



# *The Committee on Energy and Commerce*

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## **Memorandum**

April 8, 2013

TO: Members, Subcommittee on Energy and Power

FROM: Committee Staff

RE: Hearing on H.R. 3, the Northern Route Approval Act

On Wednesday, April 10, 2013, at 10:00 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold a legislative hearing on H.R. 3, the Northern Route Approval Act, introduced by Rep. Lee Terry.

### **I. WITNESSES<sup>1</sup>**

Mr. Alexander Pourbaix  
President, Energy and Oil Pipelines  
TransCanada

Mr. Anthony Swift  
Attorney  
Natural Resources Defense Council

Mr. Keith Stelter  
President  
Delta Industrial Valves, Inc.

Mr. David Mallino Jr.  
Legislative Director  
Laborers International Union of North America

Dr. Mark Jaccard  
Professor and Research Director  
Simon Fraser University

### **II. BACKGROUND**

On September 19, 2008, Canada-based TransCanada Corporation submitted an application with the U.S. Department of State for a Presidential Permit for their Keystone XL pipeline project to cross the U.S.-Canada border. The first proposed pipeline project application included 1,384 miles of pipeline from two segments: the Gulf Coast segment and the Keystone XL segment.

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<sup>1</sup> Invitations to testify were sent to officials at the Bureau of Land Management, Department of State, Environmental Protection Agency, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service. Each one of these agencies declined to testify.

The Secretary of State is delegated the President's authority for applications for Presidential Permits under Executive Order 13337. Issuance of a Presidential Permit is dependent upon a finding that the project would serve the "national interest". Also, pursuant to the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) must be prepared by the Department of State because of the determination Keystone XL would constitute a major Federal action that may have a significant impact upon the environment.

Through this determination process, the Department of State was required to coordinate with and/or receive views from the following Federal agencies:

- Army Corps of Engineers;
- Department of Agriculture (Farm Service Agency, Natural Resource Conservation Service, and Rural Utilities Service);
- Department of Energy (Office of Policy and International Affairs and Western Area Power Administration);
- Department of Interior (Bureau of Land Management, National Park Service, Fish and Wildlife Service, and Bureau of Reclamation);
- Department of Transportation;
- Environmental Protection Agency (EPA);
- Department of Defense;
- Department of Justice;
- Department of Homeland Security; and,
- Department of Commerce.

The September 2008 application's NEPA process resulted in a draft EIS that was issued on April 16, 2010, followed by a supplemental draft EIS that was issued on April 15, 2011, to address EPA's concerns that the draft EIS was "inadequate", and a final EIS that was issued August 26, 2011. Issuance of the final EIS started the 90-day public review period for the Department of State to gather information to inform its national interest determination. On November 10, 2011, the Department issued an announcement that additional information was needed to make a determination which may include the need for an additional supplemental EIS which would have further delayed a determination until 2013. A provision was included in the Temporary Payroll Tax Cut Continuation Act of 2011 that was signed into law in December 2011 that required the Secretary of State to issue a Presidential Permit for the project unless the President determined it was not in the national interest. On January 18, 2012, President Obama denied the application for Keystone XL's Presidential Permit.

On May 4, 2012, TransCanada submitted a second application for a Presidential Permit for the Keystone XL pipeline project. This application triggered a new NEPA review process and national interest determination requirement. The new application was for 875 miles of pipeline for the Keystone XL project; the southern Gulf Coast segment which did not require a Presidential Permit had already begun construction and is currently 50 percent to 60 percent

complete. On March 1, 2013, the Department of State issued a draft supplemental EIS for the second Presidential Permit application.<sup>2</sup>

According to the Department of Energy, the Keystone XL pipeline project, if fully completed, would be able to move 830,000 barrels of oil per day from the oil sands region of Alberta, and it could also accept U.S. crude from the Bakken oil fields.

TransCanada estimates that it would spend approximately \$7 billion to construct the full project and would directly create 20,000 jobs. 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, of which 3,900 would be directly involved with project construction.

In order to address continued regulatory uncertainty Rep. Terry introduced H.R. 3, the Northern Route Approval Act which removes the need for a Presidential Permit and addresses other necessary Federal permits as well as limit litigation challenges to the Keystone XL pipeline.

### **III. SECTION-BY-SECTION**

#### **Section 1: Short Title**

Section 1 provides the short title for the legislation, the “Northern Route Approval Act”.

#### **Section 2: Findings**

Section 2 offers seven separate Congressional findings regarding the need for energy infrastructure, the national security benefits of Canadian oil imports, the employment and economic benefits from the Keystone XL pipeline, the review and approval by the State of Nebraska of the Keystone XL pipeline, the length and breadth of the Federal review process, the safety and environmental benefits of transporting oil via pipeline, and the resemblance to the action that was needed to approve the Alaska Pipeline in 1973.

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<sup>2</sup> Despite the term “supplemental” being used for this draft EIS, the second application triggered a new NEPA review process. The use of the term ‘supplemental’ for a draft EIS for a new permit application of any type is not a standard practice.

### **Section 3: Keystone XL Permit Approval**

Section 3 removes the requirement for a Presidential Permit for the Keystone XL pipeline described in the application filed by TransCanada on May 4, 2012, and that was supplemented to include the reroute approved by the Nebraska Governor. It deems the final EIS issued on August 26, 2011, and the Final Evaluation Report issued by the State of Nebraska to satisfy all requirements of NEPA and the National Historic Preservation Act (NHPA).

### **Section 4: Judicial Review**

Section 4 vests, except for review by the Supreme Court, the U.S. Court of Appeal for the District of Columbia Circuit with sole jurisdiction over specifically listed legal challenges regarding Keystone XL pipeline. These are limited to the review of any final decisions by Federal agencies regarding the project, questions of constitutionality, and the adequacy of any analysis. Any claims must be brought within 60 days of a decision giving rise to a claim. Any action brought under this section shall receive expedited consideration.

### **Section 5: American Burying Beetle**

Section 5 deems an incidental take permit to have been issued for the American burying beetle for the construction, operation and maintenance of the Keystone XL pipeline.

### **Section 6: Right-of-Way and Temporary Use Permit**

Section 6 deems a right-of-way and temporary use permit to have been issued according to terms set forth in an application filed with BLM.

### **Section 7: Permits for Activities in Navigable Waters**

Section 7 states that no later than 90 days after an application is filed, the Secretary of the Army shall issue all permits necessary under section 404 of the Federal Water Pollution Control Act and section 10 of the Rivers and Harbors Appropriations Act. The application shall be based on the administrative record which shall be considered complete. The Secretary is given the authority to waive any procedural requirements and if the Secretary has not issued the permits in 90 days then the permits are deemed to have been issued. The Administrator of the Environmental Protection Agency (EPA) may not prohibit or restrict any activities in this section.

### **Section 8: Migratory Bird Treaty Act Permit**

Section 8 deems a special purpose permit under the Migratory Bird Treaty Act to have been issued that is described in an application filed with the U.S. Fish and Wildlife Service.

#### **IV. ISSUES**

The following issues will be examined at the hearing:

- The economic impact of Keystone XL construction;
- The length and breadth of the Federal approval process of the Keystone XL pipeline;
- The need for Congress to intervene to approve Keystone XL; and,
- The environmental concerns raised by the proposed pipeline.

#### **V. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Jason Knox or Tom Hassenboehler at (202) 225-2927.