the FEIS further recognized that the Keystone XL Project would provide significant tax revenues to the states and communities that it crosses. Once the Project is constructed, it would generate long-term property tax revenues for these states and counties. The FEIS found that there would be a 42.7 percent increase over 2006 property tax revenues along the Steele City Segment of the original Keystone XL Project. The FEIS concluded that increased property tax revenues “would represent a major fiscal benefit to the affected counties.”¹⁵

7. Relationships between proposed projects and goals to reduce reliance on fossil fuels and to increase use of alternative and renewable energy sources

The Department recently has found that the United States will continue to reduce reliance on oil through conservation and energy efficiency measures, as well as through

¹⁵ FEIS at 3.10-91.

the pursuit of comprehensive climate legislation and an ambitious global agreement on climate change that includes substantial emission reductions for both the United States and Canada.¹⁶ It is indisputable, however, that these efforts will not end U.S. reliance on crude oil in the near term. As a result, the question posed by this application does not involve a choice between a project that provides additional access to secure, reliable Canadian and domestic crude oil versus turning to alternative fuels and renewable energy.

Today, while the development of alternative fuels and renewable energy is still in its relatively early stages, the need for imports of crude oil to replace declining Venezuelan and Mexican supplies is real. The choice for the United States and the Department of State is to obtain those alternative supplies from Canada or to turn to increased reliance on offshore foreign suppliers. As the FEIS found, in all domestic pipeline scenarios considered, increased U.S. imports of Canadian crude oil would reduce U.S. imports of foreign oil from sources outside of North America. Moreover, reductions in U.S. oil demand would result in reductions of oil imports from non-Canadian foreign sources, with no material reduction in imports of WCSB crude oil (FEIS at 1-10).¹⁷

B. Recent Department Precedent Supports a National Interest Determination for Keystone XL

On February 28, 2008, the Department found that granting a Presidential Permit for the original Keystone Pipeline was in the national interest. The Department found that the project would (i) increase the diversity of available supplies among the nation's

¹⁶ Alberta Clipper ROD/NID, p. 3.

¹⁷ Significantly, the FEIS found a general consensus that the volume of crude oil consumed worldwide is unlikely to decrease substantially over the next 30 years, even under policy scenarios that more aggressively address global climate change, and that the mix of crude oil consumed in the future will include an increased proportion of oil from high cost unconventional sources and/or heavy crude oil. (FEIS at 1-7).

worldwide crude oil sources; (ii) shorten the transportation pathway for a portion of the nation's crude oil imports; (iii) increase crude oil supplies from a source region that has been a stable and reliable trading partner without exposing that additional supply to heightened security and environmental concerns associated with high seas or railway transport; and (iv) provide additional supplies of crude oil to make up for the continued decline in imports from several other major U.S. suppliers.

On September 3, 2009, the Department found that granting a Presidential Permit for the Enbridge Alberta Clipper Pipeline was in the national interest. In addition reaffirming and applying to the Alberta Clipper Pipeline the findings made a year earlier with regard to the Keystone Pipeline, the Department also found the Alberta Clipper Pipeline to be in the national interest because it would send a positive economic signal about the future reliability and availability of the United States' energy imports, "and in the immediate term, will provide construction jobs."¹⁸

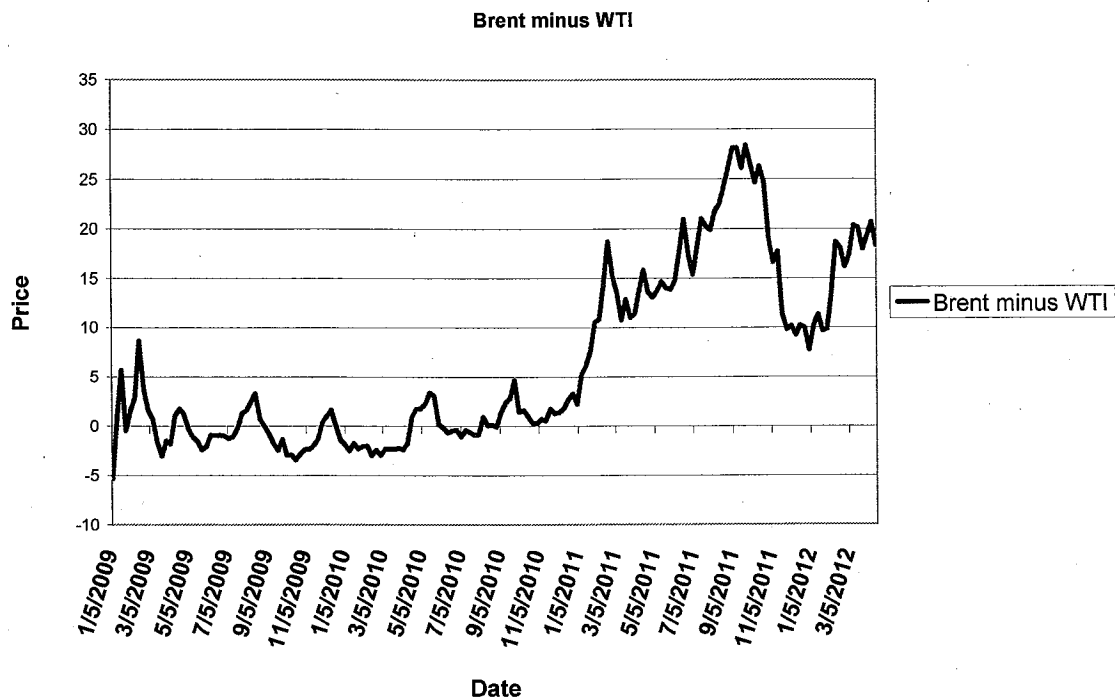
The factors relied upon by the Department in approving those two recent Presidential Permits have become even more compelling today and warrant the conclusion that granting a Presidential Permit for the Keystone XL Project is clearly in the national interest. Having found those two very similar projects to be in the national interest, it would be inconsistent for the Department to reach a different conclusion with respect to the Keystone XL Project, which provides the same important benefits to the United States.

¹⁸ Alberta Clipper Pipeline ROD/NID at p. 25.

C. Current Circumstances Amplify the Basis for a National Interest Determination

The timing of the initial Presidential Permit application coincided with a period of lower gasoline prices and a minimized spread between Brent Crude pricing and domestic West Texas Intermediate (WTI) pricing. Keystone submitted an application for a Presidential Permit for the Keystone XL Pipeline Project on September 19, 2008 when the differential between Brent Crude and WTI was approximately (-5.6) \$/bbl. As of April 16, 2012 the differential has grown to approximately 18.32 \$/bbl.

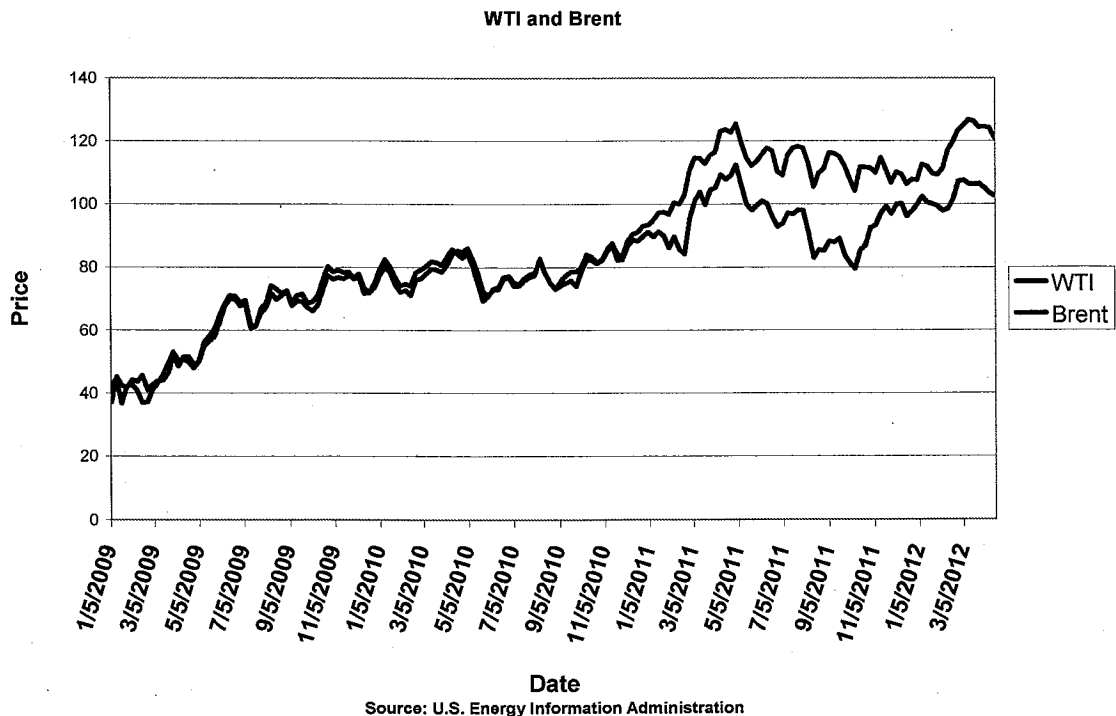
Over the last two to three years the spread between international and domestic crude has increased as the Brent Crude price increases have outpaced WTI crude. Brent is used as a benchmark to price much of internationally traded crude oil. Petroleum production from Europe, Africa and the Middle East flowing to the United States is priced relative to Brent crude. Several global factors have lead to upward pressure on Brent Crude prices over the last two to three years.



Beginning in late 2010 to early 2011, the “Arab Spring” began to affect several countries. These countries, including Egypt, Libya, Lebanon, Saudi Arabia, Yemen, are part of the Arab League, which is responsible for nearly one third of oil production in the world. For instance “the spot price of Brent increased \$15 per barrel from February 18 to March 2 as the market coped with the loss of 1.5 million barrels per day (bbl/d) of exports from Libya. With low spare production capacity, this sudden supply loss challenged the ability of the Organization of the Petroleum Exporting Countries (OPEC) producers to provide incremental supplies to an already tight market.”¹⁹

¹⁹ <http://www.eia.gov/todayinenergy/detail.cfm?id=4550> U.S. Energy Information Administration, based on Thomson Reuters.

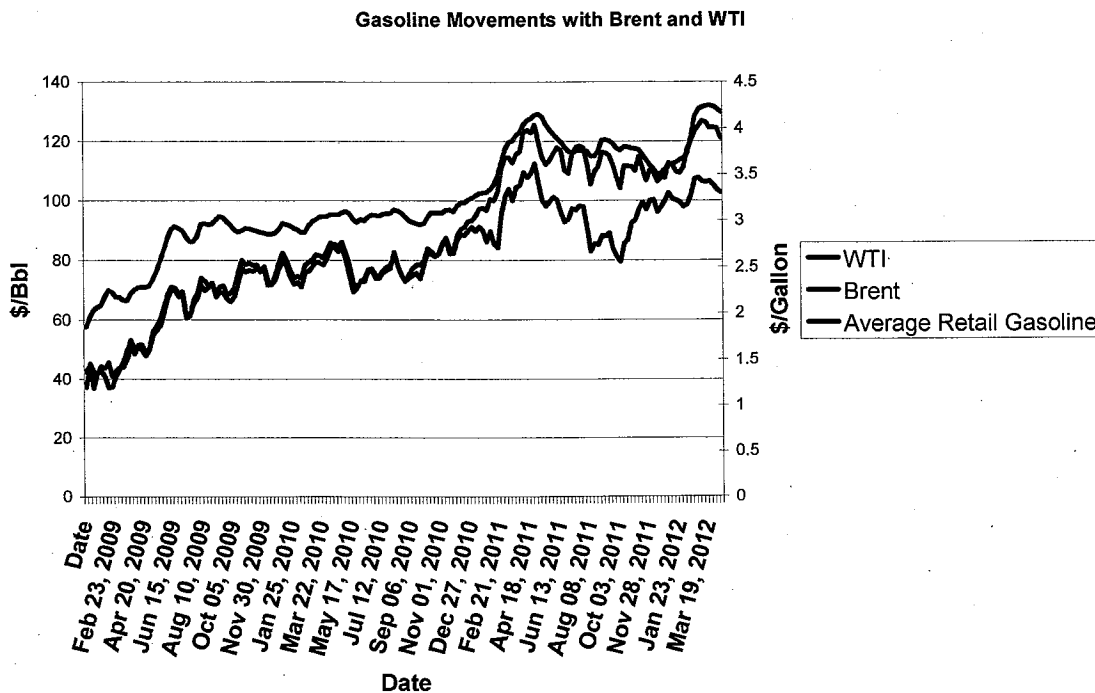
This instability has led to supply concerns and coincides with the differential between Brent Crude and WTI. The graph below demonstrates the growing differential starting in late 2010.



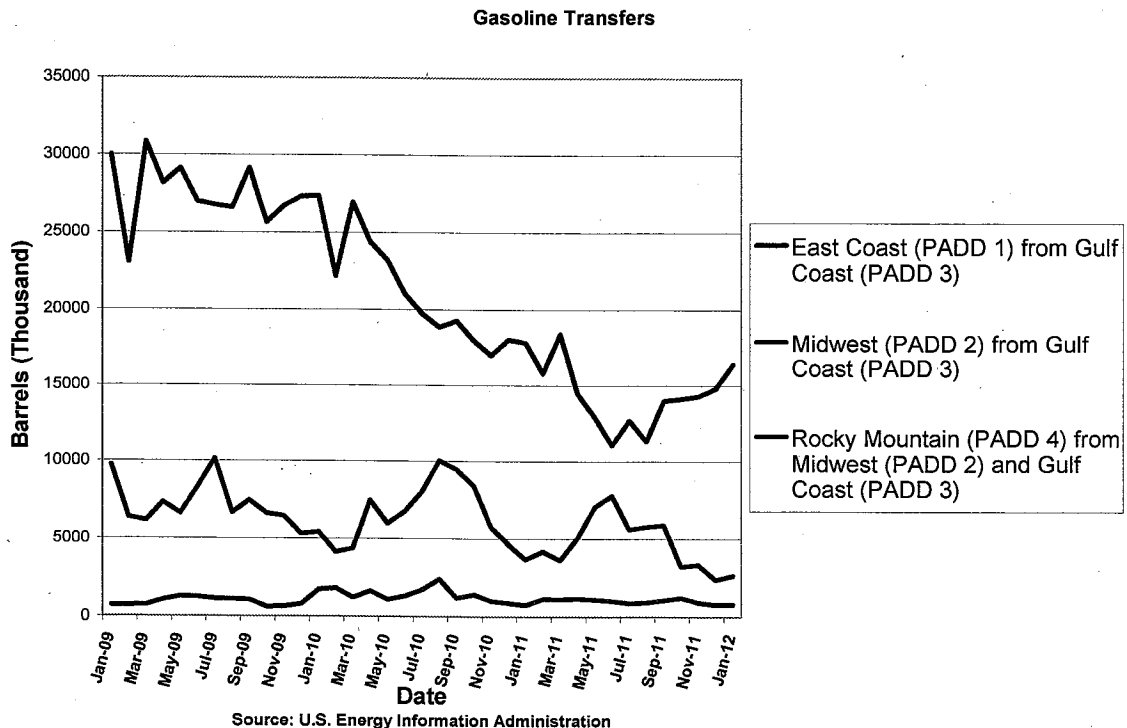
In January 2012, the European Union (EU) adopted an oil embargo policy against Iran. The EU has banned new oil deals with Iran and implemented a total boycott of Iranian oil in July 2012. The EU embargo follows U.S. sanctions approved earlier in January. In retaliation, Iran has threatened to close the Strait of Hormuz. Approximately one quarter of world oil output passes through the Strait of Hormuz. The combination of these supply restrictions and market uncertainty have contributed to increasing the cost of international Brent Crude while the price of WTI has lagged due to the significant oversupply of crude oil in the Rockies and Mid-West of the U.S.

Since 2008, domestic U.S. oil production has grown by 540 thousand bpd and Canadian crude oil production has grown by over 500 thousand bpd. Because this production has exceeded demand in Western Canada, the Rockies, and the Mid-West, producers have been forced to use more expensive forms of transportation to reach markets, such as rail. The consequence of this growth in production is that the price of WTI has been priced at a discount to Brent roughly equal to the higher transportation cost to move the new production to market through less efficient means, but also impacted by storage costs and price discounting to encourage refiners to produce larger quantities.

Gasoline prices in the United States have also delinked from domestic WTI Crude pricing in the last couple of years. At all PADD locations the price of gasoline has more closely followed international Brent Crude than the domestic WTI Crude.



Gasoline prices have been linked to Brent and not WTI because the Gulf Coast area of PADD 3 is the major producer of petroleum products in the U.S. and regularly exports significant quantities of gasoline to other regions of the United States. Because there is only one price for gasoline in a given market, the price is set by the highest cost refiners. In the United States, the highest cost refiners are those that run significant quantities of crude oil that is priced based on Brent Crude. Therefore, even though refiners in the PADD 4 and PADD 2 regions have access to much cheaper crude oil from Canada and domestic sources, they are able to sell at prices that are linked to the international market, because demand in their regions is too large to be met by domestic refiners alone and requires imports from PADD 3 producers.



Providing pipeline access to the Gulf Coast for growing production of lower cost domestic and Canadian crude oil is part of the solution to addressing these issues of

energy security, moderating gasoline prices, and encouraging domestic production.

Specifically, Keystone XL:

- Provides Gulf Coast refineries with access to greater quantities of lower cost crude oil supplies, allowing them to reduce the imports of higher priced international crude oil. Refiners with access to larger stable quantities of lower cost crude are able to be more price-competitive.
- Allows domestic and Canadian producers to avoid railing of crude oil, discounting and longer term storage through access to a lower cost and more efficient pipeline transportation option. As a result, producers will receive a better overall price for their production, which acts as an incentive to continue to produce.

V. SIMILAR FACILITIES

The nearest similar crude oil pipeline facilities to the proposed border crossing facilities are those of the Express Pipeline system. Those facilities cross the border approximately 100 miles west of the proposed Project. Because of the distance, the Express facilities are not shown on any maps of the proposed Project; however, the Express facilities may be identified on any commercial crude oil map. Nearby natural gas pipeline facilities owned by Northern Border Pipeline (an affiliate of Keystone) and Foothills Pipeline are shown on Exhibit B.

VI. CONSTRUCTION PLAN

The design and procedures for construction of the Project are discussed in detail in Chapter 2 of the FEIS. In addition, the project will be constructed in conformance with a detailed Construction Mitigation and Reclamation Plan (“CMRP”) which has been updated from the CMRP that is set forth at Appendix B (Volume 5) of the FEIS.²⁰ Further, the Project will be constructed in compliance with all conditions included in

²⁰ The updated CMRP, redlined against the CMRP included in the FEIS, is attached as Exhibit D to this application. The updates recognize that the pipeline will not be routed through the Nebraska Sandhills region and that measures specific to the Gulf Coast area are no longer applicable.

applicable permits, particularly the approvals received from the Bureau of Land Management, the South Dakota PUC, and the Montana DEQ, as well as any that might be included in connection with the development of alternative routing in Nebraska. Permitting and approvals for the Project are discussed elsewhere in this application and in the FEIS (Section 1.10).

VII. FINANCING AND RATES

The capital cost of the U.S. portion of the Project, from the U.S-Canada border to Steele City, Nebraska, is estimated to be U.S. \$ 5.3 billion. The project is anticipated to be financed through a combination of internally generated funds, bank financing, and access to capital markets.

The rates for crude oil transportation through the U.S. portion of the Project will be subject to regulation by the Federal Energy Regulatory Commission ("FERC"). Keystone anticipates there will be two categories of services offered:

- 1) Committed or term service – Keystone is proposing long-term contracts with discounted rates and a fixed/variable rate design. The rates vary with contract term, with lower rates offered for longer terms. The fixed portion of the rate is based on levelized 10, 15, or 20-year contracts and will not change over the term of the shipper's contract. The fixed portion of the rate is designed to recover the capital invested and is designed on a postage stamp basis. The variable portion of the rate is a flow-through of the actual operating costs, adjusted annually.

- 2) Uncommitted or spot service – Keystone will offer service to non-contract shippers on a month-to-month basis at a posted spot rate. The spot rate will be subject to indexing, as permitted by FERC.

VIII. HISTORIC PRESERVATION

In compliance with federal laws enacted to protect cultural resources from damage resulting from federally funded or permitted activities, including the National Historic Preservation Act, cultural resource investigations were conducted for each state crossed by the proposed Project. These investigations were conducted in consultation with the State Historic Preservation Officers (“SHPOs”) for each state and the Department. A discussion of the results of those surveys and the concurrence of the SHPOs is provided in Section 3.11 (Volume 2) of the FEIS. Cultural resources field inventories along the Nebraska re-route will be conducted, pursuant to SHPO-approved plans, in locations where the route differs from the FEIS route. Those surveys will be completed in the summer of 2012 pursuant to the terms of the Programmatic Agreement (PA, FEIS Appendix S, Volume 7) that was prepared for the original Keystone XL Project. Additional surveys of previously un-surveyed tracts in Montana and South Dakota, as well as treatment plans and mitigation plans, have been filed with Department and respective SHPOs under the terms of the PA for Department review and concurrence.

The Department conducted government-to-government consultations with Native American tribes along the Project route in Montana and South Dakota, as well as the original Nebraska route. Those consultations are summarized in Section 3.11.4.3 of the FEIS and the results of those consultations are incorporated into the PA.

IX. OTHER U.S. APPROVALS

Table 1.10-1 of the FEIS provides a list of the federal and state permits, licenses, approvals, and consultation requirements applicable to the Project in the United States. Keystone has worked extensively with the U.S. Bureau of Land Management (BLM) on a Plan of Development (POD) for construction of the Project on federally managed land. Keystone will finalize the POD and expects to receive a grant of right-of-way and temporary use permit from BLM later this year. Keystone has completed the South Dakota Public Utilities Commission (SDPUC) process under the Energy Conversion and Transmission Facilities Act and received a Final Decision and Order from the SDPUC in March 2010 and an amended Final Decision and Order in June 2010, approving construction of the Project in the state. The Montana Department of Environmental Quality (MDEQ) was a cooperating agency in the development of the FEIS. The FEIS incorporates the MDEQ construction specifications as well as the route variations that were adopted by the MDEQ in Montana (Appendix I, Volume 6). The MDEQ issued a Certificate of Compliance under the Major Facility Siting Act (MFSA) to Keystone on March 30, 2012.

Keystone has filed for the majority of its required county and local permits and approvals for Montana and South Dakota. With respect to the other outstanding permits and approvals, Keystone has finalized all pre-application consultations, completed draft permit application preparation, and is ready to file the remaining permit applications in 2012.

As noted, Keystone has submitted its proposed alternative routing in Nebraska to the NDEQ. Keystone expects the Nebraska alternative route selection process to be

complete later this year. Keystone will supplement this application with the revised routing in Nebraska as soon the Nebraska re-route selection process is complete.

X. CANADIAN APPROVALS

In Canada, approximately 329 miles of new 36-inch pipeline will be constructed from Hardisty, Alberta to Monchy, Saskatchewan where it will cross into Phillips County, Montana. Review and approval of the proposed Canadian facilities is subject to the jurisdiction of the Canadian National Energy Board (“NEB”) as well as various local, municipal, provincial and other federal authorities.

The Canadian portion of the Project will cross provincial and international boundaries and, accordingly, has been subject to the regulatory oversight of the NEB. The NEB issued a Certificate of Public Convenience and Necessity (“CPCN”) under section 52 of the National Energy Board Act (“NEB Act”) authorizing construction and operation of the Project on April 27, 2010. In its Reasons For Decision (OH-1-2009), the NEB determined:

- That taking into account the implementation of proposed mitigative measures and those set out in the CPCN conditions, the Project is not likely to cause significant adverse environmental effects.
- That the Project is and will be required by the present and future public convenience and necessity.

On September 2, 2010 and November 3, 2010, the NEB approved the detailed route for the Project in Canada pursuant to section 36 of the NEB Act.

In addition, on September 7, 2010, the NEB approved the relevant pre-construction conditions in Certificate OC-56 to allow construction to commence on the Hardisty B Terminal and river crossings to be constructed by horizontal directional drill (HDD). Construction commenced on the Hardisty B Terminal on September 13, 2010. On August 30, 2011, the NEB approved the pre-construction conditions for the pump stations and earth grading work has commenced. The HDD crossings of two major water courses -- the Red Deer and South Saskatchewan Rivers -- were completed during the first quarter of 2012.

Various ancillary authorizations from local, municipal, provincial and federal authorities for activities related and incidental to the construction and operation of the project facilities is also required. Filing for these authorizations is well advanced and the majority have already been received.

XI. ENVIRONMENTAL JUSTICE

To facilitate the Department's obligations under Executive Order 12898, environmental justice considerations, including information on minority and low-income populations likely to be affected by construction of the proposed pipeline, were addressed in the FEIS (Section 3.10.1.1). The FEIS concluded that potential impacts to minority and low-income populations during construction within counties crossed by the proposed Project corridor would be minor and would not disproportionately affect these populations when considered at the county population level. Some potential limited, short-term construction impacts were posited to minority and low-income populations at the micro, census block level, however, mitigations for these impacts were identified in the FEIS. Further, the FEIS concluded it is not likely that operation of the proposed

Project would disproportionately adversely impact minority and low income populations. This extensive analysis was conducted under guidance from the Environmental Protection Agency and will be updated for the new route in Nebraska once the new route has been determined.

XII. COMPATIBILITY WITH NEC RECOMMENDATIONS

With respect to the recommendations contained in the August 8, 1994 National Economic Council White Paper, "Staff Recommendations on the Task Force on Border Infrastructure and Facilitation for Improved U.S. Border Operations," Keystone states as follows:

- No specific support infrastructure or access roads are necessary or required by state or regional plans with respect to the border crossing facilities.
- No Canadian development plans or priorities have been identified as specifically applicable to the border crossing facilities. Keystone XL will comply with all permitting and other requirements applicable to the Canadian segment of the project, to the border.
- Keystone XL will inspect the border crossing facilities in accordance with U.S. Department of Transportation regulatory requirements set forth at 49 C.F.R. Parts 194 and 195, including aerial, foot and in-line mechanical inspections. The cost of these inspections will be covered by Keystone's normal operating budget. Keystone operational personnel will carry out all required inspections.

XIII. ENVIRONMENTAL REVIEW

Consistent with its practice, in response to Keystone's September 19, 2008 application for a Presidential Permit, the Department commenced a NEPA review by Notice of Intent issued January 28, 2009²¹ and prepared a Draft Environmental Impact

²¹ 74 Fed. Reg. 5019.

Statement that it released for public review on April 16, 2010. The review period was twice extended into July 2010. Following the public comment period, the Department issued a Supplemental Draft EIS on April 15, 2011. After an additional public comment period, the State Department issued an eight-volume Final EIS on August 26, 2011. The FEIS concluded that “[t]he analyses of potential impacts associated with construction and normal operation of the proposed Project suggest that there would be no significant impacts to most resources along the proposed Project corridor”²²

Keystone’s application as submitted today follows the route from the Canadian border across Montana and South Dakota that was fully studied in the FEIS. Moreover, although there will be a new route through a portion of Nebraska that avoids the Sandhills region, the remainder of the Nebraska route will utilize the routing already studied. As to the portion of the route in Nebraska that has not yet been established, Keystone has provided the NDEQ with alternatives and a proposed preferred route that avoids the Sandhills and will work with the NDEQ and the Department in the selection of an alternative route across the State. Potential impacts of that new routing will be addressed during that process. Keystone understands that the routing process in Nebraska will be fully transparent and will involve multiple opportunities for public input.

Because so much of the environmental analysis relevant to this application was recently completed in the comprehensive review associated with the original Keystone XL application, there is no basis for the Department to conduct, *ab initio*, a completely new NEPA process for this application. Existing Keystone environmental documents can

²² FEIS at 3.15-1.

be relied upon because the currently proposed action meets all four accepted criteria for determining whether existing environmental documents adequately cover a proposed action under consideration:²³

- The new proposed action is essentially similar to an alternative analyzed in the existing NEPA documents. It is within the same analysis area and the geographic and resource conditions are similar or identical to those analyzed in those analyzed in the existing NEPA document.
- The range of alternatives analyzed in the existing NEPA documents are appropriate with respect to the new proposed action, given current environmental concerns, interests, and resource values.
- The existing analyses are valid in light of any new information or circumstances. It is reasonable to conclude that new information and new circumstances would not substantially change the analysis of the new proposed action.
- The direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar to those assessed in the existing NEPA documents.

Given that the Department has prepared a FEIS for the Project as previously proposed, it would be fully appropriate for the Department to utilize an Environmental Assessment (EA) for its review of the Nebraska alternative routing. Consistent with 40 CFR 1508.28, an EA would tier from the FEIS on the larger project and address those issues specific to the alternative routing in the State. On the other hand, if the Department elects to prepare a Supplemental EIS, it should be limited to a review of the impacts of the new portion of the Project route in Nebraska.

Moreover, using existing documents complies with the President's call to speed infrastructure development through more efficient and effective permitting and

²³ See, BLM National Environmental Policy Handbook, p. 23, January, 2008.

environmental review.²⁴ As the Council on Environmental Quality regulations observe: “NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action.”²⁵

With the incorporation of the revised routing in Nebraska, Keystone will have provided all environmental information required by the Department, including:

- i. Description of the site of the proposed facility showing the types of environment that will be affected by construction of the proposed facility and related facilities.
- ii. The probable impact of construction and operation of the proposed facilities on these environments, including positive and negative aspects of primary (construction and operation) and secondary (related to long-term growth stimulated by the facility) impacts.
- iii. Ways in which adverse impacts might be mitigated through construction techniques, site planning, and safety features, etc.
- iv. Any probable adverse impacts that cannot be avoided.
- v. Brief discussion of any trade-offs between short-term environmental impacts and long-term environmental gains or vice versa.
- vi. Relationship of the proposed facility to other land use plans, policies, and controls in the affected area.
- vii. Description of the extent to which the construction of the proposed facility irreversibly curtails the range of the potential uses of the environment.
- viii. What alternatives to the proposed facility were considered and what are the relative environmental benefits and costs of the alternatives considered.

XIV. CONCLUSION

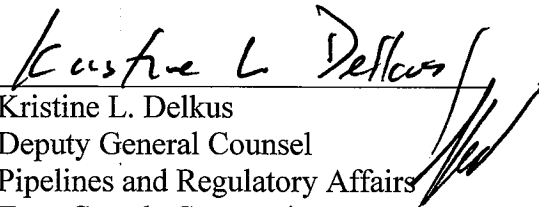
For the reasons set forth above, Keystone submits that the construction, connection, operation, and maintenance of the proposed border crossing facilities, in

²⁴ See, www.whitehouse.gov/the-press-office/2011/08/31/presidential-memorandum-speeding-infrastructure-development-through-more. See also, “Memorandum for Heads of Federal Departments and Agencies” Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act, March 6, 2012, pp 12-13.

²⁵ 40 C.F.R. § 1500.1(c).

conjunction with the Project as described herein and in the FEIS, are in the national interest of the United States. Accordingly, Keystone respectfully requests that the Department issue a Presidential Permit authorizing the construction, connection, operation, and maintenance of the identified border crossing facilities for the importation of crude oil, to be located at the international border between the United States and Canada, at Phillips County, Montana, as more fully described in this application. Keystone respectfully requests that the Department issue a Presidential Permit promptly after the revised Nebraska routing is submitted.

Respectfully submitted,


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