

**Congress of the United States**  
**U.S. House of Representatives**  
**Committee on Small Business**  
2361 Rayburn House Office Building  
Washington, DC 20515-6515

**Memorandum**

To: Members, Subcommittee on Agriculture, Energy, and Trade  
From: Committee Staff  
Date: May 9, 2013  
Re: Hearing: "If You Build It: The Keystone XL Pipeline and Small Business Job Growth"

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**Introduction**

At 10:00am on May 16, 2013, in Room 2360 of the Rayburn House Office Building, the Subcommittee on Agriculture, Energy, and Trade of the Committee on Small Business will meet for the purpose of receiving testimony on the potential direct and indirect economic benefits to small businesses and rural communities where construction of the Keystone XL pipeline will take place. The hearing also will serve as an opportunity to discuss the benefits of lower energy prices that are likely to accrue once the pipeline is complete.

**A Brief History of Canadian Oil Sands Development and the Proposed Keystone XL Pipeline**

In recent years, the advent of new technologies combined with changes in petroleum markets have made it economical to extract crude oil from unconventional<sup>1</sup> oil and natural gas fields, including producing crude oil from tar sands. While tar sand deposits can be found in many nations, including the United States, one of the world's largest sources is located in the province of Alberta Canada.<sup>2</sup> Current production is 1.6 million barrels per day<sup>3</sup> and the provincial government in Alberta<sup>4</sup> is committed to expanding that output despite the controversy surrounding the extraction of oil from tar sands.<sup>5</sup> A quick glance of a map of Canada shows one major dilemma – Alberta is

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<sup>1</sup> UNIVERSITY OF TEXAS PETROLEUM EXTENSION SERVICES, FUNDAMENTALS OF PETROLEUM 225 (5<sup>th</sup> ed. 2011). Unconventional fields are generally those where the geological formations lack sufficient porosity or permeability to allow hydrocarbons to flow freely into the wellbore under natural pressures. Until recently, many unconventional resources have not been considered economically viable sources of hydrocarbons.

<sup>2</sup> Tar sands are "composed of very heavy oil (bitumen)." NORMAN HYNES, Nontechnical Guide to Petroleum Geology, Exploration, Drilling & Production 481(3<sup>rd</sup> ed. 2012). Due to its viscosity, oil cannot be extracted from tar sands using conventional drilling technology. *Id.* Therefore, tar sands are considered an unconventional resource. UNIVERSITY OF TEXAS PETROLEUM EXTENSION SERVICES, FUNDAMENTALS OF PETROLEUM 225 (5<sup>th</sup> ed. 2011).

<sup>3</sup> <http://oilsands.alberta.ca/resource.html>.

<sup>4</sup> Under Canadian federalism, the provinces have nearly plenary power over natural resources situated within the boundaries of the province. See STEPHEN BROOKS, CANADIAN DEMOCRACY: AN INTRODUCTION 108-09, 203, Table 7.1 (5<sup>th</sup> ed. 2007).

<sup>5</sup> Environmental groups, among others, claim that production of oil sands requires processes that may result in much higher lifecycle greenhouse gas emissions compared to other conventional and nonconventional petroleum resources.

landlocked. In that situation, the most efficient mechanism for shipping oil is by pipeline.<sup>6</sup> However, the existing pipeline system is inadequate to ship this additional production from northern Alberta.

Two options exist for new pipeline infrastructure. A pipeline can be built from the tar sands fields to other points in Canada; an option that would not involve any decisions by the United States government. The other option is to construct a pipeline from the tar sands fields to the United States. Trans-Canada, a Canadian energy company, is interested in this second option with a project known as the Keystone XL pipeline, which would provide about one million barrels of oil per day to refineries in the Midwest and Gulf Coast. However, such construction requires the approval of the United States, an issue we know turn to.

### **President/Secretary of State Authority Related to the Keystone XL Pipeline**

No federal statute covers the requirements for constructing pipelines across the border between the United States and Canada. Rather, the requirements are governed by a series of Executive Orders based on the inherent authority of the President to conduct foreign relations under Article II of the Constitution.<sup>7</sup> The President has delegated the determination on whether a permit shall be issued to construct a pipeline across the border with Canada to the Secretary of State.<sup>8</sup>

The order providing delegation establishes a detailed yet abbreviated multi-agency information gathering process.<sup>9</sup> Once this information relayed to the Department of State, a permit may be issued if the Secretary finds that issuance will serve the national interest.<sup>10</sup> The Executive Order also grants the Secretary the power to condition the permit so that the national interest will be served.<sup>11</sup> The term “serve the national interest” is not defined in the Executive Order or any statute; the absence of any such standards leaves the issuance of the permit solely within the discretion of the Secretary.<sup>12</sup>

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NATURAL RESOURCES DEFENSE COUNCIL, SETTING THE RECORD STRAIGHT: LIFECYCLE EMISSIONS OF TAR SANDS 1 (November 2011), available at [http://docs.nrdc.org/energy/files/ene\\_10110501a.pdf](http://docs.nrdc.org/energy/files/ene_10110501a.pdf). Others contend lifecycle emissions from oil sands development are only slightly greater than those from conventional sources of oil. IHS CERA, INC., OIL SANDS, GREENHOUSE GASES, AND US OIL SUPPLY: GETTING THE NUMBERS RIGHT 10 (September 2010), available at [http://www.api.org/aboutoilgas/oilsands/upload/cera\\_oil\\_sands\\_ghgs\\_us\\_oil\\_supply.pdf](http://www.api.org/aboutoilgas/oilsands/upload/cera_oil_sands_ghgs_us_oil_supply.pdf).

<sup>6</sup> ANDREW INKPEN & MICHAEL MOFFET, THE GLOBAL OIL & GAS INDUSTRY: MANAGEMENT, STRATEGY & FINANCE 397 (2011).

<sup>7</sup> See *NRDC, Inc. v. United States Dep't of State*, 658 F. Supp. 2d 105, 111 (D.D.C. 2009).

<sup>8</sup> Exec. Order No. 13,337, 69 Fed. Reg. 25,299 (May 5, 2004), reprinted in 3 C.F.R. 165 (2005). This executive order amends an order issued by President Johnson that originally delegated authority for permits to construct facilities across United States borders to the Secretary of State. Exec. Order No. 11,423, 33 Fed. Reg. 11,741 (Aug. 20, 1968).

<sup>9</sup> Exec. Order No. 13,337, § 1(b), 69 Fed. Reg. at 25,299. The Order requires the multi-agency process to conclude within 90 days. Although the authority in the Executive Order is plenary, actions of the Department of State still are subject to other statutes (as recognized in § 1(f) of the Order, 69 Fed. Reg. at 25,300), such as the National Environmental Policy Act (NEPA) mandating preparation of an environmental impact statement if the issuance of the permit is considered a major federal action. See *Sierra Club v. Clinton*, 689 F. Supp. 2d 1147, 1155, 1158 (D. Minn. 2010) (rejecting plaintiff argument because State Department complied with NEPA). There is no set limitation on the time period for conducting the processes required by NEPA.

<sup>10</sup> *Id.* at § 1(g), 69 Fed. Reg. at 25,300.

<sup>11</sup> *Id.*

<sup>12</sup> *NRDC, Inc.*, 658 F. Supp. 2d at 111.

## **The Keystone XL Pipeline Application History**

Trans-Canada Keystone, L.P. submitted an application to construct a pipeline from Hardisty, Alberta, Canada to areas along the Gulf Coast of Texas on September, 19, 2008.<sup>13</sup> The Department of State determined that the grant of a permit constitutes a major federal action requiring preparation of an environmental impact statement.<sup>14</sup> The final environmental impact statement (FEIS) was issued on August 26, 2011.<sup>15</sup> After reviewing the information in FEIS, the Department of State concluded on November 10, 2011 that it needed more information, especially relative to the impact of the proposed route on the Sandhills region of Nebraska, before it could make a determination whether the permit was in the national interest.<sup>16</sup> Given the length of the decision-making process, Congress intervened and required that the President make a determination within 60 days after the enactment of the Temporary Payroll Tax Cut Continuation Act which was signed into law on December 23, 2011.<sup>17</sup> On January 18, 2012, the President, based on the recommendation of the Department of State, determined that the proposed project would not “serve the national interest.”<sup>18</sup>

The determination by the President did not stop the TransCanada effort entirely. TransCanada determined that, irrespective of the northern portion of the pipeline, it would construct the portion of the original project that ran from Oklahoma to the Gulf Coast of Texas. Since the project does not cross an international boundary, construction of that pipeline segment does not require Presidential approval under Executive Order No. 13,337 although it may require other federal and state approvals (the scope of which is beyond this memorandum).

On May 4, 2012, Keystone filed a new permit application with a route through Nebraska that was modified from the original application filed in September of 2008.<sup>19</sup> Under Executive Order 13,337, this constitutes a new application and the entire approval process must be started from the beginning with one significant difference – preparation of an environmental impact statement. Regulations governing preparation of these documents permit supplementation of an existing FEIS.<sup>20</sup> The draft of the supplement was published in March of 2013 with a public comment period

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<sup>13</sup> *Application of TransCanada Keystone Pipeline, L.P., for Presidential Permit Authorizing the Construction, Operation and Maintenance of Pipeline Facilities for the Importation of Crude Oil to be Located at the United States-Canada Border*, 4-5 (2008), available at <http://keystonepipeline-xl.state.gov/documents/organization/181769.pdf>. The project involved a 327-mile segment in Canada and three separate segments in the United States totaling 1,375 miles. *Id.* at 4-6.

<sup>14</sup> Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and to Initiate Consultation under Section 106 of the National Historic Preservation Act for the Proposed TransCanada Keystone XL Pipeline, 74 Fed. Reg. 5019, 5020 (Jan. 28, 2009).

<sup>15</sup> Notice of Intent to Prepare a Supplemental Environmental Impact Statement and to Conduct Scoping Meetings and to Initiate Consultation under Section 106 of the National Historic Preservation Act for the Proposed TransCanada Keystone Pipeline Proposed to Extend from Phillips, MT to Steele City, NE, 77 Fed. Reg. 36,032, 36,032 (June 15, 2012).

<sup>16</sup> UNITED STATES DEP'T. OF STATE, DRAFT SUPPLEMENTARY ENVIRONMENTAL IMPACT STATEMENT FOR KEYSTONE XL PIPELINE § 1.1, at 1-2 (March 2013), available at <http://keystonepipeline-xl.state.gov/documents/organization/205657.pdf> [hereinafter Draft Supplemental EIS].

<sup>17</sup> Pub. L. No. 112-78, § 501(a), 125 Stat. 1280, 1289.

<sup>18</sup> Draft Supplemental EIS, § 1.1, at 1.

<sup>19</sup> *Id.* at § 1.1, at 2.

<sup>20</sup> 40 C.F.R. § 1502.9(c).

that ended on April 22, 2013.<sup>21</sup> The supplemental impact statement must be finalized before a decision on whether the redesigned project will serve the national interest.

TransCanada has spent almost five years trying to get the pipeline project constructed. The new application demonstrates that TransCanada believes there are significant economic benefits that will accrue from the pipeline project. In addition to the benefits that will obviously redound to TransCanada, significant secondary impacts will accrue to numerous small businesses and rural communities along the route as well as secondary benefits that may accrue from lower energy prices. It is to this subject that we now turn.

### **Economic Benefits for Small Business**

#### *Jobs*

TransCanada estimates that it would spend approximately \$7 billion to construct the full project which would directly create 20,000 jobs.<sup>22</sup> In the draft supplemental EIS that was issued on March 1, 2013, the Department of State estimated approximately 42,100 direct and indirect jobs would be created over the project construction period.<sup>23</sup>

The report estimated that 2,000 jobs would be in transportation and warehousing; 4,600 jobs would be created in manufacturing; and 5,700 jobs would be created in accommodations, lodging, and food services.<sup>24</sup> While individual studies are not broken down into large vs. small business, 99.7 percent of all businesses in the United States are classified as small,<sup>25</sup> and TransCanada states it has contracts with more than 50 suppliers across the U.S., including companies in Texas, Missouri, Pennsylvania, Michigan, Oklahoma, South Carolina, Indiana, Georgia, Maryland, New York, Louisiana, Oklahoma, Minnesota, Ohio, Arkansas, Kansas, California and Pennsylvania.<sup>26</sup> Thus, many of the jobs directly associated with construction of the pipeline are likely to be with small businesses.

#### *Economic Growth*

A study by the Energy Policy Research Foundation concluded that the Keystone expansion would provide net economic benefits from improved efficiencies in both the transportation and processing of crude oil of \$100 million to \$600 million annually, in addition to an immediate boost in construction employment.<sup>27</sup> Similarly, a 2009 report from the Canadian Energy Research Institute commissioned by the American Petroleum Institute predicts that Keystone XL will add \$172 billion

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<sup>21</sup><http://www.keystonepipeline-xl.state.gov/>.

<sup>22</sup><http://www.transcanada.com/5921.html>.

<sup>23</sup> Draft Supplemental EIS, § 4.10. at 8.

<sup>24</sup> *Id.* at 4.10-8

<sup>25</sup> UNITED STATES SMALL BUSINESS ADMINISTRATION OFFICE OF ADVOCACY, FREQUENTLY ASKED QUESTIONS 1 (Sept. 2012) available at [http://www.sba.gov/sites/default/files/FAQ\\_Sept\\_2012.pdf](http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf).

<sup>26</sup> <http://keystone-xl.com/about/jobs-and-economic-benefits/>

<sup>27</sup> ENERGY POLICY RESEARCH FOUNDATION, INC., THE VALUE OF THE CANADIAN OIL SANDS (...TO THE UNITED STATES 2 (Nov. 2010), available at <http://www.eprinc.org/pdf/oilsandsvalue.pdf>.

to America's gross domestic product by 2035 and will create an additional 1.8 million person-years of employment in the United States over the next 22 years.<sup>28</sup>

### *Energy Security*

The United States consumed 6.87 billion barrels of oil in 2001.<sup>29</sup> Almost four billion barrels<sup>30</sup> of these imports came from OPEC. Despite growing domestic oil production, the United States will continue to be a net importer of oil for the foreseeable future. There is existing demand by Gulf Coast area refiners for stable sources of crude oil. Supplies to the Gulf Coast may come from various sources; to the extent that they come via oil tanker, there may be disruptions to supplies such as: weather disruptions due to hurricanes in the Gulf of Mexico; internal domestic matters affecting national oil companies in places as disparate as Venezuela, Russia, and Nigeria; declining production in other areas, including Mexico; and general political uncertainty in the Middle East.<sup>31</sup>

In addition, the proposed Keystone XL Pipeline would be able to transport domestically produced oil from the Bakken Formation in North Dakota,<sup>32</sup> thus easing bottlenecks that could potentially stymie the increased domestic production of onshore crude oil. The development of the Bakken Formation has resulted in significant economic benefits to local communities near drilling operations which have echoed throughout the entire state. North Dakota's unemployment rate of 3.3 percent,<sup>33</sup> the lowest in the nation, is attributable, in a significant part, to oil and gas extraction.

### **Conclusion**

This hearing represents an opportunity for Members to learn more about the beneficial impact construction and maintenance of the Keystone XL pipeline. The hearing will highlight how the project could reduce the United States' reliance on higher-priced foreign oil and replace it with stable, secure supplies from both Canada and the United States; create high paying jobs; and inject billions of dollars into the United States economy.

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<sup>28</sup> CANADIAN ENERGY RESEARCH INSTITUTE, THE IMPACTS OF CANADIAN OIL SANDS DEVELOPMENT ON THE UNITED STATES' ECONOMY, FINAL REPORT vii (Oct. 2009) available at <http://www.scribd.com/doc/21296235/CERI-The-Impacts-of-Canadian-Oil-Sands-Development-on-the-United-States%E2%80%99-Economy>.

<sup>29</sup> [http://www.eia.gov/dnav/pet/pet\\_cons\\_psup\\_dc\\_nus\\_mbb1\\_a.htm](http://www.eia.gov/dnav/pet/pet_cons_psup_dc_nus_mbb1_a.htm).

<sup>30</sup> [http://www.eia.gov/dnav/pet/pet\\_move\\_impcus\\_a2\\_nus\\_ep00\\_im0\\_mbb1\\_a.htm](http://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_ep00_im0_mbb1_a.htm).

<sup>31</sup> See ANDREW INKPEN & MICHAEL MOFFET, THE GLOBAL OIL & GAS INDUSTRY: MANAGEMENT, STRATEGY & FINANCE 72-76 (2011); ROY NERESIAN, ENERGY FOR THE 21<sup>ST</sup> CENTURY: A COMPREHENSIVE GUIDE FOR CONVENTIONAL AND ALTERNATIVE SOURCES 206-210 (2007).

<sup>32</sup> The hydrocarbon resources in the Bakken formation are mainly natural gas and oil embedded in shale rock. New extraction technologies, especially, hydraulic fracturing (colloquially "fracking") have made development in the Bakken field economical. NORMAN HYNES, NONTECHNICAL GUIDE TO PETROLEUM GEOLOGY, EXPLORATION, DRILLING & PRODUCTION 477-78 (3d ed. 2012).

<sup>33</sup> <http://www.bls.gov/web/laus/laumstrk.htm>.