



Nebraska Wildlife Federation
Comments on the Keystone XL
Draft Supplemental Environmental Impact
Statement

June 6, 2011

The Honorable Hillary Clinton
Secretary of State
US Department of State
2201 C Street NW
Washington, DC 20520

Kerri-Ann Jones
Assistant Secretary of State for Oceans
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VIA State Department Web Site

Dear Secretary Clinton, Assistant Secretary Jones, and State Department staff,

We appreciate the effort the US Department of State made in issuing a Draft Supplemental Environmental Impact Statement on the proposed Keystone XL pipeline, and recognize the additional analysis that went into the latest assessment. We also appreciate the swift response of State Department staff to our suggestion of several public libraries in Lincoln and Omaha that would be appropriate places to receive a copy of the Draft Supplemental Environmental Impact Statement (DSEIS).

However, the State Department's DSEIS states that the supplemental analysis does not change the ultimate conclusion of the original Draft Environmental Impact Statement. That ultimate conclusion, that "the proposed Keystone XL Project would result in limited adverse environmental impacts during both construction and operation..." does not appear to be supported by the Department's analysis, or by the analyses of a number of organizations and experts. In some cases, we believe the State Department again failed to carry out an adequate assessment of the impact on natural resources.

In short, we believe the State Department's Draft Supplement Environmental Impact Statement still falls well short of what is required by the National Environmental Policy Act and the Endangered Species Act. It fails to recognize the significant harm the project will do to wildlife, wetlands, rivers, groundwater and the Nebraska Sandhills, and fails to require TransCanada to put in place measures to deal with that harm.

We incorporate by reference comments we provided on the Draft Environmental Impact Statement last summerⁱ, a follow-up letter we sent in December asking the Department of State to issue a supplemental environmental impact statement that includes an assessment of alternative routes that avoid the Nebraska Sandhills and reduce the threat to the Ogallala aquiferⁱⁱ, and a May 9 request to the State Department to extend the public comment period on the Draft Supplemental Environmental Impact Statement, hold public hearings in the pipeline corridor, and provide additional copies to libraries in Nebraskaⁱⁱⁱ.

Wetland Destruction

Last July, the Environmental Protection Agency said the State Department “should identify how wetland impacts would be avoided and minimized, to the maximum extent practicable, and how unavoidable wetland impacts would be compensated for through wetland restoration, creation or enhancement.^{iv}” The State Department appeared to ignore this request, providing no new information on how TransCanada would avoid damage to wetlands or mitigate unavoidable damage.

The original Draft Environmental Impact Statement shows at least 10 Rainwater Basin “wetlands of special concern or value,” and 37 wetlands of special concern or value in the Sandhills that could be harmed by the pipeline. The new analysis fails to note that, as a result of federal court decisions, there is no federal protection for isolated wetlands like many of those in the Rainwater Basin and Sandhills, and precious little state protection. Yet the assessment provides no commitments from TransCanada to protect these wetlands, and no analysis of the damage that could be done to wildlife if the wetlands are drained or damaged.

The State Department’s analysis appears to assume that there will be no drainage or damage to wetlands, because TransCanada will comply with federal and state laws. In fact, drainage and damage to wetlands can occur under current federal and state laws. The original DEIS and the new DSEIS both fail to analyze the potential impact on wetlands from the construction and operation of the pipeline.

Power Line Impacts

The Department of Interior and US Fish & Wildlife Service have expressed concern about the impact on migrating birds of several large new power lines needed to provide electricity to pumping stations along the pipeline. Those include three new power lines to be built by Nebraska Public Power District in Central Nebraska, including one power line that will cross the Platte River between Grand Island and Columbus. Collisions with power lines are the largest known cause of Whooping crane deaths during migration, and these lines will be built in the Whooping crane migratory corridor.

The State Department admits that the new power lines required for the project could harm the Whooping crane, Interior least tern, piping plover, greater sage grouse, mountain plover, and Sprague’s pipit, but fails to assess how substantial the damage could be or measures needed to prevent or reduce this damage. Instead, the State Department leaves that to the local power companies and power districts to work out with state and federal regulatory agencies.

These new power lines are an integral part of the project; they would not be built but for the construction of the pipeline, and the pipeline cannot operate without adequate power for the pumping stations. *The State Department’s Environmental Impact Statement needs to assess and document the environmental impact of the construction of those power lines, and should include measures included to reduce such impact.*

The fact that these new power lines would have an impact on Whooping cranes, piping plovers, Interior least terns, and other birds also provides clear evidence of the environmental advantages of alternate routes that would be outside the main Whooping crane migratory

corridor, and that would avoid tern and plover use areas. Yet the State Department's analysis of alternate routes includes a number of routes that the Department rejected because they allegedly would provide no environmental advantage to the proposed route. The I-90 route, for example, would carry the pipeline east sooner than the proposed route, taking it – and associated power line facilities – outside of the primary Whooping crane migratory route for that portion of the pipeline.

Alternate Routes

The State Department took an initial look at alternatives to the proposed route through the heart of the Sandhills and over and through a substantial part of the Ogallala aquifer. One by one it eliminated each of these alternatives, saying they involved longer routes or posed other problems. The Department claimed these routes “would not offer an environmental advantage” to the proposed routes. It failed to mention important advantages of alternative routes that would use existing pipeline corridors (such as the Keystone I corridor through eastern Nebraska), like eliminating the need to build new power lines in the Whooping crane migratory corridor to provide electricity to pumping stations, and reducing the acres of native prairie disturbed by the pipeline construction and operation.

The State Department also failed to assess shorter route alternatives that would take the pipeline around the Sandhills, reduce the impacts on native prairie, and better utilize existing pipeline rights of way. For example, moving the route to travel southeast from its crossing of the Niobrara River in northern Nebraska, to intersect and follow the Keystone I route in the Norfolk area could allow it to skirt the Sandhills and the deepest portions of the Ogallala aquifer, while reducing the need to build new electric power lines. The State Department also appeared to discount the danger posed by burying a pipeline in fragile sand dunes covered by a thin layer of grass, right over a major aquifer. Instead, the Department repeatedly pointed to the safety record it expected Keystone XL pipeline to have, based on its use of modern industry standards. Apparently, the Department plans to ignore the leaks and anomalies that have already been found in the new Keystone I pipeline.

Native Prairie

Native prairie is one of the most endangered habitats in North America. Losses of native tallgrass prairie are estimated at some 99% of pre-settlement acres; mixed grass and short-grass prairie have also seen substantial losses. Many species of ground-nesting birds and other wildlife that depend on native prairie are in decline.

Although the proposed pipeline would disturb many acres of native prairie, the Draft Supplemental Environmental Impact Statement, like the original Draft Environmental Impact Statement, fails to consider the environmental impacts of this disturbance. In the Nebraska Sandhills, as has been well documented, restoring a disturbed prairie site can be extremely difficult. We appreciate the efforts of the State Department to understand the special soils and climate of the Nebraska Sandhills, and appreciate the intentions of TransCanada (as outlined in Appendix D of the DSEIS) to provide special construction and restoration practices in this region. Our discussions with landowners who live in the area continues to convince us that even with the best intentions, restoring Sandhills prairie once disturbed is extremely difficult.

The DSEIS, like the original DEIS, fails to address a concern we raised in our comments on the DEIS. That is, the heat generated by the pipeline operation will create a unique microclimate in the strip of soil immediately above the pipeline. According to the DEIS, soil temperatures close to the pipeline depth (and within the root zone of native prairie plants) would be expected to be 40° F higher than ambient air temperature. Soil temperatures 10° to 15° F higher could be expected at 6” below the surface. Those higher temperatures in the root zone and at the surface are likely to impact the soil evaporation, and plant growth and dormancy, of the vegetation that is supposed to be protecting the soil directly above the pipeline from wind or water erosion. To our knowledge, impacts like these have not been studied, especially with respect to Sandhills soil types.

The issue of prairie destruction is also important in places like eastern Nebraska where extremely rare tallgrass prairie will be disturbed by the pipeline. We have fielded complaints from landowners who were concerned that with respect to the Keystone I pipeline, and the power lines built to supply its pumps, that TransCanada and Nebraska Public Power District refused to adjust the pipeline or power line routes to avoid impacts to native prairie. In fact, the route of the pipeline seems to have been chosen in part to prefer disturbing native prairie over disturbing already-converted cropland.

As we have noted with respect to wildlife impacts, the environmental advantages of routing the pipeline through already converted cropland, like that in eastern Nebraska, versus the native prairie of the Sandhills, does not appear to have been considered when the State Department rejected alternative routes.

Energy Conservation Alternative

Many have questioned the need for this huge new pipeline at a time when America should be reducing its reliance on oil, and reducing its reliance on foreign oil in particular. The State Department’s own analysis^v shows that, while most experts expect Canada’s exports of tar sands oil to continue to grow, an aggressive national strategy designed to reduce the use of carbon-based fuels like oil (and reduce greenhouse gas emissions) could slow that growth. Under that “energy conservation” scenario, the growth from 1.3 million barrels per day of tar sands oil imported to the USA (in 2009) to 3.3 million barrels per day in 2030 could be carried by *existing pipelines in place* without building the new Keystone XL pipeline.

Yet the State Department rejected that conservation alternative as a viable option, saying there would still be demand to move Canadian tar sands oil from the Upper Midwest (Illinois, Indiana, Ohio and other states in PADD 2) to the refineries in Texas and along the Gulf Coast (PADD 3). The State Department’s analysis ignores the fact that a much shorter pipeline from the Midwest to the Gulf Coast could meet that demand, and that building the Keystone XL would only add more expensive, unneeded pipeline capacity to the system in that scenario. The Department’s failure to consider energy conservation as a viable option also meant that it failed to assess the many jobs that would be created and maintained by pursuing an energy conservation strategy.

We believe the State Department’s failure to develop and recognize viable alternatives to the proposed Keystone XL pipeline is another fatal flaw in its analysis, and one that violates the National Environmental Policy Act requirements.

Consulting With Expert Agencies

The Department of Interior and US Fish & Wildlife Service have expressed concerns about the potential impact of the proposed Keystone XL pipeline on rare species like the Whooping crane and other migratory birds. Under federal law, a federal agency is required to formally consult with the Fish & Wildlife Service whenever a project like this could put at further risk a federally protected species.

Despite the likely impacts on a number of federally protected species, the Department of State is appearing to ignore its obligation to consult with the Fish & Wildlife Service to assess the potential impacts on rare species, and to ensure that actions the Department takes will not jeopardize a protected species or their critical habitat.

We believe the risks to species like the Whooping crane, piping plover, and Western prairie fringed orchid require the State Department to consult formally with the Fish & Wildlife Service over impacts to those species.

We recognize this is a separate process from the environmental analysis required under the National Environmental Policy Act, but the implications of those consultations – the impacts on rare species – needs to be an important part of the State Department’s environmental analysis.

Some of these impacts will result from construction and operation of the pipeline in the USA. Other impacts will be to species like the Whooping crane that spend a substantial portion of their lives in the USA, but the impacts will be due to the expansion of tar sands oil production on the Canadian side of the border. We believe all of these impacts need to be considered as part of the State Department’s environmental assessment and consultations.

Safety Concerns

In the past week, the US Department of Transportation declared that TransCanada’s Keystone I pipeline is an immediate threat to life, property and the environment. This declaration is rarely used, and typically only on much older pipelines that have reached their intended lifespan or are otherwise seeing the results of decades of wear and tear. In this case, the Keystone I pipeline is less than a year old – the first time *ever* a new pipeline was subject to this declaration.

As a result of the declaration, the Department of Transportation will spend the next several months reviewing the pipeline to determine what the problems are, and whether and how the pipeline can be operated safely. The proposed Keystone XL pipeline would be designed, built and operated by the same company, TransCanada, likely using many of the same design features and questionable business practices that resulted in the problems with the Keystone pipeline.

We believe it would be irresponsible for the Department of State to conclude its environmental review – which depends in part on assumptions about the safety of the pipeline and the likelihood of a spill or leak – before the Department of Transportation has finished its analysis of Keystone I.

We again urge the Department of State to extend the public comment period on this proceeding to allow experts, citizen groups and others to provide input based on the Department of Transportation's review. At a minimum, we ask the Department of State to refrain from concluding its analyses and issuing a Final Environmental Impact Statement until the Department of Transportation has concluded its review and the State Department has a chance to incorporate its findings into its assessment of environmental impacts.

We appreciate the efforts the State Department went to in preparing a Draft Supplemental Environmental Impact Statement. We appreciate the opportunity to provide comments on the DSEIS.

Yours in Conservation,

Duane Hovorka

Duane Hovorka, executive director
Nebraska Wildlife Federation

ⁱ *Comments of the Nebraska Wildlife Federation on the US State Department Draft Environmental Impact Statement for the proposed Keystone XL Pipeline*, July 2, 2010.

ⁱⁱ Letter to Secretary of State Hillary Clinton, December 23, 2010, from Nebraska Wildlife Federation.

ⁱⁱⁱ Letter to Secretary of State Hillary Clinton and Assistant Secretary of State for Oceans and International Scientific Affairs Kerri-Ann Jones, May 9, 2011, from Nebraska Wildlife Federation.

^{iv} Letter to Assistant Secretary Jose W. Fernandez and Assistant Secretary Kerri-Ann Jones, US Department of State, from Cynthia Giles, US Environmental Protection Agency, July 16, 2010.

^v Section 4.1.3 of the Draft Supplemental Environmental Impact Statement.