

**AMERICAN JOBS NOW: A LEGISLATIVE HEARING
ON H.R. 3548, THE NORTH AMERICAN ENERGY
ACCESS ACT**

HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
SECOND SESSION

JANUARY 25, FEBRUARY 3, 2012

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AMERICAN JOBS NOW: A LEGISLATIVE HEARING ON H.R. 3548, THE NORTH AMERICAN ENERGY ACCESS ACT—DAY 1

WEDNESDAY, JANUARY 25, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 8:05 a.m., in room 2123 of the Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Sullivan, Shimkus, Walden, Terry, Burgess, Bilbray, Scalise, Olson, McKinley, Gardner, Pompeo, Griffith, Barton, Kinzinger, Upton (ex officio), Rush, Inslee, Markey, Green, Doyle, Gonzalez, and Waxman (ex officio).

Staff present: Charlotte Baker, Press Secretary; Caroline Basile, Staff Assistant; Mike Bloomquist, Deputy General Counsel; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Maryam Brown, Chief Counsel, Energy and Power; Allison Busbee, Legislative Clerk; Patrick Currier, Counsel, Energy and Power; Garrett Golding, Professional Staff Member, Energy; Cory Hicks, Policy Coordinator, Energy and Power; Peter Kielty, Senior Legislative Analyst; Heidi King, Chief Economist; Ben Lieberman, Counsel, Energy and Power; Dave McCarthy, Chief Counsel, Environment and Economy; Mary Neumayr, Senior Energy Counsel; Katie Novaria, Legislative Clerk; Phil Barnett, Democratic Staff Director; Greg Dotson, Democratic Energy and Environment Staff Director; Caitlin Haberman, Democratic Policy Analyst; Elizabeth Letter, Democratic Assistant Press Secretary; and Alexandra Teitz, Democrat Senior Counsel, Environment and Energy.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. I would like to call this meeting to order this morning, and the subject of this hearing is “American Jobs Now,” and we are going to be considering H.R. 3548, the North American Energy Access Act.

I would also like to welcome those members of the referee training class. I didn’t realize you all were going to be with us this morning but we are delighted you are here on the second row, and I hope you will enjoy the hearing as well.

Today's hearing gives us the opportunity to learn why the Obama administration denied a permit to build the Keystone pipeline from Canada through parts of the United States. How could the Obama administration when presented with the chance to create thousands of jobs and at the same time significantly reduce our dependence on oil from the Middle East say "no" to the American people?

Today we will examine how such a harmful decision was made and explore opportunities to reverse that decision. While the administration struggles to find a rational reason to reject the construction of Keystone pipeline, we are going to look for ways to build the Keystone pipeline.

This is a project that would cost about \$7 billion to build. There would not be any government money involved in this project. It is all being supplied by private industry, and it would immediately put at least 20,000 people to work. That certainly sounds like the national interest to me.

If our President decides that sending three aircraft carrier strike groups to the Strait of Hormuz to defend the free flow of oil, if he thinks that is in the national interest, then one would also think a pipeline from Canada that would help us be less dependent on Middle Eastern oil would also serve the national interest.

The President's own State Department determined that the pipeline would have no significant impact on the environment. The President said it himself. His rejection of the Keystone pipeline is not based on its merits. He said that, which makes us believe that the decision to reject the pipeline was solely a political decision to help him be reelected.

[The prepared statement of Mr. Whitfield follows:]

**Opening Statement of the Honorable Ed Whitfield
Subcommittee on Energy and Power
Hearing on "American Jobs Now: H.R. 3548, the
North American Energy Access Act"
January 25, 2012
(As Prepared for Delivery)**

Today's hearing gives us the opportunity to examine solutions to a problem that shouldn't exist. The problem I'm speaking of is how an administration can be presented with the chance to create tens of thousands of jobs while reducing our dependence on Middle East sources of oil, yet completely squander the opportunity.

Today we're here to look into how such an unacceptable decision was made and how it can be corrected so that we are able to create 20,000 jobs and relieve our dependence on hostile sources of fuel through this project.

The phrase "national interest" should be somewhat simple to understand. If the nation is plagued by persistent unemployment and a private company is willing to spend \$7 billion to construct an infrastructure project, putting over 100,000 people to work – that sounds like something that serves the national interest.

If our President decides that sending aircraft carrier strike groups to the Strait of Hormuz to defend oil flow is in the national interest, then one would also think a pipeline from Canada that would help eliminate our Middle East oil imports also serves the national interest.

Unfortunately, that is not the same conclusion that President Obama reached, stating that they needed more time. Over 3 years was not enough time. Eleven agencies reviewing the pipeline was not enough review.

President Obama's delays could risk losing the project entirely, and even the State Department agrees in its OWN environmental impact statement that the "no action" option (not building the pipeline at all) is the wrong option. But I worry that's where we are headed.

So today we want to ask questions of the Administration and hear their perspective on legislation offered by our colleague Mr. Terry of Nebraska.

###

[H.R. 3548 follows:]



112TH CONGRESS
1ST SESSION

H. R. 3548

To facilitate United States access to North American oil resources, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 2, 2011

Mr. TERRY (for himself, Mr. UPTON, Mr. WHITFIELD, Mrs. BLACKBURN, Mr. LATTA, Mr. MURPHY of Pennsylvania, Mrs. McMORRIS RODGERS, Mr. REHBERG, Mr. BERG, Mr. HARRIS, Mr. PITTS, Mr. SULLIVAN, Mr. SHIMKUS, Mr. SCALISE, Mr. OLSON, Mr. GARDNER, Mr. POMPEO, Mr. KINZINGER of Illinois, Mr. BOUSTANY, Mr. GRIMM, Mr. BURGESS, Mr. THORNBERRY, Mr. CARTER, Mr. NEUGEBAUER, Ms. GRANGER, Mr. CULBERSON, Mr. SAM JOHNSON of Texas, Mr. BARLETTA, Mr. MARINO, Mr. KELLY, Mr. SCHOCK, Mr. LATOURETTE, Mr. McCOTTER, Mr. DAVIS of Kentucky, Mr. TURNER of Ohio, Mr. PEARCE, Mr. GIBBS, Mr. MILLER of Florida, Mr. FORBES, Mr. MANZULLO, Mr. BARTON of Texas, and Mr. SHUSTER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To facilitate United States access to North American oil
resources, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “North American En-
3 ergy Access Act”.

4 **SEC. 2. RESTRICTION.**

5 (a) IN GENERAL.—No person may construct, oper-
6 ate, or maintain the oil pipeline and related facilities de-
7 scribed in subsection (b) except in accordance with a per-
8 mit issued under this Act.

9 (b) PIPELINE.—The pipeline and related facilities re-
10 ferred to in subsection (a) are those described in the Final
11 Environmental Impact Statement for the Keystone XL
12 Pipeline Project issued by the Department of State on Au-
13 gust 26, 2011, including any modified version of that pipe-
14 line and related facilities.

15 **SEC. 3. PERMIT.**

16 (a) ISSUANCE.—

17 (1) BY FERC.—The Federal Energy Regulatory
18 Commission shall, not later than 30 days after re-
19 ceipt of an application therefor, issue a permit for
20 the construction, operation, and maintenance of the
21 oil pipeline and related facilities described in section
22 2(b), to be implemented in accordance with the
23 terms of the Final Environmental Impact Statement
24 described in section 2(b). The Commission shall not
25 be required to prepare a Record of Decision under
26 section 1505.2 of title 40 of the Code of Federal

1 Regulations with respect to issuance of the permit
2 provided for in this section.

3 (2) ISSUANCE IN ABSENCE OF FERC ACTION.—

4 If the Federal Energy Regulatory Commission has
5 not acted on an application for a permit described
6 in paragraph (1) within 30 days after receiving such
7 application, the permit shall be deemed to have been
8 issued under this Act upon the expiration of such
9 30-day period.

10 (b) MODIFICATION.—

11 (1) IN GENERAL.—The applicant for or holder
12 of a permit described in subsection (a) may make a
13 substantial modification to the pipeline route or any
14 other term of the Final Environmental Impact
15 Statement described in section 2(b) only with the
16 approval of the Federal Energy Regulatory Commis-
17 sion. The Commission shall expedite consideration of
18 any such modification proposal.

19 (2) NEBRASKA MODIFICATION.—The Federal
20 Energy Regulatory Commission shall enter into a
21 memorandum of understanding with the State of
22 Nebraska for an effective and timely review under
23 the National Environmental Policy Act of 1969 of
24 any modification to the proposed pipeline route in
25 Nebraska as proposed by the applicant for the per-

1 mit described in subsection (a). Not later than 30
2 days after receiving approval of such proposed modi-
3 fication from the Governor of Nebraska, the Com-
4 mission shall complete consideration of and approve
5 such modification.

6 (3) ISSUANCE IN ABSENCE OF FERC ACTION.—

7 If the Federal Energy Regulatory Commission has
8 not acted on an application for approval of a modi-
9 fication described in paragraph (2) within 30 days
10 after receiving such application, such modification
11 shall be deemed to have been issued under this Act
12 upon expiration of the 30-day period.

13 **SEC. 4. RELATION TO OTHER LAW.**

14 (a) GENERAL RULE.—Except as provided in sub-
15 section (b), a permit issued under this Act shall be the
16 sole legal authority required to construct, operate, and
17 maintain the pipeline and related facilities described in
18 section 2(b) in the United States.

19 (b) EXCEPTIONS.—Nothing in this Act shall affect
20 the application to the pipeline and related facilities de-
21 scribed in section 2(b) of—

22 (1) chapter 601 of title 49, United States Code;

23 or

1 (2) the authority of the Federal Energy Regu-
2 latory Commission to regulate oil pipeline rates and
3 services.

○

Mr. WHITFIELD. At this time, I would like to yield the remainder of my time to Mr. Terry.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman, for holding this hearing on this bill.

A couple of points with the couple of minutes I have. This is what the State Department has by way of environmental studies on the Keystone route. As you can see, it is very voluminous and it is difficult to understand why this would just be discarded, and we will get into some of the points later during questioning.

I want to go off my regular script and just express my displeasure that the State Department decided or objected to our Nebraska witness that could help put in context the Nebraska exemption and what Nebraska is doing. The State Department objected because they don't sit on the same panel as a State witness, so the head of our Nebraska Department of Environmental Quality is not worthy enough to sit there, and because of time constraints, his ability to answer our questions had to be deleted from this panel and frankly, I am disturbed by that.

But we are going to get into the false excuse of using the State of Nebraska as the reason—reading your testimony—as the reason for the denial. In fact, the bill was written so you wouldn't have to make that decision, and we will get into those statements. I yield back.

Mr. WHITFIELD. I thank the gentleman for yielding back.

I might say also that last night the President in his State of the Union address talked about the importance of infrastructure for America to remain competitive.

Mr. RUSH. I am really going to have to say that regular order isn't in order, and the 5 minutes is up, so we should proceed because the regular order is up. Your time is up, Mr. Chairman.

Mr. WHITFIELD. Well, I think when you said that, there was still 30 seconds left.

Mr. RUSH. I looked at it and it was——

Mr. WHITFIELD. We will enforce the 5-minute rule and recognize the gentleman for 5 minutes.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. Thank you, Mr. Chairman. Thank you for recognizing me.

Mr. Chairman, I am also delighted to see the referees there. This is a good opportunity for them to exercise their craft because I expect there to be a big battle to take place this morning at this morning's hearing, because, Mr. Chairman, today we are holding yet another hearing on the Keystone XL pipeline as a follow-up to the last hearing, the last markup and the former we had where the majority attempted to force the Obama administration to hastily make a decision on the Keystone XL pipeline. Let me remind you, the majority first tried to move legislation that required the administration to forego its legal obligations and its due diligence and come out with a favorable decision for Keystone XL by November

1 of last year, and the majority's reckless and irresponsible view if the American public was left unprotected because the administration did not have the time needed to conduct a thorough review, I want to repeat, a thorough review and oversight of this project. For my Republican colleagues, as long as industry got what it wanted, then that was the most important role of this Congress.

After that tactic failed, the majority held hostage the payroll tax cut extension, which would benefit millions of middle-class working families, in order to attach a rider that attempted to force President Obama to come out in favor of Keystone XL within 60 days of the bill's enactment, and we all know how well that strategy worked out.

Again, the majority said too bad if ordinary Americans might have been negatively impacted by a lack of Federal oversight, and who cares if the Republican governor and legislators Nebraska have yet to even identify a new route for the pipeline. As was the theme all last year, my Republican colleagues continue to push this false notion that if you would just roll back government oversight and protections for average Americans and allow industry to do what it wants without restriction, and unfettered, then somehow miraculously, jobs will be created and millions of out-of-work Americans will be gainfully employed. After all, Mr. Chairman, we saw how well this well-defined philosophy worked during the Bush years with the collapse of our total financial institutions and our economy.

Mr. Chairman, it is ironic that 25 Energy and Power Subcommittee and joint hearings, the nine bills that originated from this subcommittee that went through the House last year, the only piece of legislation that actually became law was the Pipeline Safety Reauthorization bill, which expanded regulation in order to address public safety. In fact, the pipeline safety bill enjoyed unanimous support from this committee and so it would appear that my Republican colleagues are not always opposed to Federal regulation and oversight, especially when their districts are directly affected.

So Mr. Chairman, today we are here on another proverbial fishing expedition by the majority party, again to try to sidestep Federal regulations and oversight in order to help industry get what they want and the American public be damned in the process. I am not sure if the majority's goal is simply to show TransCanada that they are working feverishly on their behalf for more campaign contributions, even when they know that the underlying legislation would never, ever become law—

Mr. TERRY. Mr. Chairman—

Mr. RUSH [continuing]. Or they are trying to keep this issue—

Mr. TERRY [continuing]. I think the gentleman's time has expired and I want his words taken down.

Mr. RUSH [continuing]. With the millions of dollars that the—

Mr. TERRY. I move that his words be stricken.

Mr. RUSH [continuing]. American Petroleum Institute is pouring into commercials supporting Keystone XL.

Mr. WHITFIELD. The gentleman's time is expired.

Mr. RUSH. And I yield back the balance of my time.

Mr. WHITFIELD. Recognize the gentleman from Nebraska.

Mr. TERRY. The gentleman made an accusation saying that we are tied to campaign contributions. A, that is wrong, but that is against our rules. His words need to be taken down.

Mr. WHITFIELD. We will have the clerk review the transcript, and then we will proceed at that time, and I will remind everyone that we do not need to be making accusations about what people are and are not doing as far as legal campaign finance laws and whatever.

At this time I would like to recognize the gentleman from Michigan for 5 minutes, Mr. Upton, the chairman of the full committee.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman. I notice we have a number of referees in that second row. Welcome to the big house. I note that you have got red flags, and of course, that is not a yellow flag, that is a red flag. A red flag usually means it is a review of the play. We look forward to having a review of the play. In fact, that vote did pass in this committee and on the House Floor by a two-to-one margin, and we are looking to have the ruling on the field confirmed again and perhaps again and again.

It is not often that Congress can take a single step that will simultaneously help reduce the future price at the gas pump, strengthen the Nation's energy security, and create literally tens of thousands of jobs. And it is certainly not often that we can accomplish all of these important goals at absolutely no cost to the taxpayer. But this is exactly what approving the Keystone XL pipeline expansion project would do and why I support this legislation, H.R. 3548, the North American Energy Access Act.

Keystone is a shovel-ready project whose construction would create badly needed jobs. Once completed, it would allow more oil from our ally Canada to come to the United States, taking the place of imports from far less friendly producers. The oil would go to refiners in the Midwest and the Gulf Coast, increasing the supply of American-made gas and preserving domestic refining jobs. The pipeline would also provide an outlet for the growing supplies of domestic oil produced in the Bakken formation in North Dakota and Montana, relieving a potential bottleneck there. And every penny of the \$7 billion project will be paid for by the private sector.

Given the many benefits of Keystone, it is no surprise that so many Americans consider this decision to be a no-brainer, especially since the environmental impacts of the project have been extensively studied for years and found to be minimal.

Last July, the House passed a bill requiring the State Department to make the long-overdue decision on Keystone by November 1st. It was certainly bipartisan, 47 Democrats joining nearly all the Republicans in supporting the reasonable measure. The bill probably would have garnered even more votes if not for the administration's repeated assurances that it is going to make a decision before the end of 2011, and that a legislated deadline was not necessary.

But sadly, as the end of the year approached, the administration reversed position and postponed its decision until 2013 at the earliest. In response, Congress gave the President a second chance to

do the right thing by providing him yet another 60 days to approve Keystone as part of the payroll tax bill, but last week he decided to reject the proposal after only 26 days. You see, 60 days wasn't enough.

Make no mistake, time is of the essence. Not only are unemployed Americans anxiously looking for jobs, not only is Iran threatening the Strait of Hormuz, not only is the price at the pump headed towards perhaps 5 bucks in the next couple of months, but the Canadian government is understandably growing impatient with the endless red tape and delays coming from Washington. Canada is rapidly increasing its oil production, and if the United States foolishly refuses to be a customer for these new supplies, Canada will build a pipeline not to the south but to the Pacific coast and the oil will be exported to China, where they are waving their hands because they want it there.

That is why we are again offering an opportunity to approve Keystone. I believe that this approach, this legislation giving the decision-making authority to the FERC, the Federal Energy Regulatory Commission, is a good one. I look forward to moving it through the committee, and I would yield to anyone on our side that would like time, and if not, will yield back the remainder of my time.

[The prepared statement of Mr. Upton follows:]

Opening Statement of the Honorable Fred Upton
Subcommittee on Energy and Power
Hearing on "American Jobs Now: H.R. 3548, the
North American Energy Access Act"
January 25, 2012
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It's not often that Congress can take a single step that will simultaneously help reduce the future price at the gas pump, strengthen the nation's energy security, and create tens of thousands of jobs. And it's certainly not often that we can accomplish all of these important goals at absolutely no cost to the taxpayer. But this is exactly what approving the Keystone XL pipeline expansion project would do, and that is why I support H.R. 3548, the North American Energy Access Act.

Keystone XL is a shovel-ready project whose construction would create badly needed jobs. Once completed, it would allow more oil from our ally Canada to come to the U.S., taking the place of imports from far less friendly producers. The oil would go to refiners in the Midwest and Gulf Coast, increasing the supply of American-made gasoline and preserving domestic refining jobs. The pipeline would also provide an outlet for the growing supplies of domestic oil produced in the Bakken formation in North Dakota and Montana, relieving a potential bottleneck there. And every penny of this \$7 billion dollar project will be paid for by the private sector.

Given the many benefits of Keystone XL, it is no surprise that so many Americans consider this decision to be a no-brainer, especially since the environmental impacts of the project have been extensively studied for several years and found to be minimal.

Last July, the House passed a bill requiring the State Department to make its long-overdue decision on Keystone XL by November 1st. It was truly a bipartisan effort, with 47 Democrats joining nearly all Republicans in supporting this reasonable measure. The bill probably would have garnered even more votes if not for the administration's repeated assurances that it is going to make a decision before the end of 2011, and that a legislated deadline is not necessary.

Unfortunately, as the end of the year approached, the administration reversed position and postponed its decision to 2013 at the earliest. In response, Congress gave the President a second chance to do the right thing by providing him another 60 days to approve Keystone XL as part of the payroll tax bill, but last week he decided to reject the project.

Make no mistake, time is of the essence. Not only are unemployed Americans anxiously looking for jobs, not only is Iran threatening the Strait of Hormuz, not only is the price at the pump headed higher, but the Canadian government is understandably growing impatient with the endless red tape and delays coming from Washington. Canada is rapidly increasing its oil production, and if the U.S. foolishly refuses to be a customer for these new supplies, Canada will build a pipeline to the Pacific coast and the oil will be exported to China and other overseas buyers.

That is why we are again offering an opportunity to approve Keystone XL. I believe the approach in H.R. 3548 of giving the decision-making authority to the Federal Energy Regulatory Commission is a good one and I look forward to moving it through this Committee.

#

Mr. WHITFIELD. The gentleman yields back the balance of his time.

At this time I recognize the gentleman from California for 5 minutes, Mr. Waxman.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman.

Today, we once again consider legislation to approve the Keystone XL tar sands pipeline.

This legislation exempts one pet project from every Federal and State permitting requirement. Yes, one project would be exempted from every review. Now is that a way to approve an important and controversial pipeline? I hardly think that is the case.

The fact is that the legislation we are considering today is an earmark that benefits just one project. You remember the Republicans saying they were against earmarks? Well, not when it helps their friends. And the arguments for the project just don't stand up to scrutiny. This tar sands pipeline won't boost our energy independence or lower gas prices or create the inflated jobs being promised.

Why have the Republicans introduced bill after bill to short-circuit the permitting process on Keystone XL? They say it will make the country more energy independent. That is a myth. Oil prices are set by the global markets. This pipeline will have no impact on our vulnerability to price spikes or Iranian brinksmanship.

In fact, Keystone won't even reduce our imports. It will simply allow Canadian oil companies to use the United States as a conduit for shipping their tar sands overseas to China.

Now, I know they say if they don't get this pipeline, they are going to go to the West Coast. Well, that is a problem, because there are First Nations in Canada that don't want this pipeline going in that direction, and it is not so clear they can get the approval to do that.

The Republicans say it will cut gasoline prices. But the opposite will happen. Canadian oil that is now being refined in the Midwest and suppressing prices in that market will be diverted to the Gulf Coast for export, costing consumers in the Midwest billions of dollars.

The Republicans say they support the pipeline because it will create tens of thousands of jobs, but that is not right either. According to TransCanada, the company seeking to build the Keystone XL pipeline, the project will have "a peak workforce of approximately 3,500 to 4,200 construction personnel." Some labor groups have recently described the GOP's antics on Keystone as the "politics-as-usual strategy of a do-nothing Republican Congress."

If the Republicans were seriously and actually concerned about jobs, they would work with the President passing his jobs bill. They have no solution to the jobs crisis. The jobs crisis, they say, must be responded to by tearing away regulations to protect public health and safety. We will have more jobs if we let billionaires keep more money and it will trickle down to more jobs. And then they

say this one project will provide the jobs we need. It is amazing to me. The fact is, the legislation we are considering today is one that is hard to understand.

This committee has an obligation to understand who benefits from this legislation. Last year, news organizations reported that one company, Koch Industries, would be one of the “big winners” if this pipeline were constructed.

We asked Koch whether this was true and were told that they have no interest whatsoever in the pipeline. But then we learned that they have told the Canadian government that they have a “direct and substantial interest.” Something does not add up.

To understand this situation better, Mr. Rush and I requested that we invite the Koch brothers or the Koch Industries to come here and testify. The chairman hasn’t even responded to our letter. We therefore, Mr. Chairman, are invoking the minority’s rights under rule XI of the House rules to have a minority day of hearings. It is important that we hear from Koch and other stakeholders.

I think this pipeline is a bad idea. It ignores the concerns of the——

Mr. WHITFIELD. The gentleman’s time is expired.

I would also tell the gentleman, we will certainly accept the letter and we will follow the rules, but we are not going to be subpoenaing the Koch brothers, and we are not asking the Koch brothers to appear because the Koch brothers have nothing to do with this project.

Mr. WAXMAN. Well, how does——

Mr. WHITFIELD. At this time I would like to——

Mr. WAXMAN. Point of order, Mr. Chairman. You made a statement where you were not recognized for the time. You cut me off in the middle of a sentence. I would like to know the substantiation for your——

Mr. WHITFIELD. Your time was up, Mr. Waxman.

Now, we are going to recess this hearing for 10 minutes, and then we are going to come back.

Mr. WAXMAN. Are you calling the Koch brothers during the recess?

Mr. WHITFIELD. Let me tell you something. If you want to talk about that, let us talk about the millions of dollars that the Obama administration gave companies like Solyndra, to people like George Kaiser, who is out there bundling money for the President.

Mr. WAXMAN. Point of order, Mr. Chairman.

Mr. WHITFIELD. Would you like for us to——

Mr. WAXMAN. Point of order, Mr. Chairman.

Mr. WHITFIELD. Would you like for us to subpoena him, too?

Mr. WAXMAN. Why are you interrupting members and then you take unlimited time for yourself?

Mr. WHITFIELD. I am responding to your questions, your allegations. I am the chairman and I am telling you right now, we are going to recess for 10 minutes.

[Recess.]

Mr. WHITFIELD. I call the hearing back to order, and at this time we will hear the testimony of our two witnesses, and I would like to welcome both of you to this hearing today.

First of all, we have the Honorable Kerri-Ann Jones, who is the Assistant Secretary of State, Bureau of Oceans and International Environmental and Scientific Affairs, and we also have Mr. Jeffery Wright, who is the Director, Office of Energy Projects at the Federal Energy Regulatory Commission.

So once again, I welcome you all to the hearing. Each one of you will be recognized for 5 minutes, and then we will have questions for you at that time.

So Ms. Jones, I will recognize you for your 5 minutes.

STATEMENTS OF HON. KERRI-ANN JONES, ASSISTANT SECRETARY OF STATE, BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS; AND JEFF C. WRIGHT, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT OF KERRI-ANN JONES

Ms. JONES. Thank you, Mr. Chairman, and good morning, Chairman Whitfield, Ranking Member Rush and other members of the Subcommittee on Energy and Power. I appreciate the opportunity to appear before you today.

The U.S. Department of State received the application for Keystone XL pipeline project in September 2008. We undertook a thorough, rigorous and transparent process to determine whether issuance of a Presidential Permit for this pipeline was in the national interest.

In December, Congress passed the Temporary Payroll Tax Cut Continuation Act of 2011, which required a determination by the President within 60 days of whether the Keystone XL proposal project would serve the national interest. On January 18, 2012, the Department of State recommended to the President that the application for a Presidential Permit be denied due to insufficient time to conduct the necessary analysis. The President accepted our recommendation and determined that the Keystone XL pipeline project, as presented and analyzed at that time, would not serve the national interest.

I would like to provide some further details about this process and also comment briefly on the administration's view of H.R. 3548.

On April 30, 2004, President Bush issued Executive Order 13337, which designated and empowered the Department of State to receive the applications for Presidential Permits for all oil infrastructure projects that cross a United States border. The Executive Order indicates that the permit should be granted based on whether it is in the national interest. The Department's national interest determination factors include numerous issues including energy security, foreign policy, economic effects, health, safety and environmental considerations including climate change as well as any other factor the Department believes is relevant to the national interest. To make an informed decision, the Department is directed in the Executive Order to request additional information as needed from the applicant.

In order to analyze the potential environmental impacts of the project as required by the Executive Order, the Department deter-

mined that it would prepare an Environmental Impact Statement, or EIS, consistent with NEPA, the National Environmental Policy Act of 1969. We also carried out processes mandated by the National Historic Preservation Act of 1966 and the Endangered Species Act. Following NEPA requirements, we engaged in a robust public outreach effort including meetings along the proposed pipeline route.

On August 26, 2011, we issued the final EIS. Following its issuance, we began an interagency review period for the national interest determination and we conducted an additional public comment period that closed on October 9, 2011. We held meetings along the pipeline route including in the Sand Hills. These meetings were passionate with strong opinions and rationale on both sides. In Nebraska, we heard concerns about the fragile and unique Sand Hills of Nebraska. We heard about their importance to the Nation and to the people of Nebraska. Indeed, the people of Nebraska felt so strongly about this issue that their legislators met in special session to draft a law to ensure the Sand Hills would be protected. That is why we paused the process in November 2011, and based on experience with pipelines of similar length, we estimated that it would take until early 2013 to complete our assessment.

In December 2011, as we were cooperating with Nebraska's Department of Environmental Quality, the Temporary Payroll Tax Cut Continuation Act was enacted into law. We knew that 60 days was not enough time to complete the work and the analysis needed relevant to the national interest determination. We decided based not on the merits but on the inadequate time period and incomplete review to recommend that the President deny the permit.

This now brings me to H.R. 3548. The proposed legislation imposes narrow time constraints and creates automatic mandates that prevent an informed decision. We also feel the legislation raises serious questions about existing legal authorities and appears to override foreign policy and national security considerations implicated by a cross-border permit, which are properly assessed by the State Department.

Mr. Chairman, internationally we remain fully engaged with all our key partners and suppliers including Canada as we work on issues of energy security and diplomacy. As we do this, the State Department remains committed to carrying out its responsibilities under the Executive Order with diligence and fairness to the applicants but with ultimate concern for the best interest of the American people.

Thank you again for this opportunity to testify, and I would be pleased to answer any questions.

[The prepared statement of Ms. Jones follows:]

**TESTIMONY OF
DR. KERRI-ANN JONES
ASSISTANT SECRETARY OF STATE
BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND
SCIENTIFIC AFFAIRS
U.S. DEPARTMENT OF STATE

BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER OF THE COMMITTEE
ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

JANUARY 25, 2012**

Good morning Chairman Whitfield, Ranking Member Rush and other Members of the Subcommittee on Energy and Power; I appreciate the opportunity to appear before you today.

The Keystone XL project is a proposed seven billion dollar, 1,700-mile pipeline that TransCanada Keystone Pipeline LP applied to build and operate. It would transport up to 830,000 barrels per day of crude oil from Alberta, Canada to refineries in the U.S. Gulf Coast Region. Most of the oil would originate from the oil sands of Alberta, although as much as 100,000 barrels per day might have come from the Bakken formation in Montana and North Dakota and up to 150,000 barrels per day could have been transported from Cushing, Oklahoma to the Gulf Coast. The U.S. Department of State received the application for this project in September 2008. We began a thorough, rigorous and transparent process to determine whether issuance of a Presidential Permit for this pipeline was in the national interest. Congress passed the Temporary Payroll Tax Cut Continuation Act of 2011, which required a determination by the President, within 60 days, of whether the Keystone XL pipeline project would serve the national interest. On January 18, 2012 the Department of State recommended to the President that the application for a Presidential Permit be denied, due to insufficient time to conduct the necessary

analysis, and the President accepted our recommendation and determined that the Keystone XL pipeline project, as presented and analyzed at that time, would not serve the national interest.

I would now like to fill in some further details about our authority to conduct such a process, about the way in which we did so, and about the events that led to our final recommendation. I will also comment briefly on the Administration's view of H.R. 3548, the bill that Congressman Terry and others have introduced seeking to provide an expedited approval of the pipeline by the Federal Energy Regulatory Commission, or FERC.

On April 30, 2004, President George W. Bush issued Executive Order 13337, which amended Executive Order 11423, originally issued in 1968. Executive Order 13337 designated and empowered the Department of State to receive the applications for Presidential Permits for all oil infrastructure projects that cross a U.S. border. The Executive Order indicates that the permit should be granted based on whether it is in the national interest. The Executive Order also states that the Secretary shall consult with eight other agencies: the Departments of Commerce, Defense, Energy, Homeland Security, Interior, Justice, and Transportation, and the Environmental Protection Agency. Executive Order 13337 also envisions broader consultations to include state, tribal and local government officials and foreign governments. The Department's national interest determination factors in a full range of issues, including energy security, foreign policy, economic effects, health, safety, and environmental considerations, including climate change, as well as any other factor the Department believes is relevant to the national interest. To make an informed decision, the Department is directed in the Executive Order to request additional information as needed from the applicant.

In order to analyze the potential environmental impacts of the project, as required by Executive Order 13337, the Department of State determined that it would prepare an Environmental Impact Statement, or EIS, consistent with the National Environmental Policy Act of 1969.

Preparation of an EIS requires significant technical expertise. In a project of this complexity, it requires a great deal of scientific input, including from geologists, hydrologists, ecologists and botanists, to name a few. It requires engineers that understand fluid dynamics and material strength and pipe-welding specifications. It requires statisticians and economists; it requires experts in oil spills and emergency oil spill response. In preparing the EIS for the Keystone pipeline, we consulted extensively with other federal agencies that have substantial direct expertise in these areas.

We followed the provisions of the NEPA regulations, and the example of other federal agencies in engaging a technical contractor to assist in developing the EIS. ENTRIX (now Cardno ENTRIX) was selected. The applicant paid the costs of preparing the EIS. We directed the work of ENTRIX and ensured the quality of all information and analysis in the EIS.

At the same time, we conducted two parallel processes mandated by law. Section 106 of the National Historic Preservation Act of 1966 requires agencies to consider the effects of their actions on properties that may have religious or cultural importance and to engage the Advisory Council on Historic Preservation. In addition, Section 7 of the Endangered Species Act requires

Federal agencies to consult with the Fish and Wildlife Service to ensure that the proposed action will not jeopardize the continued existence of any federally listed endangered or threatened species.

Following NEPA requirements, we engaged in a robust public outreach effort. We carried out our consultation on many different levels, including Government-to-Government consultations with over 95 Indian tribes. In 2009, we conducted 20 scoping meetings in communities along the pipeline route. In April of 2010 we issued a Draft EIS and held 21 public comment meetings during a 45-day period including meetings in Kansas, Montana, Nebraska, Oklahoma, South Dakota, Texas, and Washington, DC. As a result of these comments and consultations, we issued a Supplemental Draft EIS in April 2011. In the subsequent 45-day period, we received over 280,000 comments. On August 26, 2011, we issued the Final EIS. Following its issuance we began an interagency review period for the national interest determination required by Executive Order 13337 and conducted an additional public comment period that closed on October 9, 2011. During this period we again held public meetings in Washington, DC and along the pipeline route, including in the Sand Hills of Nebraska.

These meetings were passionate. We heard voices urging diametrically opposite actions and providing solid rationales on both sides. In Nebraska particularly, we again heard concerns, clearly and repeatedly, about the fragile and unique Sand Hills of Nebraska and their importance to the nation and to the people of Nebraska. We listened to these views, many actually supportive of the pipeline, but stressing that the route needed to be moved. Indeed, the people of Nebraska felt so strongly about this issue that their legislators met in special session to draft a

law to ensure the Sand Hills would be protected. That is why we paused the process in November 2011, and based on experience with pipelines of similar length we estimated that it would take until early 2013 to complete our assessment.

In December 2011, as we were cooperating with Nebraska's Department of Environmental Quality to develop a process to evaluate any potential new route, the Temporary Payroll Tax Cut Continuation Act (H.R. 3765) was enacted into law imposing a 60-day clock on a decision about the Keystone XL pipeline permit; at that time, the requested permit lacked critical information, including the exact route of the pipeline. We knew that 60 days was not enough time to complete the work and the analysis needed relevant to the national interest determination, especially given that the route had not been finalized. We have been committed to carrying out a thorough, rigorous, inclusive and transparent review of this application and this was not possible within the timeline imposed. We decided – based not on the merits but on the inadequate time period and incomplete review – to recommend that the President deny the permit.

This brings us to H.R. 3548. Last week the President concurred with our recommendation that the Keystone XL project would not serve the national interest at this time. That decision was based on the fact that the exact route of the pipeline has yet to be identified in critical areas. As a result, there are unresolved concerns for a full range of issues, including energy security, foreign policy, economic effects, health, safety, and environmental impacts, among other considerations. This new legislation would not resolve any of these concerns; it just imposes narrow time constraints and creates automatic mandates that prevent an informed

decision. The legislation raises serious questions about existing legal authorities, questions the continuing force of much of the federal and all of the state and local environmental and land use management authority over the pipeline, and overrides foreign policy and national security considerations implicated by a cross border permit, which are properly assessed by the State Department.

I know that each and every Member of this Committee is concerned about our nation's energy security, and I can assure you that Secretary Clinton and the Department of State share that concern. Internationally, we remain fully engaged with all our key suppliers, including Canada, as we work on issues of energy diplomacy while at the same time transitioning to cleaner sources of energy. As we do so, the Department of State remains committed to carrying out its responsibilities under Executive Order 13337 with diligence and fairness to the applicants but with ultimate concern for the best interests of the American people.

Thank you again for this opportunity to testify before this Subcommittee and I would be pleased to answer any questions the subcommittee might have.

Mr. WHITFIELD. Thank you, Ms. Jones.
 Mr. Wright, you are recognized for 5 minutes.

STATEMENT OF JEFF C. WRIGHT

Mr. WRIGHT. Thank you. Chairman Whitfield, Ranking Member Rush and members of the subcommittee, my name is Jeff Wright and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission, and I appreciate the opportunity to appear before you today. The Office of Energy Projects is responsible for, among other things, the certification of interstate natural gas pipelines pursuant to the National Gas Act.

H.R. 3548, the North American Energy Access Act, addresses the Keystone XL pipeline project. I have no position on the proposed bill, but should Congress direct the Commission to act on an application for the project, the Office of Energy Projects as the Commission's infrastructure review branch would likely take a primary role in advising the Commission on the matter. Therefore, I will offer comments on the proposed bill with the goal of seeking to ensure that if Congress gives this responsibility to the Commission, the legislation should provide clear and effective procedures for conducting this review.

Before commenting on specific sections, I do note that the authorization provided by the bill would differ substantially from the Natural Gas Act in that the proposed act does not make any explicit provision for procedures such as public notice, public comment, issuance of an order supporting a Commission decision, rehearing or judicial review in conjunction with the Commission's consideration of an application.

I now turn to specific provisions of the act. Section 3(a) of the bill would require the Commission to approve the project within 30 days of receipt of an application, and if the Commission has not acted on the application within these 30 days, the application is deemed approved. The 30-day deadline would not permit construction of an adequate record of allow for meaningful public comment in arriving at a decision. In fact, section 3 could be read as giving the Commission no discretion in the issuance of the permit.

The section also states that the permit is to be implemented in accordance with the terms of the final Environmental Impact Statement. However, it is not clear whether the Commission or any other entity would have authority to ensure and enforce compliance with the measures required by that document.

Section 3(b)(1) allows for the applicant or permit holder to propose a modification of the route or other terms of the final Environmental Impact Statement and for the Commission to authorize such a modification. The bill, however, does not articulate a standard or a process for such a decision. Section 3(b)(2) of the bill states that the Commission will enter into a memorandum of understanding with the State of Nebraska for an effective and timely review under the National Environmental Policy Act of any route modification of the project in the State of Nebraska. Upon approval of the modification by the Governor of Nebraska, the Commission will have 30 days to finish its review and to approve the modification, and Section 3(b)(3) provides that if the Commission has not acted within 30 days, a modification shall be deemed approved.

The proposed process here is unclear. The bill appears to contemplate that such entity, either the Commission or the State, will issue a NEPA document regarding a Nebraska modification after which the Governor of Nebraska will have the opportunity to approve the proposal. The Commission then would have 30 days to complete consideration of and approve such modification. This section could be read to mean that the Commission has no discretion but to approve a Nebraska modification, and further, this section does not appear to provide a process for public notice and comment, opportunity for hearing or rehearing.

Section 4 of the proposed legislation states that a permit issued under this act shall be the sole legal authority required to construct and operate the pipeline except for the safety oversight of the Department of Transportation's Pipeline and Hazardous Materials Safety Administration and the Commission's existing rate and tariff authority. The language makes it unclear whether such permits from other Federal agencies would still be required. Further, while the Department of State is responsible for issuing the Presidential Permit that authorizes the border crossing facilities, individual States or subdivisions thereof, depending on State law, have authority to site oil pipelines within their jurisdiction. This proposed legislation could be construed as providing that Federal jurisdiction supplants local authority.

This concludes my testimony, and I will be happy to answer any questions you may have.

[The prepared statement of Mr. Wright follows:]

Testimony of Jeff C. Wright
Summary of Major Points

- The Federal Energy Regulatory Commission (the Commission) is responsible for, among other things, the siting of natural gas pipelines. The Commission has no authority and no experience with the siting of oil pipelines.
- We have no position on the proposed bill, H.R. 3548. If directed, the Commission will carry out the mandate of the legislation to the best of its ability.
- We offer several technical comments on the proposed legislation:
 - Unlike our statutory provisions concerning gas pipeline siting, there are no explicit provisions for procedures such as public notice, public comment, issuance of an order supporting a Commission decision, rehearing, or judicial review.
 - Based on our experience in siting gas pipelines, the 30-day deadline for approval of a permit does not allow sufficient time to build an adequate record to arrive at a defensible decision.
 - It is unclear what entity would enforce the terms of the EIS.
 - The proposed process for a modification (in and out of Nebraska) is unclear and would appear to not allow the building of an adequate record upon which to base a defensible decision.

- It is unclear whether the legislation would obviate the need for permits from other agencies.
- The legislation could be construed as providing that federal jurisdiction supplants local authority.

**Testimony of Jeff C. Wright
Director, Office of Energy Projects
Federal Energy Regulatory Commission
Before the Committee on Energy and Commerce
Subcommittee on Energy and Power
United States House of Representatives**

**Hearing on
*American Jobs Now: A Legislative Hearing on H.R. 3548, the North
American Energy Access Act*
January 25, 2012**

Mr. Chairman Whitfield and Ranking Member Rush and members of the subcommittee:

My name is Jeff Wright and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission (FERC or Commission). The views I express are my own and not necessarily those of the Commission or of any individual Commissioner. I appreciate the opportunity to appear before you to discuss H.R. 3548.

Summary

1. We have no position on the proposed bill, H.R. 3548.
2. Although FERC is the federal agency with responsibility over the certification of interstate natural gas pipelines and storage facilities, the Commission has no authority over the siting of interstate oil pipelines. However, I am testifying today to offer technical comments on H.R. 3548 based on my expertise.

I. Background

The Office of Energy Projects is responsible for the certification of interstate natural gas pipelines and storage facilities; the authorization and oversight over the construction and operation of on-shore and near-shore liquefied natural gas (LNG) terminals; and the licensing, administration, and safety of non-federal hydropower projects. In reviewing applications for proposed projects, the Commission is required by the Natural Gas Act (NGA) and the Federal Power Act (FPA) to provide public notice and opportunity for hearing before acting, to explain the reasons for its decisions, and to authorize only those projects that it determines, in accordance with the provisions of the relevant statutes, are in the public interest.

II. H.R. 3548

H.R. 3548, the North American Energy Access Act, addresses the Keystone XL Pipeline Project (project). Should Congress direct the Commission to act on an application for the project, the Office of Energy Projects, as the Commission's infrastructure review branch, would likely take a primary role in advising the Commission on the matter. Therefore, I will offer comments on the proposed bill, with the goal of seeking to ensure that, if Congress gives this responsibility to the Commission, then the legislation should provide clear and effective procedures for conducting this review.

Before commenting on specific sections, I note that the authorization provided by the bill would differ substantially from either the NGA or the FPA in

that the proposed Act does not make any explicit provision for procedures such as public notice, public comment, issuance of an order supporting a Commission decision, rehearing, or judicial review in conjunction with the Commission's consideration of an application.

I now turn to the specific provisions of the Act.

A. Section 3

Section 3(a) of the bill would require the Commission to approve the project within 30 days of receipt of an application and, if the Commission has not acted on the application within these 30 days, the application is deemed approved. The bill also states that the Commission is not required to issue a record of decision, as would normally be required when implementing the National Environmental Policy Act of 1969 (NEPA) under the NGA and FPA. Further, the 30-day deadline would not permit construction of an adequate record or allow for meaningful public comment in arriving at a decision. In fact, section 3 could be read as giving the Commission no discretion in the issuance of the permit (other than to choose not to act). This section also states that the permit is "to be implemented in accordance with the terms of the Final Environmental Impact Statement"; however, it is not clear whether the Commission or any other entity would have authority to ensure and enforce compliance with the measures required by that document. The bill provides no specific authority.

Section 3(b)(1) allows for the applicant or permit holder to propose a modification of the route or other terms of the final environmental impact

statement (FEIS) issued by the Department of State and for the Commission to authorize such a modification. The bill, however, does not articulate a standard or a process for such a decision.

Section 3(b)(2) of the bill states that the Commission will enter into a Memorandum of Understanding with the State of Nebraska for “an effective and timely review” under NEPA of any route modification of the project in the State of Nebraska. Upon approval of the modification by the Governor of Nebraska, the Commission will have 30 days to finish its review and to approve the modification.

Section 3(b)(3) provides that if the Commission has not acted within 30 days on an application for a modification approved by the Governor of Nebraska, then the modification shall be deemed approved.

The proposed process in this section is unclear. Typically, a federal agency develops a NEPA document in the course of reviewing a proposed action. The bill appears to contemplate that some entity – perhaps, but not necessarily, the Commission – will issue a NEPA document regarding a Nebraska modification, after which the Governor of Nebraska will have the opportunity to approve the proposal. The Commission then would have 30 days to “complete consideration of and approve” such modification. The section could be read to mean that the Commission has no discretion (other than to choose not to act), but to approve a Nebraska modification. Further, the section appears to allow for no process for public notice and comment, opportunity for hearing, or rehearing. As a result,

even assuming that the Commission has discretion, the Commission might have only limited information on which to act on a Nebraska modification. Also, if a modification proposed under section 3(b)(1) conflicted with a Nebraska modification under section 3(b)(2), the Commission would have to compare and select an alternative within 30 days, making reasoned decision making extremely difficult.

B. Section 4

Section 4 of the proposed legislation states that a “permit issued under this Act shall be the sole legal authority required to construct and operate” the pipeline except for the safety oversight of the Department of Transportation’s Pipeline and Hazardous Materials Safety Administration and the Commission’s rate and tariff authority. An FEIS contemplates that the project will be constructed and operated in compliance with permits from other agencies (e.g., the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, etc.); however, the language of Section 4 makes it unclear whether such permits would still be required. Further, while the Department of State is responsible for issuing the Presidential Permit that authorizes the border crossing facilities (and the requisite NEPA review), under the current law, individual states (or subdivisions thereof, depending on state law) currently have certain authority to site oil pipelines within their jurisdiction. This proposed legislation could be construed as providing that federal jurisdiction supplants local authority.

III. Conclusion

This concludes my testimony. I will be happy to answer any questions you may have.

Mr. WHITFIELD. Thank you very much, Mr. Wright.

I will recognize myself for 5 minutes of questions. Ms. Jones, on October 15, 2010, Secretary of State Clinton said she was inclined to approve the Keystone pipeline permit. On October 31, 2011, White House Press Secretary Jay Carney stated the fact is that this is a decision that will be made by the State Department, and the very next day, President Obama said the decision would rest with him. But in the President's announcement last week to reject the pipeline's permit, he said he had accepted the State Department's recommendation to do so.

So my question would be, were you involved in the decision made at the State Department and did you recommend to the President that he reject this permit?

Ms. JONES. Thank you, Mr. Chairman. The recommendation that went to the President was a State Department recommendation, and it came from my bureau and other bureaus. It came through the deputy and through the Secretary to the President.

Mr. WHITFIELD. So your bureau recommended that the——

Ms. JONES. Yes, sir.

Mr. WHITFIELD [continuing]. Permit be denied?

Ms. JONES. Yes, sir.

Mr. WHITFIELD. And what other bureaus at the State Department were involved in that decision making?

Ms. JONES. The other bureau that is involved is the Bureau of Economic Affairs. The State Department looks at this pipeline across all of the issues that are involved so there are multiple bureaus involved in all of the meetings and discussions that we have. We also have some energy expertise, and we also have of course the regional bureau which handles matters with Canada.

Mr. WHITFIELD. Now, I think Mr. Walden over there has a copy of the impact statement, which is quite voluminous, but isn't it true that the State Department's draft Environmental Impact Statement concluded that the Keystone pipeline would have limited adverse environmental impact?

Ms. JONES. Mr. Chairman, what the statement said was, it suggested that there would be little adverse impact to most resources. It then went on to say that was the case if the applicant followed all of the State and local rules and all of the mitigation procedures that were outlined. It then went on to say there were three or four areas that were of concern where there could be impact: called out spills a possibility, called out cultural resources related to Native Americans, called out wetlands and some other areas where trees and shrubs would not be put back after the pipeline was put in. The Environmental Impact Statement is very long. The summary is just a page, but there are many other pieces throughout the document.

Mr. WHITFIELD. Isn't it true that the State Department's own Environmental Impact Statement included review of an alternative not to build the pipeline at all and didn't the Environmental Impact Statement conclude that building the pipeline along the preferred route was better environmentally than no pipeline at all?

Ms. JONES. In the Environmental Impact Statement, we looked at many alternative routes and we analyzed those, and we looked at routes that avoided the Sand Hills. We looked at routes that

took short little jogs and made different changes. The Environmental Impact Statement did not identify any of those alternative routes as more preferable to the proposed route at that time based on the different environmental considerations that the different routes had as well as economic and some technical issues.

But Mr. Chairman, the denial of this permit is related not to all of these pieces but to the timeline that we had in that we did not have a complete route to look at at this point.

Mr. WHITFIELD. Well, Ms. Jones, reading directly from the Federal Environmental Impact Statement, it says, "As a result of these considerations, the Department of State does not regard the no action alternative, that is, not to build the pipeline, we do not regard that alternative to be preferable to the proposed project." So this language in here is very clear that as opposed to not doing anything, the State Department concluded it was preferable to build the pipeline. So we found ourselves confused about how all of a sudden the State Department and the President reverse themselves on this. After all, this was a study that went on for 40 months or so.

My time is expired. At this time I would like to recognize the gentleman from Illinois, Mr. Rush, for 5 minutes.

Mr. RUSH. Thank you, Mr. Chairman.

Ms. Jones, most people would agree that haste makes waste. So my question is, why did the State Department recommend that the President deny the Keystone XL pipeline application?

Ms. JONES. We recommended the denial because we felt we did not have the time to get the information that was needed on the alternative routes in Nebraska, and with not getting that information, we would also be unable to look at the other factors, economic, socioeconomic factors, environmental factors as well as foreign policy and energy security. We did not have the time to do that, and that is why we recommended denial. It was not based on the merits of the project.

Mr. RUSH. Well, maybe you can further explain this. Why was the "full assessment" not completed by the arbitrary deadline set forth by the Republican bill and what additional issues did the State Department not have time to consider?

Ms. JONES. In November when we identified that there was the need for additional information and in-depth analysis on alternative routes that would avoid the ecologically unique area, the Sand Hills in Nebraska, we recognized that there are many pieces to that information, and the first piece we don't have yet is to just identify what some of those alternative routes may be. So we don't even have a complete route for this pipeline, which goes through the whole central part of the country. That is one thing we don't have.

We also don't have the level of detail. If we were to have a route, we would then have to get into the level of detail regarding all of the different kinds of information—the topography, the number of bodies of water crossed, if it crossed any aquifers. Then we would also have to look at if there were any endangered species issues, and of course, we would have to interact with the communities along that new route to hear their concerns and to understand what any issues might be there. So that overall process would take

several months and the estimate that we put out there was supported by both the applicant and the State of Nebraska when we talked to them about this. So this is the process that we had defined and worked with partners, both the applicant and the State of Nebraska, to understand what would be needed to get the information that we thought we needed to make a decision that would be very well informed.

Mr. RUSH. Do you think then that it would have been irresponsible, reckless and potentially harmful to the American public had you tried to grant permits within these artificial deadlines as established by the Republicans in this situation?

Ms. JONES. Well, I think it would have been irresponsible because we didn't have defined a significant portion of a major pipeline that would be a major piece of infrastructure that would affect our country for many years. So I think having that information was an important piece, and that is what we based our first decision on November 10th and this most recent decision is based on the fact that we did not have the time to get the information we think we needed.

Mr. RUSH. In all of your experience in your particular role and your capacity at the State Department, have you ever had any similar instances whereby Congress enacted some artificial deadline that did not allow you the time to thoroughly and completely perform your responsibilities to the American public?

Ms. JONES. Not that I can recall, Congressman.

Mr. RUSH. Thank you, Mr. Chairman. I yield back.

Mr. WHITFIELD. Thank you, Mr. Rush.

At this time I would like to recognize the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman.

I need to make a disclosure before I ask my questions. My Congressional district in Texas, if it were a State, at one time would have been the fifth largest energy-producing State in the country. I have producing oil wells, producing natural gas wells. I have producing coal mines. I have coal-fired power plants. I have gas-fired power plants. I have oil pipelines. I have natural gas pipelines. I have water pipelines existing that are in use, and some that are not in use but are still underground. I have big pipelines and little pipelines. So I think I know a little bit about this subject.

I have listened with interest to the gentlelady from the State Department's explanation, and I will say that she puts the best face possible on a terrible decision that her department has made. One of the things that you just said, Madam Secretary, was that there were socioeconomic factors that had to be considered. Where is that in the law, especially the State Department, socioeconomic factors?

Ms. JONES. Congressman, the—

Mr. BARTON. No, is it in the law? I don't need a long, dodge answer. Is there a statute under law that says the State Department has to consider socioeconomic factors, yes or no?

Ms. JONES. It is in the Executive Order.

Mr. BARTON. Oh, it is in the Executive Order. That is not a law.

Ms. JONES. It is in NEPA as well, sir.

Mr. BARTON. I see. Well, I would like you to provide it, if that is the case.

Is it a socioeconomic factor that a project might bring thousands of high-paying jobs to a region? Is that a socioeconomic factor?

Ms. JONES. Yes, it is.

Mr. BARTON. Is it a socioeconomic factor that a project might bring much-needed energy to the mid-continent and the lower Southwest and southeastern States? Is that a socioeconomic factor?

Ms. JONES. Yes, it is.

Mr. BARTON. OK. And were those considered?

Ms. JONES. Absolutely.

Mr. BARTON. Absolutely? So——

Ms. JONES. The decision at this time was not based on those factors.

Mr. BARTON. So those socioeconomic factors might be the reason that until the radical environmentalists begin to protest and petition against it that when the Secretary of State was asked out in California the status of the application, she indicated that she was inclined or the State Department was inclined to approve it? Is that a fair statement?

Ms. JONES. We considered—we were considering all of those factors that you mentioned, Congressman, but we were unable to complete that analysis because of the deadline that was put forward.

Mr. BARTON. What is the statutory deadline in the law for consideration? Isn't it 180 days after receipt of the application?

Ms. JONES. I am not sure, sir.

Mr. BARTON. OK. I know it is not 4 years, OK? I am not going to swear it is 180 days but I think it is 180 days.

Ms. JONES. My understanding is that in previous cases where we have reviewed pipelines, it has taken 2 years or so. So I don't know what the statutory timeline is.

Mr. BARTON. Well, there are three phases of a pipeline. You have the construction phase, you have the operation phase, and unfortunately, on occasion, you can have a catastrophic accident once it is in operation. Were there concerns about the construction of the pipeline? What I am trying to get at is, the primary concern of the State Department. Is it the construction phase concern, is it an operation phase concern or is it a concern about some sort of a catastrophic event that would spill oil out into the environment?

Ms. JONES. Our concern at this point, sir, was that we did not have time to do the analysis. All of the dimensions of the issue that you are talking about, we had been studying. Certainly the spills, certainly the issues around construction and operation, but the reason the decision was taken was because we did not have the time——

Mr. BARTON. But we fought and won World War II in less time than it has taken so far to evaluate this project. I mean, with all due respect, it is an insult to the American people to say that you need more time. There are 10 other agencies that reviewed this project, and correct me if I am wrong, but my understanding is that the Corps of Engineers approved it, the Department of Agriculture approved it, the Energy Department approved it, the Department of Interior approved it, the Department of Transportation approved it, the Environmental Protection Agency, believe it or not, approved it, the Defense Department approved it, the Justice Department approved it, the Homeland Security Department ap-

proved it, and the Department of Commerce approved it. Only the State Department, which I believe by law is required to look at the international implications, since it is TransCanada, only the State Department did not approve it.

Mr. WHITFIELD. The gentleman's time is expired.

Mr. BARTON. With that, I yield back, Mr. Chairman.

Mr. WHITFIELD. At this time I would like to recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

When we first held a hearing on this subject a year ago, there were press reports that Koch Industries would be one of the "big winners" if this pipeline was constructed, and we asked Koch Industries whether this was true.

Mr. SULLIVAN. Will the gentleman yield?

Mr. WAXMAN. No.

And we were told——

Mr. SULLIVAN. Will the gentleman yield?

Mr. WAXMAN [continuing]. That they had no interest whatsoever in the pipeline, but then we learned that they have told the Canadian government they have a direct and substantial interest. Something doesn't add up, and I have before me a document. This is the application for intervenor status in Canada, and this is an application from a company called Flint Hills Resources Canada of Flint Hills, which is a subsidiary of Koch Industries, and they said, "What is your specific interest in this proceeding?" They said, "Flint Hills Resources of Canada is among Canada's largest crude oil purchasers, shippers and exporters, coordinating supply for its refinery in Pine Bend, Minnesota. Consequently, Flint Hills has a direct and substantial interest in the application."

Mr. Chairman, I would like this document to be made part of the record.

Mr. WHITFIELD. Without objection.

[The information follows:]

National Energy
BoardOffice national
de l'énergie**Application for Intervenor Status**

Date: 5/19/2009 10:14:17 AM

Proceeding Information

Project Name: Keystone XL Pipeline	Company Name: TransCanada Keystone Pipeline GP Ltd.
Hearing Order No: OH-1-2009	File Number: OF-Fac-Oil-T241-2009-01 01

Intervenor Information

Name: Joanne Pasini	Address: 1510, 111-5th Ave SW
Title:	City: Calgary
Organization: Flint Hills Resources Canada LP	Province: AB
Telephone: (403) 716-7762	Postal Code: T2P 3Y6
Facsimile: (403) 716-7720	Email: joanne.pasini@fhr.com
Address for Courier/Personal Service: (if different from mailing address)	
Address:	Telephone:

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Calgary, Alberta T2P 0X8444, Septième Avenue S.-O.
Calgary (Alberta) T2P 0X8

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<http://www.neb-one.gc.ca>
Telephone/Téléphone : 1-800-859-1265
Facsimile/Télocopieur : 1-877-288-8803

Authorized Representative Information

If you do not have an authorized representative, please leave blank.

Name	Address
Title	City
Organization	Province
Telephone	Postal Code
Facsimile	Email
Address for Courier/Personal Service: (if different from mailing address)	
Address	Telephone

Issues and Interests

What is your specific interest in the proceeding?	
Flint Hills Resources Canada LP ("Flint Hills") is among Canada's largest crude oil purchasers, shippers and exporters, coordinating supply for its refinery in Pine Bend, Minnesota. Consequently, Flint Hills has a direct and substantial interest in the application.	
Do you or your authorized representative intend to appear at the public hearing?	Yes ☐ No ☒
If you do not intend to actively participate at the hearing, please state clearly the reasons why your interest in the proceeding requires an intervention.	
At this time, Flint Hills does not anticipate taking an active role in this hearing. However, Flint Hills reserves the right to appear at the public hearing and to address the issues set out in the hearing order as well as any issues that may arise in the course of the proceeding. This includes the right to participate in the oral hearing through cross examination of other parties, introduction of evidence and presentation of argument.	
Do you feel that your concerns are covered in the List of Issues included in the Hearing Order? If not, provide your suggested issues or amendment to an existing issue. Include a clear explanation of their relevance to the Hearing.	

Access, Notification and Service

Which official language do you wish to use in correspondence with the Board and at the public hearing?	English ☒ French ☐
Documents submitted electronically are available on the Board's electronic document repository. If you have the capability to access the repository, the Board and other parties in this proceeding may serve you notification that a document has been filed and is available in the repository, instead of serving you a hard copy of the document.	
Do you have the capability to access the Board's electronic document repository?	Yes ☒ No ☐

Participation at the Hearing

Intervenors wishing to give evidence must file their written evidence with the Board and serve a copy on all parties by the deadline for intervenor evidence indicated in the Timetable of Events in the Hearing Order.		
Will you be filing written evidence?	Yes ☐	No ☒
Do you intend to question the Applicant or intervenors on their evidence?	Yes ☐	No ☒
Do you intend to present a final argument at the end of the hearing?	Yes ☐	No ☒
Do you require a paper copy of the daily transcripts (Note: You may view the transcripts through the Board's Internet site at www.neb-one.gc.ca)?	Yes ☐	No ☒

Additional Comments

Mr. WAXMAN. This document raises the issue that the statement that Koch Industries was not involved is inaccurate because they are involved and they claim to intervene in Canada because they are involved, and that is why I think we need to get more information.

Now, the Keystone XL tar sands pipeline poses substantial risks for Americans. This would pump tar sands almost 2,000 miles across the middle of America from Canada to the Gulf of Mexico. Even if the pipeline is rerouted around Nebraska, the Sand Hills, it will almost certainly still go through the Ogallala Aquifer, endangering water supplies for 2 million Americans, their farms and their businesses. The State Department's analysis indicates that shifting to tar sands oil from crude oil would increase carbon pollution and that increase could be substantial.

Now, these are risks. They are real and they are serious. The benefits for oil companies are also real. They will finally be able to export tar sands to Asia. Port Arthur is even a tax-free trade zone. But the benefits for Americans are a lot less clear.

Dr. Jones, how many jobs would the pipeline generate, according to the State Department's analysis?

Ms. JONES. Economic analysis and economic consideration is part of the review we have been doing that was cut short with the deadline we faced, but in the final Environmental Impact Statement, we approximated based on the number of work crews that would be used to build the pipeline at 5,000 to 6,000 construction jobs would be needed per year.

Mr. WAXMAN. Per year. For how many years?

Ms. JONES. For 2 years.

Mr. WAXMAN. Well, the oil industry has been saying this would create 20,000 or even 100,000 jobs. They haven't provided any information to us supporting those claims or challenging your estimate. Have they submitted information to you challenging your estimate?

Ms. JONES. Congressman, we have seen many different estimates on the number of jobs that would be created with this pipeline, and the job creation issue is a very complicated issue because—

Mr. WAXMAN. Have the oil companies challenged your data and your claim?

Ms. JONES. Well, we have had a lot of challenges coming from a lot of different directions but that is the number that we have gotten through the—

Mr. WAXMAN. Let me get back to my time because as soon as my time is up, that gavel is going to be smashed.

The Washington Post claimed that this project will create tens of thousands of jobs. This was called a Two Pinocchio challenge when this statement was made. The economy is recovering. We need millions of new jobs to reduce unemployment and get the economy moving again. The President proposed an American jobs bill. Instead of doing that legislation, we are considering legislation to ram through one pipeline. I think that is a pitiful excuse for a jobs policy.

I want to ask you about the review, Dr. Jones. Assuming that TransCanada reapplies for a permit and the State Department is still the relevant agency, you will need to assess the application in

light of a new route. Will you commit to examine other questions about addressing U.S. carbon emissions and climate change when you look at this question?

Ms. JONES. Congressman, should a new application be submitted, it would be reviewed without prejudice and we would look at all of the different aspects of the project, and as you mentioned, certainly greenhouse gases as well as the economic considerations and other broader environmental issues, foreign policy, everything would be considered, and we would just do that in all fairness and transparency as we have tried to do with this process, and it would be a new application.

Mr. WAXMAN. Thank you.

Thank you, Mr. Chairman, for your generosity on the time.

Mr. WHITFIELD. At this time I would like to recognize the gentleman from Oklahoma, Mr. Sullivan, for 5 minutes.

Mr. SULLIVAN. Thank you, Mr. Chairman, and I would like to yield 1 minute of my time to my friend from Kansas, Mr. Pompeo.

Mr. POMPEO. Thank you.

You know, I have sat here for a year and watched folks on the left obsess about one of my constituents, Koch Industries. But today we reached a new place. We reached a place where they have now asked a private company to come talk about whether they happen to benefit from a particular permit application. This makes no sense to me. We are supposed to do good policy. We are not supposed to decide whether a particular company benefits or not. I can't understand why whether Koch Industries benefits or not would be relevant to our decision. We should decide if this is in the American national interest.

I would not for a moment suggest that we should bring Warren Buffett in to testify about whether his company and his rail interest would benefit from this permit application. I have read that he would be greatly benefited if we do not get that permit approved. I cannot believe that anyone on this committee would have their decision on whether or not to vote for this piece of legislation turn on whether Koch Industries or any other private company benefited or was harmed by this. This is not what we are supposed to be doing.

The Constitution tells us we are supposed to do good public policy and we should not be making decisions based on whether one company or another benefits.

I yield back.

Mr. WHITFIELD. Mr. Pompeo, Mr. Sullivan didn't want you to go over 1 minute.

Mr. SULLIVAN. Well, thank you, Mr. Pompeo. Thank you, Mr. Chairman.

Mr. POMPEO. Thank you, Mr. Sullivan.

Mr. SULLIVAN. Thank you, Ms. Jones, for being here today. And it has taken, you know, 3 years, no decision, and my constituents are wondering about this, and I know the government is kind of slow, but when do you think you could make a decision? Do you think 10 years from now? Do we need to reapply, or when do you think you can make a decision?

Ms. JONES. Congressman, when we made the decision in November that we needed additional information, we put an estimate out

there that it would take until probably the first quarter of 2013, but at this time we recommended the denial because we didn't have the time to do that.

Mr. SULLIVAN. Well, these other departments seem to have approved. We heard from Mr. Barton about that. Why are they so nimble and you are so slow?

Ms. JONES. Congressman, I didn't have a chance to respond to Congressman Barton's comments, but we did not finish the national interest determination of consultations with other agencies so I was not clear as to what kind of approval that was referring to because we didn't finish the process.

Mr. SULLIVAN. OK. Ms. Jones, on January 11th, Secretary of State Hillary Clinton made remarks calling Iran's Strait of Hormuz threats "provocative and dangerous." She also called the strait "the lifeline that moves oil and gas around the world." According to the Department of Energy, about 15.5 million barrels of oil a day, or a sixth of the global consumption, passes through the Strait of Hormuz between Iran and Oman at the mouth of the Persian Gulf. The fact is that crude oil futures have risen 7.4 percent since December 16th on increasing concern that Iran, OPEC's second largest producer, would close the passage in the face of pressure from the U.S. and European governments to abandon a suspected nuclear weapon program.

In light of these national and energy security threats from Iran, why has it taken 3 years for the State Department to review the Keystone XL pipeline? And do you agree that it is in our national interest for the United States to be more energy-independent from regimes such as Iran that want to harm our way of life, impose energy security threats, and would you agree that fluctuating oil prices demonstrate how our economic and national security is threatened by reliance on unstable sources of oil? And Ms. Jones, as you noted earlier, Secretary of State Hillary Clinton is concerned about Iran's provocative actions in the Strait of Hormuz. Does the State Department share the same concerns with our good friend and neighbor, Canada? Yes or no on the Canada thing.

Ms. JONES. Yes, we share a commitment with Canada to work towards energy security. It is one of the areas that is part of our very strong bilateral relationship. And as you point out, the whole issue of energy independence and energy security is a very important national priority and it was and is one of the considerations when pipelines are being reviewed.

We did not have the opportunity to complete that review. We did not have a complete route for this pipeline. That is the reason why we took the action, made the recommendation that we did last week. It is only partially defined, this pipeline at this point.

Mr. SULLIVAN. Well, Ms. Jones, Keystone XL pipeline is a game changer for energy security. The pipeline when fully completed could transport nearly 1.3 million barrels of oil per day from Alberta and North Dakota to refineries in the Midwest and Gulf Coast. I believe it is in our national interest to move forward with this pipeline, and the State Department's 3-year delay in considering this pipeline is a national travesty and I wish it would have happened a lot sooner.

Thank you, and I yield back.

Mr. WHITFIELD. At this time I recognize the gentleman from Texas, Mr. Gonzalez, for 5 minutes.

Mr. GONZALEZ. Thank you very much, Mr. Chairman, and good morning to the witnesses.

First, in full disclosure, I support the building of the pipeline, and I also believe that given the proper timelines to look at all factors that eventually this application will be approved with recommendations. It is a matter of time, and I will agree that time is of the essence and that we need to move forthwith, however, not to rush it. We can still do this properly and address all the concerns that have been mentioned by the two witnesses.

I believe that it will lead to energy security. It is my understanding if we do this, if we do this, the total production out of Canada and the United States will exceed the production of Saudi Arabia. That to me is energy security. I also believe it will result in more jobs in America just merely on the construction side. I also believe that it will lead to more jobs as a result of the United States being an exporter of fuel.

Now, the only problem I have is the representation that is consistently made by members of this committee and on the floor that this is going to inure to the benefit of the American consumer in lower gasoline prices. That is not going to happen, and the sooner they acknowledge that it is a world market and the leading export for the United States last year, according to a story that appeared in the Associated Press on the last day of last year, was fuel. Fuel. And there are tremendous implications for the United States as a result of that. But as a result of world market forces and selling it to the highest bidder means that the American public is not going to be paying less for fuel, and we need to continue to emphasize alternative means and fuels and hybrids and more efficiency and conservation.

The only real reservation I have is that we are placing all our eggs in one basket, and it may be the Keystone pipeline, and it is a distraction from pursuing more responsible energy policies that truly will lead to energy independence in this country but in a way that is safe and is cleaner, more efficient and cheaper to the American people. But this is part of it. I do believe that it is part of it.

Now, Dr. Jones, there has not been made any final determination on the application, and is it clear from your testimony that the reason it has not been approved is that you have not been given sufficient time?

Ms. JONES. Yes, sir, that is the reason.

Mr. GONZALEZ. Mr. Wright, let me ask you, now, you are not new to your job. I asked my staff to look into your background. I think you have been with FERC since the inception of the department that you worked with.

Mr. WRIGHT. In 1979, I began at FERC.

Mr. GONZALEZ. Since 1979. And your testimony today that what we are attempting to do or the proposition to basically circumvent or introduce a new process at this point in time would not be workable in its present form. Is that correct?

Mr. WRIGHT. Well, my testimony is based upon my experience with the siting of natural gas pipelines under the Natural Gas Act. Given the strictures of the Natural Gas Act and my experience

with gas pipelines trying to extrapolate to oil pipelines, it doesn't appear that would be enough time, as I mentioned, for procedures to be followed with public notice, public comment, time allowed to do an appropriate study under the National Environmental Policy Act.

Mr. GONZALEZ. Well, this is not the first time that Congress is unhappy with basically one department or one agency, and we try to transfer it to another, and the other agency or department is telling us it is still not going to work with the wording and the process that we are proposing. So I am hoping that we are listening. I hope that we can all be on one page. Understand that if we do this properly and correctly, it will be beneficial to the people of the United States of America in every respect, but let us just give it the time that is necessary.

And with that, I yield back. Thank you, Mr. Chairman.

Mr. WHITFIELD. At this time I recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. So many questions, so little time. Thanks for you all coming.

Last night, the President used a great phrase that was really coined by Republicans a couple years ago, which is, we need an all-of-the-above energy strategy. In fact, I was sitting with my friend on the other side of the aisle and I looked at him and he goes, yes, he should have credited you, Shimkus, for that phrase. All of the above means all of the above—nuclear, solar, wind, natural gas, crude oil, energy security. So we applaud him for that statement based upon that definition.

I want to continue to frame this debate. This is not a partisan debate by Members of the House of Representatives. When the first Keystone bill passed, 47 Democrats joined us in that piece of legislation. I think the vote was 279 to 147. This not also a debate against business versus labor because we had right at the same table you are at a strong group of friends from organized labor from the laborers to the operating engineers all supporting this, and why? They support it for job creation.

Last night in the Speaker's box, we had the owner and manufacturer of pipe. He has already built 600 miles of pipe from Arkansas, which is not part of your job calculations of job creation if you are just considering people who are putting the pipe in the ground. You fail to mention the people who built the pipe and the coke and the coal that goes into steelmaking nor do you consider the people who created the electric generators for the pumping stations. So that is where it is easy to say 20,000 jobs because, you know, we built pipelines. And you know how many people it takes for a mile pipe. So just multiply that by 1,700, 1,660, I think is the mileage. So it doesn't take a rocket scientist to figure out the job creation statistics and that is why organized labor, who is usually not real friendly to the Republican side, joined us, joined 47 Members on the Democrat side and was very, very supportive of this piece of legislation. So just on the record.

Another issue, in the Speaker's box, I had two refinery managers from close to my current district, and it will be in my new Congressional district, Ray Brooks from the Marathon oil refinery in Robinson, Illinois, hundreds of jobs, and they are already using oil sands

right now from the Keystone pipeline. So we have done research on moving oil crude, oil sands crude, through pipelines. We are already doing it. Also in attendance was Mr. Jay Churchill, the manager of the ConocoPhillips Company in Wood River. The ConocoPhillips refinery for the past 3 years had a \$2 billion expansion to be able to refine and crack this new crude oil. Thousands of members of organized labor were on the ground during the worst economic times. That is why I am proud to continue to talk about the brown economy.

You talk about energy security growing our country and what my friend Mr. Gonzalez said is absolutely correct. The brown economy creates more, better, high-paying jobs with great benefits and it doesn't get the credit that it deserves.

For Ms. Jones, because I guess I should ask a question. Did you know that in the Wall Street Journal January 4th that the Athabasca Oil Sand Company sold 40 percent of their oil sands interest? Do you know to which country?

Ms. JONES. No, sir, I do not.

Mr. SHIMKUS. China. Do you know why?

Ms. JONES. No.

Mr. SHIMKUS. Because they will now have the controlling interest in that oil field so they can do what? Develop it.

In political speak, what does profoundly disappointment mean in State Department international relations speak? What does profoundly disappointment mean?

Ms. JONES. Sir, it usually means exactly what it says.

Mr. SHIMKUS. They are ticked off, I hear. In State Department language, they are very angry.

Ms. JONES. That one.

Mr. SHIMKUS. I think the Chinese are profoundly pleased. The Canadians, our allies, are profoundly disappointed, and I yield back my time.

Mr. WHITFIELD. At this time I would like to recognize the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman, and I am glad to know my colleague from Illinois is now going to represent two refineries. I have still got three more up on you, so—

Mr. SHIMKUS. I am going to work for more. I am going to work for more.

Mr. GREEN. And I am also glad you are all for the above because I know you traditionally come from a coal area. I welcome you to the natural gas and oil caucus.

Mr. Chairman, I realize this hearing's primary focus is on H.R. 3548, the North American Energy Access Act. I am a strong supporter of the Keystone pipeline and have been from the beginning. We need this product, and I think by stopping Keystone pipeline from being built, we are preventing the future production of the Canadian oil sands and mitigated all air quality concerns associated with its production. Environment and safety concerns need to be dealt with, but without this product, we will continue to feed monies into countries that hate us for everything we stand for.

Having said that, I don't think we should be rewriting a long-standing process for one pipeline, which is why I do not support this bill and particularly the approach to last week's decision, but

I do have some questions about the process and I will use my time to address it.

Ms. Jones, the Executive Branch exercises permitting authority over the construction and operation of pipelines, etc. for petroleum literally since the Executive Order in 1968. Is that correct? And the Executive Order from President Bush 13337 amended that authority but did not substantially alter the exercise of that authority with the delegation to the Secretary of State. Is that correct?

Ms. JONES. That is correct.

Mr. GREEN. Ms. Jones, how many permits have been issued under this order since 1968 for pipelines crossing international boundaries?

Ms. JONES. I know of three.

Mr. GREEN. I am sorry?

Ms. JONES. I know of three at this point. I am not sure if that is accurate.

Mr. GREEN. OK. I guess because I have a district in Texas and most of our pipelines would come from Mexico instead of Canada, but it seems like there would be a number of them that crossed international borders between Mexico and the United States and, of course, Canada.

What is the average time that these permits have taken? And it is my understanding that other pipelines of a similar nature have been granted permits between 18 and 24 months.

Ms. JONES. That is right. It has been about 2 years or so.

Mr. GREEN. OK. And I know the State Department issued a favorable Environmental Impact Statement in August on the pipeline, and then you held several public hearings as a part of the interagency review. And by the way, I appreciate the State Department a couple years ago granting my request for a hearing in eastern Harris County east of Houston—actually, it was in Congressman Poe's district but it was right across the street from mine—where we could have our constituents talk about it.

You held those hearings, and when you announced in November that you were delaying decision, you pointed to concerns raised by Nebraskans about the pipeline going through Sand Hills. My question centers on the language included in the payroll tax extension that allowed for TransCanada to continue on the alternative route through Nebraska. I understand the President's frustration at having to decide in a 60-day time frame, but given the favorable EIS, the 57 special safety conditions agreed upon by the operator and the language allowing for the Nebraska issue to be dealt with, why were you not able to make the decision in 60 days? Because the average time was 18 to 24 months for previous pipelines, and this has been well over 3 years now. Why wasn't 60 days enough time?

Ms. JONES. Congressman, we felt we did not have the information we needed, particularly related to alternative routes in Nebraska, and since we did not have that and we didn't have all of the other related information that would go along with that route, and that is a significant portion of the pipeline. So it was an arbitrary timeline and we knew it would take more time for us to do the analysis.

Mr. GREEN. Well, granted, it was arbitrary but again, previous permits have taken 18 to 24 months. Now, this is a longer pipeline

than others. I know the original Keystone pipeline that goes into Congressman Shimkus's district and Indiana is much shorter, but it just seems like 3-1/2 years is plenty of time, and to give someone 60 days and say OK, you have done all these environmental studies, you need to make a decision, even though the pipeline, I have to admit, my colleague from Nebraska, Mr. Terry, may have a different opinion, but there are pipelines crossing Sand Hills right here. Did the EIS find that out?

Ms. JONES. No, sir. We didn't see any oil pipelines crossing the Sand Hills.

Mr. GREEN. OK. There are six pipelines, and I am not sure whether they are natural gas or what product they have, but there are already six pipelines, and I understand this pipeline route would be in that easement that is already being used by other products, and so that is the frustration.

And Mr. Chairman, I know I am almost—in fact, I am out of time. I don't know if we are going to have a second round or not, but I would be glad to submit follow-up questions.

Mr. WHITFIELD. I doubt that we are because we are going to be voting on the floor, and then I think there is going to be a ceremony for Ms. Giffords.

Mr. GREEN. I would like to, like we always do, if we could submit questions, because I didn't even get to FERC but to the State Department.

Mr. WHITFIELD. At this time I recognize the gentleman from Oregon, Mr. Walden, for 5 minutes.

Mr. WALDEN. Thank you very much, Mr. Chairman, and I welcome our witnesses today. This is interesting. I have been reading through the FEIS to a certain extent. I know you are all quite familiar with it.

On November 12, 1973, the United States House of Representatives under Democrat control took a similar sort of action in approving the TransAlaska pipeline on a vote of 361 to 14 and 60. They deemed that that pipeline met the standards. The Senate took it up and approved it on a 49-49 tie, and then Vice President Spiro Agnew cast the deciding vote, and that pipeline continued. Now, that was 800 miles of pipeline. It brought oil out of Prudhoe Bay and it was about that period that we had the Arab oil embargo. President Nixon at the time said, you know, we have got to do something about using America's energy reserves, and at least the pipeline came along and was deemed approved by Congress.

So this is not an unheard-of act to grant sufficiency. Now, maybe in the State Department you have not been involved in one of these. I get that. As somebody that represents a district that has 55 percent Federal and has watched things over the years, I believe in the Clinton administration there were circumstances involving forestry where NEPA was deemed to have been sufficiently achieved in a cleanup down in Texas after a windstorm, and I think even in North Dakota, maybe South Dakota after a fire. It is not unheard of and the Congress has done it before.

I want to get on the issue of jobs. In your final EIS on 3.10.58, it says that there is \$7 billion to construct the proposed project. We don't have any disagreement on that number, do we? Seven billion. And then you talk about the number of jobs, and in the FEIS, it

talks about hiring of 5,000 to 6,000 workers over the 3-year construction period. The related income benefits would be substantial—these are the words of the FEIS—and the proposed project would generate \$349.4 million in total wages—that is in the FEIS—and if the maximum construction workforce were 6,000 people, a total of \$419.28 million in wages would be generated.

You also talked about the effect beyond that. These numbers are only related just to the actual construction of the pipeline, correct?

Ms. JONES. Yes, sir.

Mr. WALDEN. And I was trying to find table 2.3.2-1 to get into the more localized, because the 5,000 to 6,000 jobs aren't the only jobs related to approval of this construction of the pipeline, are they?

Ms. JONES. That is right. I didn't get a chance to speak to the indirect jobs.

Mr. WALDEN. I am going to give you that chance right now because I believe—I mean, I have a company—not I, I mean there is a company in Oregon that is building the pumps for the XL pipeline. Could you talk to us, tell me what the FEIS says relative to the total number of jobs both construction direct and all the indirect jobs associated were the President to approve this. What is your best estimate?

Ms. JONES. We were in the process of analyzing the indirect jobs, and there are multiple models that people use for that.

Mr. WALDEN. Sure.

Ms. JONES. We did not complete that because of the timeline. We were candid, and we have—

Mr. WALDEN. It is not in the FEIS, the final Environmental Impact Statement?

Ms. JONES. We have the direct job numbers in there. We don't have the indirect. We were looking at that through the national interest determination and engaging with other agencies. We have some rough estimates that are similar to what the applicant is saying in terms of—

Mr. WALDEN. And what would those be?

Ms. JONES. I think it was approximately 35,000 per year.

Mr. WALDEN. For how many years?

Ms. JONES. Well, that is another point of discussion. One timeline was extraordinarily long, and there has been a lot of confusion about using person-years versus particular jobs. But we do not—

Mr. WALDEN. Well, how then in the executive summary of the FEIS does it say “operation post project would also result in long-term to permanent beneficial socioeconomic impacts including employment and income benefits resulting from long-term hires and local operating expenditures and increased property tax revenues. An estimated \$140.5 million annual property tax revenues would be generated by the proposed project.” Somebody has done some of that to get to that, right?

Ms. JONES. Yes. Some of that is in the FEIS but that is only one piece of the analysis, and we did not finish the rest of it. We recognize that the economic impact is a very important consideration but we did not finish that because we do not have the complete route for this pipeline.

Mr. WALDEN. My time is expired.

Mr. WHITFIELD. At this time I would like to recognize the gentleman from Pennsylvania, Mr. Doyle, for 5 minutes.

Mr. DOYLE. Thank you, Mr. Chairman.

Mr. Chairman, I just think the discussion over this Keystone pipeline, the back and forth has been unfortunate and it sort of mirrors the discussions we have on energy policy in general. People talk about the need for us to have an all-of-the-above strategy but you hear that said a lot but in reality and in practice, this seems to always be an either-or strategy on this committee when we have energy debates. If you are for coal or if you are for oil, then you can't be solar and wind, and vice versa. And the reality is, we do need to do all of this if we are going to have energy security in the country, and we need to pay particular attention to these nascent technologies in clean energy that are slowly but surely over time going to start to replace fossil fuels because, as we all know, fossil fuels aren't an infinite supply. They are a supply that is going to go down, and something has to take its place. Now, it is not going to take its place tomorrow. It is not going to take its place even 5 or 10 years from now. But if we don't start making investments in clean energy now, we are going to be in trouble down the road. So we need to do that also.

But having said that, it is in our interest to develop domestic supplies in this country and also to continue the relationship that we have with Canada. This pipeline is a small piece of that puzzle, and let us not delude ourselves, as Mr. Gonzalez said, that this is a silver bullet for anything. This is not going to lower people's gas prices, and this pipeline will not result in us having to no longer buy oil from OPEC nations. That is just not accurate and we shouldn't make people think that that is the case.

You know, there is going to be 800,000 tons of steel pipe in this project. I wish I could sit here and say that that steel is coming from the United States of America. Unfortunately, TransCanada has contracted with an Indian multinational company, Welspun Corp Limited, and a Russian company to manufacture the steel pipe for the Keystone XL pipeline. Now, as someone coming from Pittsburgh where we still make steel and headquarters of U.S. Steel, I would feel a lot better about this project too if just one little drop of U.S. steel was being made in this pipeline. Now, it is unfortunate that it isn't.

Having said all of that, I think that probably what has doomed this application more than anything was the politics that has been played when we passed the Payroll Tax Act to put in this 60-day clause and put this gun to the President's head and said you have to make this decision in 60 days, and it is just pure election-year politicking that has been going on on this issue. I agree with Mr. Gonzalez that eventually after the environmental reviews are done with this and we make sure that we have a route that is environmentally safe and all these things are checked, that this project should move forward but not until we do that, and I don't think we are there yet.

This legislation in front of us from a good friend of mine, Lee Terry, who I have tremendous affection and respect for, once again imposes this artificial deadline of 30 days and takes this out of the

hands of the State Department to an agency that does gas pipelines but not oil pipelines. I think it is a misguided effort.

So with the time I have left, I do want to ask a couple questions. Secretary Jones, I know we had planned earlier to have the Nebraska DEQ with us today but for whatever reason Mr. Linder is not appearing today, but I note in his testimony he lays out a timeline for his State intended to follow to establish this new route through Nebraska and complete any necessary environmental reviews and allow for public comment. Mr. Linder said in his statement that "If this were done on an aggressive schedule, a new route could be approved by October of 2012 at the earliest." Ms. Jones, does the State Department believe that the 60-day timeline laid out in the payroll tax bill has allowed for a complete recommendation from the State of Nebraska on the new route for the pipeline?

Ms. JONES. No, sir, we feel that we do need the time that Mr. Linder had put out in his estimate. We had talked to both the Department of Environmental Quality as well as to the applicant and the estimates of time that came in from all of them were within the same range.

Mr. DOYLE. Thank you. Has the State Department ever recommended a pipeline be in the national interest without having the entire proposed route before them? Have you ever done that before?

Ms. JONES. No, sir.

Mr. DOYLE. Was there any indication that the State of Nebraska would be able to complete a modified route proposal by February 21, 2011, which was the deadline imposed in the Payroll Tax Act?

Ms. JONES. No, sir, and that is why we felt we could not go forward.

Mr. DOYLE. Thank you. Did this lack of a complete route proposal—I see my time is expired. Thank you, Mr. Chairman.

Mr. WHITFIELD. Now, Mr. Doyle, I am trying to get through everybody before we have to go vote because we are not going to be able to come back, so thank you.

Mr. Terry, you are recognized for 5 minutes.

Mr. TERRY. Thank you, Mr. Chairman, and I have great affection and respect for my friend from Pittsburgh. Just to add some clarification, I think it is about 60 to 65 percent of the steel in this pipeline is U.S. steel. In fact, Mr. Shimkus mentioned that. The reason why Mr. Linder isn't here is because our State Department, Dr. Jones, objected to him being on the panel because it was beneath them to have a State official. So that is why he is not here and that his testimony—

Mr. DOYLE. Would my friend yield for just one second?

Mr. TERRY. Well, I have got a lot of questions. There is an email chain verifying that. I may have put a little editorial to it.

Let me just state that I am profoundly disappointed that the State Department objected to Mr. Linder being on the panel, and therefore he is not.

Now, for the record, I would like to introduce a media note from the State Department April 15th saying "In conclusion, the U.S. State Department expects to make a decision whether to grant or deny the permit before the end of 2011." Another one making the same statement of March 15, 2011, an Executive Office of the Man-

agement of Budget from the White House saying the same thing, that they are working with the State Department and all entities are working diligently and will have all of the information they need and will be able to make their decision by December 31, 2011. I would like to submit those for the record.

[The information follows:]



State Department Announces Next Steps in Keystone XL Pipeline Permit Process

Media Note

Office of the Spokesman

Washington, DC

March 15, 2011

The U.S. Department of State expects to request public comment on a Supplemental Draft Environmental Impact Statement (EIS) for the proposed Keystone XL pipeline in mid-April. The Supplemental EIS will seek public comment on issues that will benefit from further public input. A Federal Register notice, to be issued in the mid-April time period, will provide further details.

Keystone XL is a proposed 1700-mile oil pipeline from the U.S.-Canadian border in Montana, through Cushing, Oklahoma, to refineries on the U.S. Gulf Coast.

In order to provide interested parties and the public the maximum opportunity to comment on this important project, the Department will continue to solicit public comment. The State Department has held over 20 public comment meetings along the pipeline route in Montana, South Dakota, Nebraska, Oklahoma, and Texas, as well as in Washington, D.C.

The public will have 45 days to comment on the Supplemental Draft EIS after the anticipated mid-April comment period begins. Following issuance of a Final EIS, the State Department will solicit public comment and host a public meeting in Washington, D.C., before it makes a determination under Executive Order 13337 on whether issuance of this permit is in the U.S. national interest.

The U.S. Department of State expects to make a decision on whether to grant or deny the permit before the end of 2011.



State Department Releases Keystone XL Pipeline Supplemental Environmental Impact Statement

Media Note

Office of the Spokesman

Washington, DC

April 15, 2011

The U.S. Department of State posted the Supplemental Draft Environmental Impact Statement (EIS) for the proposed Keystone XL pipeline on April 15. The Supplemental is available on the State Department's website:
<http://www.keystonepipeline-xl.state.gov>.

Keystone XL is a proposed 1700-mile oil pipeline from the U.S.-Canadian border in Montana, through Cushing, Oklahoma, to refineries on the U.S. Gulf Coast.

A Federal Register Notice will be issued on April 22, marking the opening of a 45-day public comment period and providing details about how to file a comment.

Once the Department of State issues a Final EIS, interested federal agencies, such as the Department of Energy and the Environmental Protection Agency, will have 90 days to provide their opinion on whether issuance of a Presidential Permit would be in the national interest.

The U.S. Department of State expects to make a decision on whether to grant or deny the permit before the end of 2011.

PRN: 2011/591

Then the point here is that we are using the State of Nebraska as the excuse to delay the decision until after the election. I don't think it is any coincidence that the State Department and the entities feel like they would be in a position to make a decision within about 60 days after the election. I think the point—or they said in the first quarter of 2013. It certainly flies in the face of all of their previous statements. And I read a quote from Environment News Service. I don't have the date handy on it, but it is after the Nebraska legislature met. "Kerri-Ann Jones, Assistant Secretary of State, said, 'I am confident that the Department and Nebraska authorities would be able to efficiently work together in preparing any documents necessary to examine the alternative routes in the State of Nebraska that satisfy the Federal laws and any State law of Nebraska.'" So they were all set and ready to go with the State of Nebraska. Now, if Mr. Linder would have been allowed to participate in this hearing today but for the objections of the State Department, he would have said "On December 1, 2011, we contacted the State Department to begin to explore the process of entering into an MOU between two agencies which would outline responsibilities and define a schedule. We received the first draft of the agreement from the State Department within the next 2 weeks and exchanged comments to which what we considered to be an executable document which we submitted to the State Department in December 2011. No further progress had been made on that front." I think it is odd or interesting that the State Department in the middle of December 2011 decided that they weren't going to work on this project anymore and then come in here and say they don't have enough time. In the legal field, there is a doctrine of clean hands. You can't be the one delaying it and then object to the delays.

May I also submit for the record the actual language of the bill that was signed into law that created the Nebraska exemption? Let me wait for just a second on that one, because as I understand from reading your report to Congress, you were objecting because not later than 60 days after the enactment of this act the President acting through the Secretary of State shall grant the permit under Executive Order 13337 for the Keystone XL pipeline. You said many times in your testimony and answers today, Dr. Jones, that it is that 60-day requirement, the absurdity that—darn. But yet there is Nebraska exemption in here that specifically said that is carved out and that 60 days for Nebraska doesn't run until all of the reports are done and certified by the Governor. Darn. I yield back.

Mr. WHITFIELD. Sorry. We are going to have some votes.

Dr. Burgess, you are recognized for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman.

Dr. Jones, according to some information that I have, October 15, 2010, Secretary of State Clinton said she was inclined to approve Keystone's permit. On October 31, 2011—that is over a year later—White House Press Secretary Jay Carney stated, "The fact is, this is a decision that will be made by the State Department or is housed within the State Department." The very next day, President Obama said the decision would rest with him. In the President's announcement last week to reject the pipeline's permit, he said he

had accepted the State Department's recommendations to do so. So everything seems to be pointing to you guys at the State Department. So can you tell the committee who was the one who made the call, made the decision to reject the Keystone XL permit?

Ms. JONES. Congressman, based on the act, the Payroll Tax Cut Act, which had specific language in it regarding what the President needed to do in a certain time, we, the State Department, recommended to the President—

Mr. BURGESS. Who is "we"?

Ms. JONES. "We" is the Deputy Secretary through the Secretary to the President.

Mr. BURGESS. And the name of that person is?

Ms. JONES. Bill Burns.

Mr. BURGESS. Bill Burns was the one who made the decision?

Ms. JONES. No, he recommended to the President that this decision be taken, and the President decided.

Mr. BURGESS. Did the White House exert any influence over the State Department's recommendation?

Ms. JONES. No, sir.

Mr. BURGESS. Mr. Chairman, it seems to me that there is an individual there that is missing then from this hearing today that perhaps we should ask if we should be able to submit some questions to that individual.

You know, we all know and the State Department in particular knows what is going on in the Strait of Hormuz. I was in Iraq in August, and although our military presence now there has wound down, there is still a big State Department footprint in Iraq, isn't there? In Basra, where I was, there is in fact one of the largest State Department operations, and the reason, my understanding, the reason is because that is where Iraq kind of narrows down going to the Gulf and all the oil flowing from the southern part of that country will go through Basra and the four pipelines that go through there, so the State Department felt they needed to have a large presence there. I don't get it. Why do we have to have—I mean, there are jobs there but I would rather have the pipeline through Texas where, yes, we can be hard to deal with sometimes but we are not nearly as hard to deal with as people in the Middle East.

So just food for thought. Let us build this pipeline where—you know, why make it hard on ourselves. Why make it hard on our country. We need American jobs. We need American energy. This seems so straightforward.

Mr. Chairman, I would like to yield, if he wants the time, to Mr. Pompeo. Are you good? Mr. Terry, did you get to finish everything you needed to do?

Mr. TERRY. Generally.

Mr. BURGESS. Generally? I will yield back to you, Mr. Chairman.

Mr. WHITFIELD. At this time I recognize the gentleman from Washington State, Mr. Inslee, for 5 minutes.

Mr. INSLEE. Thank you. My understanding is, there is potential that some of the product that would flow through this proposed pipeline could be exported. It could be used and consumed by other countries rather than consumers in the United States. Under this

bill, would the United States government be able to assess the impact of that export on consumer prices in the United States at all?

Ms. JONES. Congressman, I assume you mean the bill that is proposed here?

Mr. INSLEE. Yes.

Ms. JONES. I can't answer that question as to how that bill would approach it. That consideration was one of the considerations in the national interest determination that we were in the process of doing when we were given this timeline and didn't have a route to really analyze and to have an informed decision.

Mr. INSLEE. So I guess the question is, right now, my understanding is, this product is being used by American consumers in their gas tanks in their cars. If it goes to the Gulf and then is exported, other people around the world will be bidding on it. We will be bidding against them for the gasoline when we consume it domestically. In other words, there will be another person who will be bidding on the product in the export market. I think that has the potential to affect the price we pay at the pump because now we are competing for the same product with someone else who might be bidding more, which then drives up our prices potentially. Now, I don't know the answer to that question but I just wonder, under this bill, would the U.S. government assess that as part of this decision-making process?

Mr. WRIGHT. I would say as part of the NEPA analysis, as part of the overall national interest analysis, the socioeconomic impacts, that would probably be something that would be assessed.

Mr. INSLEE. Thank you.

Mr. WHITFIELD. Does the gentleman yield back his time?

Mr. INSLEE. Yes.

Mr. WHITFIELD. OK. I tell you what, we have a vote on the floor. We are not going to be able to come back. We have a lot of people still wanting to ask questions, so I am going to give everybody 3 minutes in an effort to try to get through everybody.

So Mr. Bilbray, you are recognized for 3 minutes.

Mr. BILBRAY. Thank you very much.

Ms. Jones, what is your experience on these cross-border issues? How long have you been working on cross-border issues for the State Department?

Ms. JONES. I have been at the State Department since August 2009.

Mr. BILBRAY. OK. Some of us that have more than a passing interest in cross-border and environmental problems, so let me just say, this is a 1,700-mile pipeline. We have 2,300,000 miles of pipeline in this country. How much jurisdiction does the State Department have over that 2 million-plus pipe?

Ms. JONES. The State Department is involved only in permits that cross international boundaries.

Mr. BILBRAY. Just across that line. OK. Then any environmental impact report or statement obviously looks at the impact of the no-project option. What is the emissions that would be created—well, first of all, let me back up. What is the ability under NAFTA for Canada to bring trucks across the border?

Ms. JONES. I don't think I can answer that question, sir.

Mr. BILBRAY. It is pretty unrestricted, though?

Ms. JONES. Um-hum.

Mr. BILBRAY. So the no-project option on a pipeline is to train or truck it across that area. What is the total emissions annually if we went to that option rather than using a pipeline?

Ms. JONES. I couldn't give you that number, but I do know that in the final Environmental Impact Statement, there was some analysis done that if the pipeline wasn't built, it was likely that other modes of transportation would pick up and continue to move crude.

Mr. BILBRAY. And wouldn't consider the fact that not only would those modes, train and truck, be putting out emissions but those emissions are diesel emissions, which have been categorized as a toxic emission above and beyond what dioxin is. Did they also point out that trains are three times more dangerous with fatalities than a pipeline and that trucks are, I think the latest number is 87 times more dangerous than a pipeline. So my question is this: Did you consider the fact that the no-project option or the denial or the delay, the denial would end up having more emissions total that we reflected by use of truck and train?

Ms. JONES. The denial that was taken last week was based on the fact that we didn't have the time to do all the analysis that you are talking about.

Mr. BILBRAY. OK. Let me just say this. I am very happy to see you approve, the President approve a cross-border agreement with a private company to be able to operate airports across the border, and the fact is, just because the gentleman who is financing it is a billionaire from Chicago, I am not going to attack that agreement, but I would ask, when you did this agreement at Alta Mesa, did you consider the increased emissions and the global impact of Mexico's air operations that would be operating in relationship to this border crossing that you approved, that the President approved just recently?

Mr. WHITFIELD. Go ahead and finish.

Ms. JONES. I wasn't involved with that. I can't respond to that. I could go back and get more from the Department.

Mr. BILBRAY. I would appreciate that. Thank you for approving that project.

Mr. WHITFIELD. Mr. Scalise, you are recognized for 3 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. I appreciate you having this hearing. I thank the witnesses for coming.

I think what irritates me, what irritates a lot of people that are concerned about the economy, getting the economy back on track and creating jobs is that the President made a political decision to throw away 20,000 American jobs and to hurt our relationship with Canada, who is a strong, strong friend, maybe one of the best friends of America in the world. Canada had been trying to get this project done for over 3 years. Is it true, Ms. Jones, that Canada submitted their application for this Keystone XL pipeline back in September 2008?

Ms. JONES. TransCanada, the company, submitted it then, yes.

Mr. SCALISE. So, you know, you sit here at the table and the President said this time and time again, he didn't have enough time. He has had 40 months. You know, if you look at the original Keystone pipeline, because this is a separate Keystone, Keystone

XL, the original Keystone pipeline was approved back in 2008 after less than 2 years of review. It doesn't take 40 months to review a project like this. And so at some point in time you have to decide whether you are going to fish or cut bait, and ultimately, that is what Congress decided in a bipartisan way. It is not a partisan issue. It is not a House versus Senate issue. It is one of the few things we actually came together on and agreed, Republicans and Democrats, House and Senate, said Mr. President, stop wasting time, stop delaying this project for political purposes, make a decision, yes or no, and then unfortunately, he used you all because you all back in August of last year, you all said this is something you should do. Hillary Clinton back in 2010, the quote was, "We are inclined to do so" when asked about approving the Keystone pipeline in 2010. And then you go through the timeline and then you get to August of last year where you all came with your report and you basically said this is something that we should do, we don't see any real problems with the Keystone pipeline. I will use the exact—"There would be no significant impacts." That was State Department on Keystone back in August of 2011. And what happened after that? What happened after that is in November, on November 7, 2011, radical environmentalists went and had a big rally at the White House. You know, Darryl Hanna got arrested real famously, a bunch of radical environmentalists went and said Mr. President, don't approve the Keystone pipeline. They threatened his reelection. And gee whiz, coincidentally, 3 days after this rally by radical environmentalists, the President then reversed his course and says we are going to push the decision on Keystone until after the election. He is one who gave the arbitrary date, not because of environmental reasons, because of political reasons because he was getting beaten up by radical environmentalists who didn't want this thing approved at all so he said I will just kick the can until after the election and maybe this will go away, and Canada said, we can't wait that long because China wants the oil, they want to do something, they want to participate with us. But instead, the President said no, we don't want the jobs, let China get that oil, and now of course we go to the statement by the prime minister of Canada who said they are profoundly disappointed with this decision. He has hurt our relationships and hurt our national security with a political decision.

Mr. WHITFIELD. Mr. Markey, you are recognized for 3 minutes.

Mr. MARKEY. Thank you.

We have been repeatedly told that we need to get over the concerns about the pipeline and the environment because the oil coming through this pipeline would enable us to reduce our dependence on oil imported from unfriendly Middle Eastern nations. TransCanada's application for its permit even states that the proposed pipeline will serve the national interest of the United States by providing a secure and reliable source of Canadian crude oil to meet the growing demands by refineries and markets in the United States. However, some have questioned these assertions of energy security benefits, citing plans by Gulf Coast refineries with whom TransCanada has entered into long-term sales contracts to re-export diesel and other fuels made from the Keystone crude to Latin America, Europe and beyond. In fact, nearly all of these refineries

where the Keystone crude will be sent to are located in Port Arthur, Texas, which is designated as a foreign trade zone. This means that if these refineries re-exported diesel or other fuel, they wouldn't even have to pay U.S. taxes on these exports.

Earlier this month, Canadian Prime Minister Stephen Harper said that when you look at the Iranians threatening to block the Strait of Hormuz, I think that that just illustrates how critical it is that supply for the United States to be North American. But in December when I asked the president of TransCanada whether he would agree to ensure that the oil and refined products stay here in this country instead of re-exporting it, he said no, sitting right at this table. In other words, if the permit for this pipeline is legislatively mandated by this bill, the United States may just become the middleman for shipping products made from some of the dirtiest crude oil on earth to foreign markets around the world.

Secretary Jones, does the process the administration was following to determine whether Keystone XL was in the national interest allow for the consideration of issues like whether the project would reduce dependence on Middle Eastern oil?

Ms. JONES. Yes, sir, that is one of the considerations when we look at energy security.

Mr. MARKEY. Thank you. So if the Republicans hadn't forced the administration to deny the permit because it wasn't given enough time to review it, the administration could have issued a permit that required the Keystone oil and fuels to be sold only in the United States. Isn't that right?

Ms. JONES. I am not sure of that, sir, what we can restrict in terms of exports.

Mr. MARKEY. You could restrict it?

Ms. JONES. No, we would have to study that. I don't think that we can restrict exports, but that is something we would continue to study.

Mr. MARKEY. That could be in the national interest. Is that correct? To keep the oil here.

Ms. JONES. We would have to study it in regard to export.

Mr. MARKEY. No, could it be in the national interest, though, potentially to keep the oil here?

Ms. JONES. It would certainly be a consideration but we were unable to really study all that.

Mr. MARKEY. That is right, so we never got a chance to look at that.

Now, for both Ms. Jones and Mr. Wright, does the Republican legislation provide FERC with explicit authority to issue a permit that contains a requirement that the oil or fuels have to be sold in the United States? Does it contain that provision?

Mr. WRIGHT. I did not see that explicitly.

Mr. MARKEY. Do you, Ms. Jones?

Ms. JONES. No, I do not see that there.

Mr. MARKEY. OK. Well, make no mistake, I think this is a pipeline—

Mr. WHITFIELD. The gentleman's time is expired.

Mr. MARKEY [continuing]. Out of the United States and into other—

Mr. WHITFIELD. Mr. Olson, you are recognized for—

Mr. OLSON. I thank the chair for the recognition.

Mr. WHITFIELD. We are going to have to go down to 2 minutes because we have, like, 4 minutes left on the floor. Three hundred and twelve people still have not voted, and I want everyone to get an opportunity to say something. So 2 minutes.

Mr. OLSON. I will be quick. I promise. I appreciate the witnesses' time today.

We all know the benefits of the Keystone XL pipeline: 20,000 jobs, energy from Canada as opposed to Middle Eastern oil, national security and energy security. And as a former naval aviator who has flown in the Persian Gulf in what we call strait transits, right through the Strait of Hormuz, I have unique perspective on Iran, and we all know that Iran has threatened to close the straits, stopping 30 percent of the world's supply of oil from getting to market. Now, I can't expand upon this enough but that is a very real threat. The straits are narrow, about 9 miles wide in some places, and they are shallow. If a vessel would sink, vessels in the middle of the straits, they would be blocked for months, if not years. In fact, three of our 11 nuclear-powered aircraft carriers have been deployed to the region because our Commander in Chief, our President, sees the threat as real.

The State Department has a history of approving new pipelines in the interest of national security because of political tensions. The most recent example is the Alberta Clipper pipeline in the Midwest part of the United States. This is another Canadian pipeline. And let me read you a section from the record of decision for the Alberta Clipper pipeline, and this is a quote: "The Department of State has determined through review of the Alberta Clipper project application that the Alberta Clipper project would serve the national interest. In a time of considerable political tensions in other major oil-producing region countries, by providing additional access to a proximate, stable, secure supply of crude oil with minimal transportation requirements from a reliable ally and trading partner, the United States, which we have free trade agreements that further augments the security of this energy supply." Why is the situation now different? Yes or no, Ms. Jones, is the situation now more dire than the situation was when we approved the Alberta Clipper pipeline? Yes or no.

Ms. JONES. Energy security is still a major priority for this country and this administration. However, we did not reject this project on the merits. It was an issue that we did not have time. Those considerations you raised would be considered if we had the entire route and if we had the time to conduct the process that we feel the American people need to have.

Mr. WHITFIELD. All right. Time is expired.

Mr. OLSON. Ma'am, with all due respect, you changed your mind in October.

Mr. WHITFIELD. Mr. McKinley, you are recognized for 2 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

Just some quick questions, and perhaps if you could just respond, Ms. Jones, in writing to us rather than take time. The first is, could you submit to us a chronological order of the process since it began in September of 2008, why in God's name it would take 3-1/2 years? I just know from the private sector, firms would be

fired for taking that long to go through a process. Can you get back to us as to whether the railroads in Montana and North Dakota and Oklahoma, are those captive railroads? I don't know whether they are not. Do you understand the term?

Ms. JONES. I think we will have to get an answer back to you on that.

Mr. MCKINLEY. Sure. I am not expecting you to answer these things right now. So I am asking for the record if you will get back to us on that on whether or not these are captive railroads?

Ms. JONES. Yes, we will.

Mr. MCKINLEY. And can you also respond, please, to the editorial that was in the Investment and Business Daily back on November 16th in which the editorial board there is suggesting that there could be a link between the railroad systems and this decision, especially given that it is a political decision. We all know that. Anyone who would postpone this until after the election is already crying out, this is a political decision. So since they are linking it to two major individuals, global figures, I would like your response back to that or perhaps even the person that made the ultimate decision to cancel this project. Because it wasn't based on the time frame. We understand that, and I think the American public is going to come to understand that. But thank you. If you get back to us in writing, I would appreciate it. Thank you.

Mr. WHITFIELD. Mr. Gardner, you are recognized for 2 minutes.

Mr. GARDNER. Is job creation the number one national interest? Yes or no. Is job creation the number one national interest?

Ms. JONES. Yes.

Mr. GARDNER. Does this pipeline create jobs?

Ms. JONES. Yes, but the number is—

Mr. GARDNER. Just a yes or no question, and you denied the pipeline. You recommended not moving forward with the pipeline.

Ms. JONES. We denied it based on the time we were given.

Mr. GARDNER. You denied it, and it is your number one national interest so you acted at odds with the number one national interest.

Ms. JONES. Sir, we were reviewing the job situation, the economic issues as part of the review.

Mr. GARDNER. I will accept that. You turned it down. That is fine.

I want to go back to this amount of paper here, the final Environmental Impact Statement from August 2011. the EIS identified a particular route as the preferred alternative? Yes or no.

Ms. JONES. Yes.

Mr. GARDNER. And among the other alternatives you considered, you considered a no-action alternative? Yes or no.

Ms. JONES. Yes.

Mr. GARDNER. And the final EIS expressly concluded the preferred alternative was way better than not building a pipeline at all? Yes or no.

Ms. JONES. Yes, but there was more to that. These are simple pieces coming out of the FEIS.

Mr. GARDNER. "As a result of considerations, the Department of State does not regard the no-action alternative to be preferable to the proposed project." That is from the final EIS. Thank you.

The reason you concluded that all things considered, transporting the oil in a state-of-the-art pipeline is better than shipping it by rail, truck and cargo ships because it is better than shipping it from the Middle East. Yes or no? Yes. Thank you. You have to agree with that, it is better to ship from Canada.

Ms. JONES. Yes, I do. It is part of energy security.

Mr. GARDNER. But if we delay this, if the White House delays it, we run the risk of no pipeline at all. Your delays run the risk of no pipeline. You said jobs are the number one national interest, and yet you said to the White House we don't want to do this.

Ms. JONES. We have to work with the pipeline where we have the route and we would do a comprehensive—

Mr. GARDNER. You have said jobs are the number one national interest and you have said no to this. These delays risk the killing of this pipeline, and so you will end up with no pipeline, which is not the preferred alternative as the Department of State has already said in their final EIS. So if you do this, you are going to have none of the jobs. You are going to kill the job. You are going to have none of the energy, and China wins.

Mr. WHITFIELD. Mr. Pompeo, you are recognized for 2 minutes.

Mr. POMPEO. Thank you, Mr. Chairman. I think I can do it in 1 minute.

I have one question. Ms. Jones, are you lacking any information that you were constrained for time about how this impacts a particular private company? That is, are you interested in how this might or might not affect any particular private company? Is it relevant to your decision at all?

Ms. JONES. No, sir. The issue is, the route through Nebraska and all of the impacts that possibly could have.

Mr. POMPEO. So testimony about how any private company would be impacted would be irrelevant to your decision-making process.

Ms. JONES. Sir, we are looking at the route as we had explained.

Mr. POMPEO. Thank you.

One last statement. Mr. Waxman suggested that because Koch Industries had filed as an intervenor before the Canadian National Energy Board, that that suggested that they must have a financial interest in this transaction. That is just false. This notion that they have an interest there has been shredded. There are many, many intervenors including the Sierra Club of Canada, who I don't think has a financial interest in the Keystone XL pipeline, the Alberta Federation of Labor, the Communication, Energy and Paper Workers of Canada. This is a silly concept, and I want to make sure the record reflected that this mere intervenor status makes no indication about whether any company has an interest in this pipeline at all.

With that, I yield back my time, Mr. Chairman.

Mr. WHITFIELD. Mr. Griffith, you are recognized for 2 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman.

You know, I am sitting here kind of curious. The State Department keeps talking about its studies in Nebraska but isn't your job supposed to determine what the impact is because it is international and what the impact is on the international relationship with our friends in Canada?

Ms. JONES. Because we have the authority for the permitting—

Mr. GRIFFITH. I understand you have the authority for the permitting but you got all this done by the agencies that would normally do that. Isn't your job as the State Department to focus on the relationships with our foreign friends and not to be interfering in internal decisions made by other agencies?

Ms. JONES. Our job in this situation is to look at the entire pipeline for the impact it could have on the country.

Mr. GRIFFITH. So everything these people did was worthless?

Ms. JONES. No, sir. That is important analytical information.

Mr. GRIFFITH. Well, then, why do you have to redo it all?

Ms. JONES. We don't have the route through Nebraska.

Mr. GRIFFITH. I really believe that this was a political decision. You are not supposed to comment on that, and I understand that. But I believe that you had the President in a political quandary with labor versus radical environmentalists and he had to delay until after the election. That is what I believe and that is what I believe the evidence shows. I am not asking for a comment.

I would say to you, more oil refined in the United States, particularly when it is coming from a closer supply, means more jobs in the United States, more profits in the United States, more taxes paid to the United States and more U.S. supply available. All of those things I think are good things, and because you are from the State Department, I would say that we have damaged our relationship with a good ally and a close neighbor and friend, and to me, that seems counter to the purpose of the State Department and all of this would indicate that everything that you all are doing is counter to the interest of the United States of America, and I yield back.

Mr. WHITFIELD. That concludes today's hearing. I want to thank the two witnesses for being with us today, and the record will remain open for 10 days for additional documents, and some questions were submitted to you all and we would appreciate you all getting that information back to us. Thank you.

[Whereupon, at 10:05 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Chairman Fred Upton (#1)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

Isn't it true that the provision in the Payroll Tax Bill expressly contemplate the national interest determination being made *with a* Nebraska reroute that would be a work in progress? Do you understand that the congressional intent behind this subsection was for the Nebraska reroute to *not* be the cause for further delay?

Answer:

I cannot speculate on the congressional intent behind the provision in the Temporary Payroll Tax Cut Continuation Act. The Act did not contain any definition of what constitutes the national interest. The State Department concluded that to determine what was in the national interest, we needed to evaluate the impacts of granting a permit informed by analysis of a specific proposed route. Only after a route was identified could we study and evaluate the potential impacts as well as the national interest considerations. We had announced in November 2011, based on prior projects of similar length and scope, that a potential route could be identified and assessed by as early as the first quarter of 2013. The State Department consistently

stated that it did not think it would be responsible to hasten a decision on what constitutes the national interest in response to an arbitrary deadline.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Chairman Fred Upton (#2)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

The Keystone provision of the payroll tax cut extension law expressly states that the NEPA process is over and no further federal environmental review is required. But the administration's rationale for rejecting the Keystone pipeline's permit is there was not enough time to review the new route in Nebraska.

- a. If no additional review is required by law, how was there not enough time?
- b. The law allows the President to approve the pipeline while the State of Nebraska sites and evaluates a new route within its borders. Why didn't the State Department pursue that option?

Answer:

Although the provision in the Temporary Payroll Tax Cut Continuation Act expressly states that the existing environmental review of the project would satisfy the requirements of NEPA, the State Department's consideration of what constitutes the national interest is not limited to just what is required by NEPA. On November 10, 2011, when the Department decided it would seek additional information regarding alternative routes within the State of Nebraska, it made clear that it made that decision pursuant to E.O. 13337 Sec. 1(f).

The State Department concluded that to determine what was in the national interest, we needed to evaluate the impacts of granting a permit informed by analysis of a specific proposed route. Only after a route was identified could we study and evaluate the potential impacts as well as the national interest considerations. We had announced in November 2011, based on prior projects of similar length and scope, that a potential route could be identified and assessed by as early as the first quarter of 2013. The State Department consistently stated that it did not think it would be responsible to hasten a decision on what constitutes the national interest in response to an arbitrary deadline.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Chairman Fred Upton (#3)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

In October 15, 2010, Secretary of State Clinton said she was “inclined” to approve Keystone XL’s permit. On October 31, 2011, White House Press Secretary Jay Carney stated “the fact is this is a decision that will be made by the State Department, or is housed within the State Department.” The very next day, President Obama said the decision would rest with him. In the President’s announcement last week to reject the pipeline’s permit, he said he had accepted the State Department’s recommendations to do so.

- a. Who, once and for all, made the decision to reject Keystone XL’s Presidential Permit?
- b. Did the White House exert any influence over the State Department’s recommendation?

Answer:

As I stated in my testimony, on January 18, 2012, the Department recommended to the President that the application for a Presidential Permit be denied due to insufficient time to conduct the necessary analysis, and the President accepted our recommendation and determined that the Keystone XL pipeline project, as presented and analyzed at that time, would not serve the national interest.

The White House did not exert any influence over the State Department’s recommendation.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Chairman Fred Upton (#4)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

The State Department's mission statement is to "shape and sustain a peaceful, prosperous, just, and democratic world and foster conditions for stability and progress for the benefit of the American people and people everywhere." Last week, the U.S. imported 10 million barrels of oil from Saudi Arabia, 2.6 million barrels from Nigeria, 924,000 barrels from Angola, and 4.5 million barrels from Venezuela. None of these nations practice a valid form of democracy and in some cases are actively hostile to American interests.

- a. If the U.S. continues to import large volumes of oil from these countries, does this "shape and sustain a peaceful, prosperous, just, and democratic world and foster conditions for stability and progress for the benefit of the American people and people everywhere?"
- b. If the U.S. shuns the economic interests of our closest democratic ally – Canada – does this live up to the State Department's mission statement?

Answer:

As stated in my testimony, the decision to deny the permit was not made on the merits of the proposed project. The factors you mention regarding dependence on foreign oil as well as the importance of promoting trade with our close ally Canada are important considerations. These factors, as well as the health and safety of the communities along the

pipeline route, are some of the many factors the State Department would have considered if a potential route were identified and the national interest determination was allowed to proceed as planned.

The U.S.-Canada alliance is a cornerstone of both countries' national security. We believe Canada will remain committed to the bilateral alliance, and the United States will continue to work with Canada to ensure our shared interests in energy, environmental, and economic issues are not negatively affected by this decision.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Chairman Fred Upton (#5)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

In November 2011, part of your rationale for delaying a decision until early 2013 was because “based on experience with pipelines of similar length we estimated that it would take [18 months] to complete our assessment.” Is it really State Department’s contention that it would take a year and a half to study 200 miles of new pipeline while it took three years to study nearly 1,700 miles of the same pipeline?

Answer:

Certain required elements of the review process, such as opportunities for public input, state input, and input from the other eight federal agencies named in Executive Order 13337, are unaffected by the actual length of the pipeline. That said, this timeline was only an estimate and we would have proceeded as expeditiously as possible consistent with our responsibilities.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Chairman Fred Upton (#6)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

The State of Nebraska Department of Environmental Quality contends since December they have not received any communication from the State Department on the Memorandum of Understanding for a new pipeline route mandated by Nebraska State law. Why did the State Department cease cooperating at that point?

Answer:

Robust discussions were ongoing with the State of Nebraska for a Memorandum of Understanding up until the enactment of the Temporary Payroll Tax Cut Continuation Act. To expedite discussions, the State Department's legal counsel had traveled to Nebraska to work directly with the Nebraska authorities. Once the law was enacted, the State Department determined that further negotiations should continue only after the Department determined how to proceed in light of the Act. Once the decision to deny the permit was made on January 18, the State Department no longer had an active application for a Presidential Permit before it, and thus no basis to enter into an MOU with the Nebraska Department of Environmental Quality regarding any further review.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Chairman Fred Upton (#7)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

The Report to Congress states the pipeline's developer is free to reapply for a Presidential Permit. If this occurs, what timeline do you expect for consideration? Will a new EIS process commence to evaluate the same route all over again?

Answer:

Since we do not currently have a pipeline application before us, I cannot estimate a timeline for the process. The existing Final Environmental Impact Statement for the Keystone XL pipeline would inform a new review process consistent with specific provisions in the National Environmental Policy Act (NEPA) and its implementing regulations.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#1)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

TransCanada has publicly stated that the Keystone XL pipeline would create 20,000 jobs. TransCanada has also referred to jobs estimates contained in a study commissioned by TransCanada and performed by the Perryman Group, which estimates the total impact of the pipeline on the economy as 118,935 person-years of employment over the assumed 100-year life of the project.

Has TransCanada provided any documentation or supporting analysis of TransCanada's 20,000 jobs estimate to the State Department? If so, please provide such documentation or analysis.

Answer:

TransCanada has not provided any additional data to the State Department regarding job creation statistics beyond the data discussed in the Final Environmental Impact Statement (EIS).

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#2)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

Has TransCanada provided any analysis (other than the jobs estimates provided in the Perryman Group study, which do not appear to be comparable), challenging the accuracy of the State Department's estimate in the Environmental Impact Statement that the Keystone XL pipeline could result in 20 permanent jobs and 5,000-6,000 temporary construction jobs? If so, please provide such documentation or analysis.

Answer:

The Department has not received any analysis from TransCanada regarding the employment estimates in the Final EIS.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#3)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

As reported in Environment and Energy news on January 27, 2012, Dr. Jones misspoke in response to a hearing question about jobs estimates. The article states that according to a State Department spokesperson, Dr. Jones meant to say that a rough estimate of the pipeline's indirect job potential was 3,500 annual jobs, not 35,000 jobs.

Is the article accurate in reporting that Dr. Jones misspoke in referencing 35,000 jobs and instead meant to say that a rough estimate of the pipeline's indirect job potential was 3,500 annual jobs?

Answer:

Yes. The January 27, 2012 ClimateWire article by E&E reporter, Christa Marshall, is accurate in stating that Assistant Secretary Jones misspoke when referring to indirect jobs estimates. The reference should have been to 3,500 potential indirect jobs, not 35,000.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#4)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

Was the rough estimate of 3,500 annual indirect jobs referenced by Dr. Jones based on TransCanada's estimate that 7,000 indirect job-years would be created over a two-year period?

Answer:

Yes. Assistant Secretary Jones' reference to a rough estimate of 3,500 potential indirect jobs was based on a preliminary analysis of TransCanada's assertion that 7,000 indirect manufacturing jobs would be created by the pipeline construction investment over a two-year period. TransCanada defined the 7,000 indirect jobs in "person years" and explained that it would mean 3,500 manufacturing jobs per year over a two-year construction period.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#5)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

On October 7, 2011, at a public meeting in Washington, D.C. on the Keystone XL pipeline permit application, the State Department received testimony from, among others, Mike Klink, who raised safety concerns about the Keystone XL pipeline based on this professional experience. During the construction of the first TransCanada Keystone tar sands pipeline in 2009, Bechtel was the construction contractor for TransCanada, and Mr. Klink was employed by Bechtel as a pipeline safety inspector for that project. As part of his job, Mr. Klink observed and reported to his superiors numerous safety problems in the construction of the Keystone pipeline, including the use of substandard materials. My understanding is that Bechtel and TransCanada commissioned an investigation of these allegations and a report on the findings of the investigation was provided to Bechtel and TransCanada. TransCanada's Keystone pipeline has in fact experienced significant safety issues, spilling 14 times in its first year-and-a-half of operation. Information regarding the role construction practices may have played in producing these problems would be highly relevant to an evaluation of safety concerns regarding the Keystone XL pipeline.

Have the safety concerns raised by Mr. Klink been investigated by the State Department or PHMSA as part of the safety evaluation for Keystone XL?

Answer:

We took very seriously all the information and comments provided to the State Department during the public comment periods, including comments regarding safety concerns arising from construction and operation

of the original Keystone Pipeline. The State Department has not conducted any specific investigation into Mr. Klink's comments provided October 7, 2011. The State Department consulted extensively with PHMSA throughout the Keystone XL review process regarding issues of pipeline safety. The State Department, however, cannot speak for PHMSA regarding their regulation of existing pipelines.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#6)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

If so, what were the results of that investigation? Please provide any documents describing or summarizing such an investigation and the results.

Answer:

We are not aware of such an investigation.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#7)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

How were the results of such investigation, if any, taken into consideration in developing the 57 conditions related to pipeline safety?

Answer:

The 57 conditions that were included in the Final EIS were developed in close consultation with PHMSA. The development of those conditions took into consideration the history of the start-up and operation of the first Keystone pipeline. The State Department cannot speak for PHMSA on whether or how they may have taken into consideration the types of issues identified by Mr. Klink in his comments.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#8)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

Does the State Department have the report commissioned by TransCanada and Bechtel referenced above? If so, please provide it to the Committee.

Answer:

We are not aware of such a report nor have we received such a report.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#9)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

If not, will the State Department commit to obtain a copy of the report from the Pipeline and Hazardous Material Safety Administration or TransCanada and provide a copy of that report to the Committee?

Answer:

The State Department is not aware of such a report nor have we received such a report.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#10)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

Will the State Department commit to consider the report's findings as part of its evaluation of the safety of the proposed Keystone XL pipeline? In particular, if TransCanada resubmits its permit application, will the State Department reconsider the adequacy of the analysis of pipeline safety in the EIS in light of the report, including the projected number and size of spills and the permit conditions related to pipeline safety? If not, why not?

Answer:

The Department cannot make specific commitments on the review process of a permit for which we have not yet received an application. The State Department is committed to a rigorous, thorough and transparent process, and we will examine all the available information in any future application. Such a process would include again working with the applicant and PHMSA to obtain the most current information available regarding pipeline safety, including information regarding the construction, start-up, and operation of the original Keystone pipeline.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#11)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

In light of the recent year-long delay of any decision by the Canadian government on the application for the proposed Northern Gateway pipeline in light of wide-spread and mounting opposition to that pipeline in British Columbia (as well as opposition to any alternative pipelines to the West coast of Canada and any increase in tanker traffic off the West coast), and especially across the First Nations peoples, who have legal and constitutional rights with respect to their lands, it appears increasingly unlikely that tar sands product could be exported from Western Canada to Asia anytime soon, if at all. While trucking and rail may provide alternative means to move tar sands out of Alberta, it is widely recognized that these alternative modes of transportation would be more expensive than pipelines. These recent development cast serious doubt on the statement in the final EIS that whether or not Keystone XL is built is not likely to affect the amount of crude oil produced from the tar sands.

In light of these recent developments and in the event that TransCanada resubmits its permit application, will the State Department commit to reevaluate the potential impact of the Keystone XL pipeline on the pace and extent of tar sands extraction, and the resulting greenhouse gas emissions? If not, why not?

Answer:

The Department cannot make specific commitments on the review process of a permit for which we have not yet received an application. The State Department is committed to a rigorous, thorough and transparent

process and we will examine all the available information in any future application. Such a process would include working with agencies expert in energy markets, such as the Department of Energy, to obtain the most current information available regarding the potential indirect and cumulative impacts on the energy market of the pipeline project identified in any future application.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#12)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question:

In July 2010, I requested that the State Department include in its analysis of the Keystone XL permit application an analysis of the extent to which the Gulf coast refineries are projected to export refined tar sands products to other countries. It does not appear that the final EIS includes such analysis. In recent Congressional debates on the Keystone XL pipeline, proponents of the pipeline have acknowledged that some portion of the refined product produced from the crude oil transported by the pipeline will be exported.

If this analysis has been conducted, please provide it to the Committee.

Answer:

Analysis regarding the relationship between different scenarios of pipeline construction and exports of refined petroleum products can be found in the final EIS, Appendix V, EnSys Keystone XL Assessment – Final Report, section 5.2.2.5.

**Question for the Record submitted to
Assistant Secretary of State Kerri-Ann Jones by
Henry A. Waxman (#13 - 14)
House Energy and Commerce Committee
Subcommittee on Energy and Power
January 25, 2012**

Question :

If this analysis has not been conducted, in the event that TransCanada resubmits its permit application, will the State Department commit to analyze the extent to which the refined product produced from the tar sands crude oil transported by the pipeline may be exported to other countries?

In the event that TransCanada resubmits its permit application, will the State Department commit to reevaluate its assessment of the purpose of and need for the pipeline in light of the likelihood that some portion of the refined product produced will be exported duty-free, and hence will not contribute to either U.S. energy security or U.S. government revenues.

Answer:

The Department cannot make specific commitments on the review process of a permit for which we have not yet received an application. The State Department is committed to a rigorous, thorough and transparent process and we will examine all the available information in any future application. Such a process would include working with agencies expert in energy markets, such as the Department of Energy, to obtain the most

current information available regarding the potential indirect and cumulative impacts on the energy market of the pipeline project identified in any future application.

AMERICAN JOBS NOW: A LEGISLATIVE HEARING ON H.R. 3548, THE NORTH AMERICAN ENERGY ACCESS ACT—DAY 2

FRIDAY, FEBRUARY 3, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2322 of the Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Sullivan, Walden, Terry, Burgess, Bilbray, McMorris Rodgers, Olson, Pompeo, Griffith, Barton, Rush, Dingell, Markey, Engel, Capps, Gonzalez, and Waxman (ex officio).

Staff present: Mike Bloomquist, Deputy General Counsel; Maryam Brown, Chief Counsel, Energy and Power; Allison Busbee, Legislative Clerk; Garrett Golding, Professional Staff Member, Energy; Cory Hicks, Policy Coordinator, Energy and Power; Ben Lieberman, Counsel, Energy and Power; Jeff Baran, Democratic Senior Counsel; Greg Dotson, Democratic Energy and Environment Staff Director; Caitlin Haberman, Democratic Policy Analyst; Angela Kordyak, DOE Detailee; Billie McGrane, Democratic Assistant Clerk; and Alexandria Teitz, Democratic Senior Counsel, Environment and Energy.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. Committee will come to order. Today's hearing on American Jobs Now, H.R. 3548, the North American Energy Access Act, is being held pursuant to Rule XI of the House Rules at the request of Mr. Rush, Mr. Waxman, and other members of the minority.

Although we gave opening statements at the first hearing, pursuant to an agreement between the minority and the majority, each side this morning will be given 10 minutes for opening statements, and at this time I would like to recognize myself for 5 minutes for the purpose of making an opening statement.

Like many people, I was quite disappointed when the President decided the Keystone Pipeline was not in the national interest, and the reason that he gave for making that decision was that there was not enough time to collect and review information regarding the route through Nebraska. We all are very much aware, however, that the application for the permit was filed in September of 2008. That was almost 3 ½ years ago.

As a matter of fact, as far back as October 2010, in a speech at the Commonwealth Club of San Francisco, Secretary of State Hillary Clinton in response to a question said that she was inclined

to approve the permit for the Keystone Pipeline based on the information she had.

I also want the public to know, and I am sure they are very much aware of this also, that five major labor unions supported and still support the building of this pipeline. In an article entitled, "Labor Civil War over Keystone XL," the author reported some of President Barack Obama's biggest labor supporters are fuming over his decision. Unions representing construction workers that would directly benefit from building the pipeline, as he said in his article, feel stabbed in the back by unions that joined environmental groups to kill the project. Laborers' International Union of North America General president Terry O'Sullivan said the decision was so repulsive and disgusting that he was going to pull his union out of the Blue Green Alliance, a coalition of environmental groups and labor unions that represented nearly all of the groups that signed a statement, a joint statement supporting the President.

Mr. O'Sullivan said unions and environmental groups that have no equity in this work have kicked our members in the teeth, and anger is an understatement as to how we feel about it. We will not sit at the table with people that destroy our members' livelihood.

The labor union supporting the project issued a particularly forceful statement condemning the decision as politics at its worst, and Mr. Sean Sweeney, who is the director of Global Labor Institute at Cornell University, who did a study about the jobs that this would create, made it very clear when he said that this decision was really about the President being reelected. The President's reelection is at stake, and he said there is certainly more at stake here than a simple pipeline.

In closing I would simply like to quote from an editorial in the Chicago Tribune. "Keystone should be approved. This is a good project. It will give us energy and give us jobs. You want stimulus? This is it. This is a \$7 billion project to be done with private dollars. Taxpayer dollars will not be used. President Obama made a decision that we think is the wrong decision."

[The prepared statement of Mr. Whitfield follows:]

Opening Statement of the Honorable Ed Whitfield
Subcommittee on Energy and Power
Continuation of Hearing on "American Jobs Now: H.R. 3548,
the North American Energy Access Act"
February 3, 2012
(As Prepared for Delivery)

Today's hearing is just another delay in the long list of delays we've seen with the Keystone XL project. The State Department has already spent 40 months reviewing this project that won't cost taxpayers a dime. And despite the fact that the Department concluded that the pipeline would have "no significant impact on the environment," we are still waiting.

Americans are looking for a plan for energy independence, and the President has done nothing to advance that cause, choosing instead to invest in failing firms that give him political benefit, like the bankrupt solar panel manufacturer Solyndra.

The president said in his State of the Union address that he supports "all of the above," but his actions are contradictory to that statement.

- His administration has worked tirelessly to bring an end to coal, our most affordable for of electricity.
- Leasing on federal lands for oil and natural is at an all-time low under his watch.
- The Chairman of his Nuclear Regulatory Commission has done everything in his power to limit nuclear power by stopping Yucca Mountain.

Time and again President Obama chooses the "Solyndra economy" over the "Keystone economy." The "Keystone economy" is privately funded, creates jobs and will bring nearly a million barrels of secure oil each day from our good ally Canada. We've seen what the "Solyndra economy" brings. It doesn't work.

The project is supported by members on both sides of the aisle, including 47 House Democrats who voted in favor of legislation to expedite the pipeline decision last year and numerous Senate Democrats on record in favor of this commonsense project.

Several labor unions have spoken out in strong support of this project and the jobs it will create. American labor unions have also signed Project Labor Agreements with TransCanada to build the pipeline – we just need to say yes to these jobs.

A recent poll showed the American people strongly in favor of building the Keystone XL pipeline: 64% supported it, and only 22% opposed.

I think it is high time that we build this pipeline. I urge all members to support H.R. 3548, the North American Energy Access Act to build the Keystone XL pipeline.

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Mr. WHITFIELD. And with that, I would—does anyone seek recognition for a minute and 48 seconds?

No. I will recognize you later.

All right.

Mr. WALDEN. Sure, Mr. Chairman.

Mr. WHITFIELD. I yield the balance of my time to you, Mr. Walden.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. I thank the gentleman for yielding. I appreciate his comments. I was just reviewing the testimony by I believe it is Mr. Pool from the Bureau of Land Management. I just find it interesting that how much our government rules and regulations come into play here for so little land. He says in his testimony the total permanent right of way on BLM-managed public lands for this Keystone Project would be approximately 50 feet wide and comprise a total of approximately 270 acres.

Now, let that sink in. You think about how minor a role the Federal Government is playing in terms of this land and yet—and they have issued their approval is my understanding. Final biological assessment has been issued and shows no jeopardy under the Endangered Species Act. The Federal Government BLM at least, 270 acres, 50 feet wide. We have got horrible unemployment problem. It is getting a little better, but, you know, 8.3 percent is nothing to brag about. You got a \$7 million potential investment here, private sector funds, that could create thousands of jobs and new property tax base payments to local governments throughout that region, and I just think it is time to get this done.

So I yield back.

Mr. WHITFIELD. Thank you, Mr. Walden.

At this time I recognize the gentleman from Illinois, Mr. Rush, for 5 minutes.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. Good morning. Thank you, Mr. Chairman, for holding this important hearing that the minority side requested in order to hear from some of the important stakeholders who were not invited to participate in last week's hearing and to shed light onto some of the ramifications of the legislation before us, H.R. 3548.

Mr. Chairman, this bill is simply another bite at the apple in the majority's attempt to backdoor the Obama administration and green light a project that has not yet been fully vented in what amount to be an application of the Federal Government's oversight responsibilities.

In fact, why don't we simply call this bill for what it really is. Instead of the North American Energy Access Act, this bill should be renamed the Republicans and Congress Favor to TransCanada Act. This bill does not make sense. Legally it doesn't make sense. Sensibly it doesn't make sense because it shifts the responsibility for a cross-water pipeline from the State Department to FERC, an agency which has no experience in signing this type of national

project, specifically, or on pipelines generally. This bill does not make sense frankly, and it does not make sense morally.

As we heard from the Assistant Secretary of State Kerri-Ann Jones last week, she—of the Bureau of Oceans and International Environment and Scientific Affairs, the recommendations for denying the permit was made simply because there was not sufficient time for the agencies to complete its due diligence and perform its legal oversight responsibility, mainly due to the fact that currently there is not even a proposed route for the State Department to review. It would have been a gross negligence and recklessness for the Obama administration to approve a permit for a pipeline that would cut through the heart of the country where when the policy-makers in those very states that are mostly affected, like Nebraska, haven't even identified the most appropriate route for the pipeline to move through.

While the language the Republicans passed in their initial efforts to force the administration to come up with a decision within 60 days of enactment of the Middle Class Payroll Tax Extension was inconsiderate and irresponsible, I must say that the language in this new bill, which was transferred in the decision to a different and completely inexperienced agency, FERC, and also implying permission to make a decision within 30 days or the project will be automatically approved is even more irrational and more irresponsible.

Assistant Secretary of State Kerri-Ann Jones stated at last week's hearing regarding her agency's recommendation, and I quote, "That decision was based on the fact that the exact amount of the pipeline has yet to be identified in 24 areas. As a result there are unresolved concerns for a full range of issues including energy security, foreign policy, economic effects, health, safety, and environmental impacts among other considerations."

Ms. Jones went on to say, "The legislation raises serious questions about legal authorities, questions of continuing force of much of the Federal and all of the State and local environmental and line use management authority over the pipeline," and Mr. Chairman, I want to emphasize this, "It overrides foreign policy and national security considerations implicated by a cross border permit which are properly assessed by the State Department."

Mr. Chairman, with such dire warnings of this bill I think we owe it to the American public to fully explain the consequences of this legislation to ensure that the public interests were taken, and with that I yield back the balance of my time.

Mr. WHITFIELD. Thank you, Mr. Rush.

At this time I would like to recognize the gentleman from Texas, Mr. Barton, for the purpose of making an opening statement, 5 minutes.

**OPENING STATEMENT OF HON. JOE BARTON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. I am not—I won't use that much time, Mr. Chairman, but thank you.

This is a continuing hearing. Everything that can be said about Keystone has been said, but sometimes it needs to be repeated. This is an extremely important project for our Nation's future.

Just in the last month or so we have had a number of announcements that refineries in the United States, in the Northeast, and in the Virgin Islands are going to be closed, several in Pennsylvania, one in the Virgin Islands, I think one in Ohio. Altogether they are taking about a million barrels of refinery production off the books, and while the Keystone Pipeline is not building a new refinery, it is bringing additional crude oil to the Gulf Coast where we still have refinery capacity. That crude oil will be used to be refined into products that then can be transshipped up into the Midwest and the Northeast.

If you shut down refineries in the Midwest and offshore that serve that market, and if you don't build Keystone, that is a double whammy. The absolute certainty is that the prices will go up, shortages will exist, our economy will suffer.

On the other hand, if we build the Keystone Pipeline, we are going to have additional crude coming into the United States, approximately 800,000 barrels a day. It doesn't offset in totality the closure of these other refinery facilities, but it will alleviate them, and as my good friend from Oregon, Mr. Walden, just pointed out, to have to go through the bureaucratic red tape that this project has gone through for the reasons it has been subjected to it just doesn't seem to make good sense in any way. In any way.

So, Mr. Chairman, I look forward to the hearing. There is another hearing downstairs on the Chemical Facilities Act, so I will be shuffling back and forth, but I do appreciate you holding the hearing, and I obviously appreciate being allowed to speak.

I would like to yield the balance of my time to Mr. Terry of Nebraska, who has been a strong voice for this project.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. TERRY. Thank you, Mr. Chairman emeritus. Just to clarify a few points, the State Department issued three statements over the summer that they would have all of the information, and they were doing all of the due diligence to have a decision made by the end of 2011, and we took them at their word for that, and it turned out to be not true.

I think one of the key points here that has been missed in the State Department's testimony, in particular in the basis for their decision, is that they are using Nebraska as the excuse to deny the permit. The reality is in the legislation that the President signed specifically exempting Nebraska out of this, this was going forward on the other parts of the pipeline in the other states. It carved out a time that—or a trigger that would review the Nebraska portion, the 30 or 40 miles that the pipeline would be moved based upon when the governor certified that it was ready. So I am amazed at why that hasn't been brought out.

Now, I am glad that the Corps of Engineers is here today because they do play a vital point and in their testimony raises a valid point that we had already vetted and had planned to change and that is we want to make it clear that what the legislation does is remove the Presidential permission part and gives it to the agency, the Federal Agency that actually has experience in pipelines. We thought that was a rational approach with this bill.

So I want to let the Corps know that we aren't usurping, and we will change the language of issuing permits of any project that crosses the waterway under your jurisdiction.

So we knew there were other permits that they would have to file and receive once the Presidential authorization was made. I am disappointed that we invited the Corps of Engineers and the BLM to our hearing last week, and they denied or refused to come, but yet when Henry Waxman asks to testify in opposition, you are here loaded forebear. So that concerns me.

One last point in my 6 seconds is I think the message that the President's denial of this permit sent the world is that the far left of the environmental community is now in charge of our energy and foreign policy.

I yield back.

Mr. WHITFIELD. At this time I recognize the gentleman from California, Mr. Waxman, for 5 minutes for the purpose of an opening statement.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Mr. Chairman, today we are holding a legislative hearing on a bill to mandate approval of TransCanada tar sands pipeline Keystone XL.

This tar sands pipeline is hugely controversial, and for good reason. The American people will bear the risks, and Big Oil will reap the rewards. With this pipeline we get more carbon pollution, more dangerous oil spills, land seizures by a foreign country, and higher oil prices in the Midwest.

Big Oil gets the ability to extract more profits from the Midwest, a conduit for exporting tar sands products to China, and the green light to exploit the tar sands at maximum speed regardless of the consequences.

President Obama listened to differing views of American citizens and made a responsible decision. He would not approve the pipeline through the ecologically-fragile Sand Hills area of Nebraska, but the State Department would consider an alternative route.

Nebraska is taking the time to find a route that is acceptable, and the President is making sure that he has all the information he needs to make the right decision.

This bill takes the opposite approach. It gives the pipeline an unprecedented regulatory earmark. It directs the Federal Energy Regulatory Commission, directs them to approve the pipeline, even though we don't yet know what route it will take through the State of Nebraska. It exempts the pipeline from the requirement to obtain permits from the Corps of Engineers before crossing rivers and wetlands. It takes away the Department of Interior's authority to protect sensitive public lands.

For a year I have been asking a simple question: Who benefits from this extraordinary Congressional intervention in the regulatory process?

Last year Reuters reported that Koch Industries would be one of the big winners from this earmark, and there is evidence to support this.

We know that Koch is one of the largest crude oil exporters in Canada. We know it owns an oil terminal in Hardisty, Canada, where the pipeline would begin. And we know it has a refinery in Texas near where the pipeline is going to end.

Last May, I contacted Koch to inquire about the nature of its interest in the pipeline, and Koch responded that despite the evidence to the contrary, it had no financial interest in whether the pipeline was built or not, and I accepted that answer.

But then I learned that Koch had told the Canadian government that the company had a "direct and substantial interest" in the pipeline.

I want to know why Koch would tell the U.S. Congress one thing and the Canadian government the exact opposite. So I asked Chairman Upton and Chairman Whitfield to invite Koch Industries to testify today.

Well, they refused, and Koch refused to appear without an invitation from the chairman.

So we are left with unanswered questions. Why is Koch Industries being placed in a witness protection program? What does the company have to hide? And why does the company get special treatment while the American people get left in the dark?

I also asked the chairman to invite the operator of the pipeline, TransCanada. Members on our side want to ask TransCanada reasonable questions, like what route it plans to follow in Nebraska.

We also want to know about these claims of jobs. State Department testified that we would get 5,000 to 6,000 temporary jobs if this pipeline is approved. These jobs would be around for 2 years. TransCanada said it is going to be 20,000 jobs, or over 100,000. And where do they get the number 100,000? Well, that is looking at the lifetime of the pipeline for 100 years. This is the Republican jobs bill. Twenty-thousand jobs, they say. Maybe 100,000 jobs and yet the State Department did an analysis, and there is 5,000 to 6,000 jobs for 2 years.

I regret that Koch and TransCanada are not here today, and I ask the chairman to refrain from moving this bill until they are available to testify.

I am glad we have excellent witnesses here today who are going to give us their views: two departments that are going to be excluded from giving their usual review of the project—that might change, I am pleased to hear—and two gentlemen who have special insight at what this project will mean.

Thank you, Mr. Chairman, for this 7 seconds beyond the time, and I yield back whatever time I have left.

Mr. WHITFIELD. Thank you, Mr. Waxman.

Today we have two panels of witnesses. On the first panel if you—those of you on the first panel would come forward, that is Ms. Margaret Gaffney-Smith, who is Chief, Regulatory, for the U.S. Army Corps of Engineers, and Mr. Mike Pool, who is Deputy Director of Bureau of Land Management, U.S. Department of the Interior. We appreciate both of you being here with us this morning, and as you know, we are going to ask each of you to give a 5-minute opening statement and at the end of that time then questions will be asked.

I might also point out that we have been told that there will be five or six votes on the House Floor somewhere around 11:00 or so, but we are going to proceed as long as we can and then we will vote and then we will come back. So thank you all for being with us this morning.

At this time, Ms. Gaffney-Smith, I would like to recognize you for 5 minutes for the purpose of an opening statement, and be sure and turn your microphone on, and I guess that little box there on the table, a red light will come on when the 5 minutes is up. So you are now recognized.

STATEMENTS OF MARGARET GAFFNEY-SMITH, CHIEF, REGULATORY PROGRAM, ARMY CORPS OF ENGINEERS; AND MIKE POOL, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

STATEMENT OF MARGARET GAFFNEY-SMITH

Ms. GAFFNEY-SMITH. Thank you, sir. Chairman Whitfield and members of the committee, I am Meg Gaffney-Smith, Chief of the Regulatory Program for the U.S. Army Corps of Engineers. Thank you for the opportunity to discuss the Corps' regulatory authority under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act related to utility line projects and to discuss our regulatory involvement in the proposed Keystone XL Pipeline.

Section 10 of the Rivers and Harbors Act requires authorization from the Corps for the construction of any structure such as the Keystone Pipeline in, under, or over any navigable water of the U.S. Section 404 of the Clean Water Act requires authorization from the Corps for the discharge of dredged or fill material into waters of the United States.

Utility line projects may require 404 permits for temporary fills such as access roadways, storage and work areas, as well as temporary or permanent impacts associated with grading, bank stabilization, or the cross itself. When discharges of dredged or fill material are associated with activities of a similar nature and are expected to cause no more than minimal effects, individually or cumulatively, they may be authorized by a general permit.

Activities that do not meet the criteria for a general permit are typically processed through the Corps' individual standard permit procedures. When implementing the Corps Regulatory Program, the Corps is neither an opponent nor a proponent of any specific project. Our responsibility is to make fair, objective, and timely decisions that protect the aquatic environment and are not contrary to the public interest. The authority to make the final decisions on permit applications rests with our 38 district commanders.

Nationwide permit 12 is a general permit promulgated under Section 404(e) of the Clean Water Act that may be used to authorize utility line construction. The permit authorizes the discharge of dredged and/or fill material in association with temporary or permanent activities related to the construction, repair, maintenance, and removal of utility lines provided the activity does not result in

the loss of greater than one-half acre of waters, including wetlands, for a single and complete project.

Under Nationwide Permit 12 there are seven notification requirements, and if any one of these are triggered, a project proponent must submit a preconstruction notification request to the appropriate Corps district office before they begin work in waters of the United States.

Other statutes impact the ability of the Corps to authorize activities under a nationwide permit. In accordance with the nationwide permit rules and the Endangered Species Act, no activity may be authorized that would be likely to jeopardize the continued existence of threatened or endangered species or destroy or adversely modify the critical habitat of such species. In addition, no activity may be authorized by a nationwide permit until the requirements of Section 106 of the National Historic Preservation Act have been fulfilled. Further, the Corps' nationwide permits do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations that are required by law.

In September and October, 2011, TransCanada submitted preconstruction notifications to our Corps districts in Galveston, Fort Worth, and Tulsa and requested that work in waters of the U.S. in association with the Keystone XL Pipeline be verified under Nationwide Permit 12. In November and December each of the three districts made decisions to exercise their discretionary authority and suspended Nationwide Permit 12 for all work and discharges of dredge or fill material into waters of the United States associated with the Keystone XL Pipeline application. These decisions were made because of concerns identified by the Department of State that could not be addressed until a final decision was made on the pending Presidential permit application.

The President has since determined that based on the State Department's view that 60 days was an insufficient period to obtain and assess the necessary information, that the Keystone XL Pipeline project, as presented and analyzed at that time, would not serve the national interest. Should circumstances change in the future, our districts will process any future requests that are submitted for Department of Army permits in accordance with the appropriate procedures based on our statutory authorities and implementing regulations.

If H.R. 3548 is enacted, only the Federal Energy Regulatory Commission, and not the Corps, would be responsible for issuing any permit required in conjunction with construction, operation, and maintenance of the pipeline. At present, only the Corps has a statutory mandate to review projects like Keystone XL for the permit under the provisions of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

However, none of these statutory reviews would be allowed for this project under the language in Section 4(a) of this bill, and no Corps permit would be required.

I appreciate the opportunity to be here today, and I would be happy to answer any questions you may have.

[The prepared statement of Ms. Gaffney-Smith follows:]

**DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS**

COMPLETE STATEMENT OF:

**MARGARET (MEG) GAFFNEY-SMITH
CHIEF, REGULATORY PROGRAM**

BEFORE THE

**COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER**

UNITED STATES HOUSE OF REPRESENTATIVES

ON:

**H.R. 3548
The North American Energy Access Act**

February 3, 2012

Mr. Chairman and Members of the Committee, I am Margaret (Meg) Gaffney-Smith, Chief of the Regulatory Program for the U.S. Army Corps of Engineers (Corps). Thank you for the opportunity to discuss the Corps regulatory authority under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act related to utility line projects and to specifically discuss our regulatory involvement in the proposed Keystone XL pipeline. As the National Program Chief, I oversee program implementation, which is accomplished in the Corps 38 district offices.

Background on Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403)

Section 10 of the Rivers and Harbors Act requires authorization from the Secretary of the Army, acting through the Corps, for the construction of any structure in, under, or over any navigable water of the United States. Structures or work outside the limits defined for navigable waters of the United States require a Section 10 permit if the structure or work would affect the course, location, condition or capacity of the water body. The law applies to any dredging or disposal of dredged materials, excavation, filling, re-channelization, or any other modification of a navigable water of the United States, and applies to all structures, from the smallest floating dock to the largest commercial undertaking. For utility line projects, aerial or sub-aqueous utility line crossings—even when buried beneath the substrate of a navigable waterbody—may affect the navigable capacity of the waterbody and require authorization by the Corps under Section 10 of the Rivers and Harbors Act.

Background on Section 404 of the Clean Water Act (33 U.S.C. § 1344)

Section 404 of the CWA establishes a program to regulate the discharge of dredged or fills material into “waters of the United States”. Since the late 1970s, the Corps has regulated discharges of dredged or fill material into streams and wetlands related to activities such as highway construction; residential, commercial, and industrial developments; energy projects; and utility line projects. A Corps permit is required whether the work, including any discharges, is permanent or temporary. Utility line projects may include temporary fills for access roadways, storage, and work areas, as well as temporary or permanent impacts associated with grading, bank stabilization, or the crossing itself.

Discharges of dredged or fill material into streams and wetlands that are waters of the United States require authorization from the Corps. Activities that are similar in nature and that are expected to cause no more than minimal effects, individually and cumulatively, as described in Section 404(e) of the CWA, may be authorized by a “general permit.” The CWA stipulates that general permits expire after five years, at which point the Corps must evaluate them, update them if necessary, and reissue them through a public notice and comment process. All federal, tribal, state, local agencies and members of the public have an opportunity to comment on general permits as part of the reauthorization process, and the Corps uses input received to improve effectiveness and environmental protection requirements of these permits.

Activities that do not meet the criteria for a general permit are typically processed under the “standard individual permit” procedures. These procedures include issuance of a public notice, preparation of a project specific decision document in accordance with National Environmental Policy Act requirements, and application of the Section 404(b)(1) Guidelines. Regulatory program personnel in Corps districts work with applicants to avoid and minimize impacts to waters of the United States and to develop satisfactory compensatory mitigation plans for unavoidable impacts to aquatic resources. For individual permit applications, the Corps conducts a full public interest review, balancing the anticipated benefits against the anticipated impacts. The Corps can only authorize those activities that are not contrary to the public interest, and must authorize the least environmentally damaging practicable alternative, so long as that alternative does not have other significant adverse environmental consequences.

When implementing the Corps regulatory program, the Corps is neither an opponent nor a proponent for any specific project; the Corps responsibility is to make fair, objective, and timely permit decisions. The Secretary of the Army, through the Chief of Engineers, has delegated responsibility for making final decisions on permit applications to the Corps District Commanders.

Background on Nationwide Permit 12 for Utility Lines

Nationwide Permit 12 (NWP 12) is a general permit promulgated under Section 404(e) of the CWA that may be used to authorize activities that have minimal adverse effects on the aquatic environment, both individually and cumulatively. Specifically, this permit

authorizes the construction, repair, maintenance and removal of utility lines, provided the activity does not result in the loss of greater than ½ acre of waters of the United States. It further includes associated excavation, backfill or bedding for utility lines, provided there is no change in pre-construction contours. Utility lines that are routed in or under Section 10 navigable waters without a discharge of fill material may receive the necessary Section 10 authorization by means of the Nationwide Permit. This Nationwide Permit also includes authorization for temporary structures, fills, and work necessary to construct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable when temporary discharges, work, and discharges are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated as appropriate. Finally, NWP 12 includes authorization for the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, with the exception of non-tidal wetlands adjacent to tidal waters.

NWP 12 includes quantitative thresholds on the amount of discharge of dredged or fill material into waters of the United States. All activities included for authorization as part of a single and complete project must not result in the loss of greater than one-half acre of waters of the United States. It is important to note that the same Nationwide Permit cannot be used more than once for the same single and complete project. The Corps regulations define a single and complete project at 33 C.F.R. §330.2(i) as "the total

project proposed or accomplished by one owner/developer or partnership or other association of owners/developers... For linear projects, such as the Keystone XL pipeline proposal, the "single and complete project" will apply to each crossing of a separate water of the United States (i.e. single waterbody) at that location.

Applicants requesting authorization under NWP 12 are required to provide a pre-construction notification to the local district commander prior to commencing an activity involving any one of the following seven criteria:

- 1) mechanized land clearing in a forested wetland for the utility line right-of-way;
- 2) the work/discharge is proposed in a navigable waterway (i.e., Section 10 authorization is required);
- 3) the utility line in waters of the United States exceeds 500 linear feet;
- 4) the utility line is placed within a jurisdictional area (i.e., a water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area;
- 5) the activity will result in the loss of greater than one-tenth acre of waters of the United States;
- 6) permanent access roads are constructed above grade for longer than 500 linear feet within waters of the United States; or
- 7) permanent access roads are proposed to be constructed of impervious materials within waters of the United States.

Other Statutes Relevant to Corps Permitting Processes

Other statutes impact the ability of the Corps to authorize activities under any Nationwide Permit. In accordance with the Endangered Species Act (ESA), no activity may be authorized under any Nationwide Permit, including NWP 12 that would be likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify the critical habitat of such species. In addition, no activity may be authorized under any Nationwide Permit until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been fulfilled. Further, the Corps Nationwide Permits do not obviate the need to obtain other federal, state or local permits, approval or authorizations required by law.

Section 10 and Section 404 Permits for the Keystone XL Project

To date, TransCanada has submitted pre-construction notifications (PCNs) requesting verifications under NWP 12 to the Corps Galveston, Fort Worth and Tulsa districts, for the necessary authorization under Section 10 and Section 404 for activities in waters of the U.S. in association with the Keystone XL pipeline project applied for in September and October 2011. Prior to the Presidential Permit being denied, each of the three districts made decisions to exercise discretionary authority on these PCN requests and suspended all work for the discharge of dredged or fill material in waters of the United States because of concerns identified by the Department of State related to the public interest that could not be addressed until a final decision was made on the pending Presidential Permit application. The President has since determined, based upon the State Department's view that 60 days is an insufficient period to obtain and assess the

necessary information, that the Keystone XL pipeline project, as presented and analyzed at that time, would not serve the national interest. Should circumstances change in the future, the districts will process any future requests that are submitted for Department of the Army permit(s) in accordance with the appropriate procedures based on its statutory authorities and implementing regulations.

If H.R. 3548 is enacted, only the Federal Energy Regulatory Commission, and not the Corps, would be responsible for issuing any permit required in conjunction with construction, operation and maintenance of the pipeline. At present, only the Corps has the statutory mandate to review projects like the Keystone XL pipeline for a permit under the provisions of Section 10 of the River and Harbors Act and Section 404 of the Clean Water Act. However, none of these statutory reviews would be allowed for this project under the language in Sec. 4 (a) of this bill, and no Corps permit would be required.

I appreciate the opportunity to be here today and I will be happy to answer any questions you may have.

Mr. WHITFIELD. Thank you very much, Ms. Gaffney-Smith.

Mr. Pool, you are now recognized for 5 minutes for the purpose of making an opening statement.

STATEMENT OF MIKE POOL

Mr. POOL. Thank you, Mr. Chairman, and thank you for inviting the Department of Interior to this hearing on H.R. 3548, the North American Energy Access Act.

Legislation directs the Federal Energy Regulatory Commission to approve the Keystone XL Pipeline Project. The Department has concerns with several provisions of the legislation.

The proposed \$7 billion pipeline project would span more than 1,700 miles between Hardisty, Alberta, Canada, and multiple destinations in Oklahoma and Texas. Under Executive Order 13337, all proposed oil pipeline projects that cross the U.S. borders require a Presidential permit, including a determination that the proposed cross-border pipeline is in the national interest.

The State Department reviews applications for a Presidential permit and consults with eight other agencies including the Department of Interior in its review. The State received an application for Keystone XL Project from TransCanada Keystone Pipeline in September of 2008. The proposed 1,700-mile pipeline crosses through eastern Montana for 228 miles and includes approximately 42 miles of scattered parcels of Federal land managed by the BLM. The BLM was a cooperating agency with the State Department as was the U.S. Fish and Wildlife Service and the National Park Service in the preparation of an environmental impact statement to address the environmental effects of the proposed pipeline construction and operation activities.

The BLM identified pipeline routes across Federal lands in Montana that would minimize environmental impacts of pipeline construction. The final EIS was issued on August 26, 2011.

In addition, under the Mineral Leasing Act the BLM is authorized to issue rights of ways for crude oil pipelines that cross Federal lands. TransCanada Keystone Pipeline filed rights of way applications with the BLM in 2008. The Keystone Project would include a permanent 50-foot right of way along the scattered 42 miles of BLM-managed lands in Montana and comprise a total of 270 acres.

Applications were also filed for temporary use permits and for electrical transmission lines on public lands in Montana to supply power to the proposed pumping stations. Temporary rights of ways for construction purposes would comprise of 200 additional acres dispersed on BLM-managed tracts of land and would be used for a period of 3 years then reclaimed by Keystone. These permit applications have not been withdrawn. Their processing is on hold.

The North American Energy Access Act appears to make the Federal Energy Regulatory Commission the sole Federal agency responsible for the project. It would also give the commission sole authority to permit construction, operations, and maintenance for the pipeline and related facilities. The legislation is not clear on how these—how the pipeline construction, operation, and maintenance would be carried out on Federal lands and what role, if any, the

BLM would have with regard to spills on Federal lands from the pipeline.

This departure from current law would also preclude the BLM from collecting rents and cost recovery related to the pipeline and rights of way on Federal lands.

Thank you for the opportunity to testify before the subcommittee. I am pleased to answer any questions.

[The prepared statement of Mr. Pool follows:]

**Statement of
Mike Pool
Deputy Director
Bureau of Land Management
U.S. Department of the Interior**

**Before the
House Energy and Commerce Committee
Subcommittee on Energy and Power**

H.R. 3548, North American Energy Access Act

February 3, 2012

Introduction

Thank you for inviting the Department of the Interior to this hearing on H.R. 3548, the North American Energy Access Act, directing the Federal Energy Regulatory Commission (FERC) to approve the Keystone XL Pipeline Project. The Department has concerns with several provisions of this legislation.

As discussed in detail at the January 25, 2012, hearing before this Committee, the Keystone XL project is a proposed seven billion dollar, 1,704-mile oil pipeline between Hardisty, Alberta, Canada, and multiple destinations in Oklahoma and Texas. The project crosses the U.S. border with Canada, and is proposed by TransCanada Keystone Pipeline LP. Pursuant to Executive Order 13337, the State Department is empowered to receive applications for Presidential Permits for all oil infrastructure projects that cross U.S. borders and to determine whether those permits should be granted based upon whether it is in the national interest.

The State Department received the application for this project in September 2008 and, following receipt of the application, State began a process to determine whether issuance of a Presidential Permit for this pipeline was in the national interest. The Executive Order directs the Secretary of State to consult with eight other agencies, including the Department of the Interior, during its analysis.

Department of the Interior Role in EIS

Among other interests, of particular relevance to the Department of the Interior, the proposed 1,704 mile route of the Keystone pipeline crosses through eastern Montana for 228 miles, including approximately 42 miles of scattered and non-contiguous Bureau of Land Management (BLM)-managed parcels of land. Keystone has filed applications with the BLM for a pipeline right-of-way across these Federal lands in Montana under section 28 of the Mineral Leasing Act of 1920. The BLM was a cooperating agency with the State Department, as was the U.S. Fish and Wildlife Service and the National Park Service, in the preparation of the Environmental Impact Statement to address the environmental impacts of the proposed pipeline construction and operation activities, including identification of pipeline routes across BLM-managed lands in

Montana that would minimize environmental impacts of pipeline construction. The Final EIS, issued on August 26, 2011, incorporates input from the Department of the Interior.

The BLM has the authority under the Mineral Leasing Act to issue right-of-way grants on public lands for the construction, operation, and decommissioning of crude oil pipelines, pumping stations, access roads, and site improvements. The BLM received additional applications, under the Federal Land Policy and Management Act of 1976, for electrical transmission lines on Federal lands in Montana to supply power to the proposed pumping stations. In addition, the BLM received applications for associated temporary use permits that would allow additional work space during construction on the 42 miles of BLM-managed lands crossed by the Keystone XL project. These permit applications have not been withdrawn, but processing is on hold because they cannot be granted unless they are associated with an active project.

The total permanent right of way on BLM-managed public lands for the Keystone project would be approximately 50 feet wide and comprise a total of approximately 270 acres. Temporary right of way grants for construction purposes would comprise a few hundred additional acres dispersed on the BLM-managed tracts of land, used for a period of not more than three years, and then reclaimed by Keystone. The BLM would issue a separate Record of Decision under its permitting authority to approve or deny any applications for right of way grants on Federal lands in Montana.

Other Departmental Cooperation

Section 7(a)(2) of the Endangered Species Act requires Federal agencies to consult to ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any Federally listed species nor destroy or adversely modify critical habitat. The Fish and Wildlife Service began consultation with the State Department on the Keystone XL project in April 2008, when Keystone sent initial consultation letters to the various agencies including the Service. The State Department issued a final biological assessment in May 2011. On September 23, 2011, the Service transmitted the biological opinion to the State Department concluding that the construction of the Keystone Pipeline is not likely to jeopardize the continued existence of any threatened or endangered species.

On November 14, 2011, Nebraska officials and TransCanada Keystone Pipeline, LP announced that they had reached an agreement whereby TransCanada voluntarily agreed to move its proposed route for the pipeline out of the Nebraska Sand Hills. The State of Nebraska subsequently passed a law (LB 4, signed on November 22, 2011) on the process for reviewing and approving potential routes for the Keystone XL Pipeline, and the Service withdrew its biological opinion at the request of the State Department.

As discussed at the January 25, 2012, hearing before your Committee on this issue, the President concurred with the State Department recommendation that the Keystone XL project would not serve the national interest at this time because the new route for the pipeline through Nebraska had not yet been established, making it impossible to assess the impact of that route and evaluate the associated environmental, health, safety, economic and energy security considerations.

H.R. 3548

H.R. 3548, the North American Energy Access Act, appears to make the Federal Energy Regulatory Commission the sole Federal agency responsible for the project and would mandate, with very short timelines, the issuance of a permit for the construction, operation, and maintenance of the oil pipeline and related facilities by FERC, or, if FERC did not issue a permit within the time frame, a permit is deemed to have been issued. The bill would also make a permit issued under the provisions of the Act the sole authority required to construct, operate, and maintain the pipeline and related facilities.

Thus, if the legislation were enacted, it appears that FERC would become the Federal agency responsible for enforcing laws that Department of the Interior agencies – which have the expertise and authority to carry out these functions – are usually responsible for carrying out during “construction, operation, and maintenance” of a pipeline on Federal lands.

For example, unlike current law, it appears that the language in Section 4 of H.R. 3548 that confers on FERC the sole authority for “construction, operation, and maintenance” of the pipeline through its issuance of the permit would preclude the BLM from issuing any rights-of-way under the Mineral Leasing Act or the Federal Land Policy and Management Act for authorizing and managing construction, operation, maintenance, and decommissioning of the pipeline and related facilities on Federal lands. This departure from current law would also preclude the collection by BLM of rents and other cost recovery related to the pipeline and related rights-of-way on Federal lands.

Moreover, although the legislation appears to preclude issuance and administration by the BLM of these rights-of-way, the bill leaves unclear how the construction, operation, and maintenance process would be carried out on Federal lands and what role, if any, the BLM would have with regard to discharges on Federal lands from the pipeline.

With regard to the Endangered Species Act, Section 7 consultation is carried out in cases of discretionary Federal action. While the legislation notes that modifications to the EIS version of the pipeline are allowed, and the preferred agency alternative in the EIS appears to contemplate a number of variations and minor realignments in the pipeline route, it is the FERC’s determination as to whether the action taken is mandatory or discretionary and, thus, whether consultation would be triggered. We note, however, that absence of Section 7 consultation could leave the permit applicant with no “take” coverage under the ESA for impacts to listed species from construction and operation of the pipeline. Because application of the ESA is not specifically precluded by the bill, it is possible that citizen suit provisions would be available to potential litigants, who could assert take of listed species that might be impacted by the project.

Conclusion

For these reasons the Department of the Interior has significant concerns with H.R. 3548 in addition to those raised by other Federal agencies. Thank you for the opportunity to testify before the Subcommittee. I would be pleased to answer any questions.

Mr. WHITFIELD. Mr. Pool, thank you very much, and at this time I will recognize myself for 5 minutes for questions.

There has been a lot of discussion on the Keystone Pipeline about the Koch Brothers, and the Koch Brothers have indicated that they have no financial—direct financial interest in this pipeline, and for that reason we have never really called them as a witness. And I might say that we know that the Burlington Northern Santa Fe Railroad has direct routes right into Canada and Alberta and that if the pipeline is not built, that maybe some of that oil will move by rail into the U.S., and, of course, the owner of that railroad is Warren Buffett of Berkshire Hathaway.

We have not made any effort to call Warren Buffett to testify in this hearing because even though his company might benefit if the pipeline is not built, we do not think he has a direct financial interest in it, and I really in my view do not view Warren Buffett and the Koch Brothers any different on this situation.

So I simply wanted to mention that. I would also say that the State Department when it issued its final environmental impact statement in August of 2011 actually made the comment that it would be better to build this pipeline than to not build the pipeline. If you were looking at these two options, it would be better to build it than not to build it.

And so other pipeline projects requiring the Presidential permit usually take 18 to 24 months to review and approve. Keystone is now in its 40th month. So when these additional delays appear to be mounting early in 2011, the U.S. House passed bipartisan legislation with 47 Democrats voting yes that simply instructed President Obama to make a final decision one way or the other on the Presidential permit by November 1, 2011. At the time the White House stated the legislation was unnecessary because the State Department would be making the decision by the end of 2011.

But as President Obama's campaign began to warm up for Presidential, the President's political advisors realized that the environmental groups would be quite upset if the President said yes to this pipeline. On the other hand, the labor unions were going to be quite upset, at least five or six of them, if the President said no to the pipeline.

So at that time the President instead of making a decision said that he would wait until after the election to make a decision. So from our perspective this really was nothing but a political decision, and since we have had 40 months of detailed study and analysis on this, we felt like that there was no reason to delay anymore, because we do need to be less dependent upon foreign oil. We can bring in this oil from our friendly neighbor to the north, Canada, and we can create jobs as well.

So I wanted to just make that comment about the Koch Brothers and the fact that I don't see that they are in much of a different position than Warren Buffett is except they are on different sides of the issue perhaps.

And I yield back the balance of my time, and Mr. Rush, I will recognize you for 5 minutes for questions.

Mr. RUSH. Mr. Chairman, I would just suggest that maybe you should invite Warren Buffett and the Koch Brothers here. That would be a dandy old hearing.

Mr. WHITFIELD. That would.

Mr. RUSH. Right.

Mr. WHITFIELD. We would get a lot of press.

Mr. RUSH. Right. I want to ask Mr. Pool regarding the Bureau of Land Management's current role in—how—I think you hit on it, but I want you to expound on this. How does this bill affect the role of your agency? How does this bill affect the role of your agency?

Mr. POOL. It does raise concerns. The BLM has a long history of issuing the rights of ways under the Mineral Leasing Act, approximately 32,000. We have experience, we have the practitioners in the field that are familiar with the right-of-way program and the importance of working through NEPA and taking into account any cultural biological concerns.

So and we have got that experience. We have dealt with pipelines many times in the past, so the bill the way it is worded seems to confer all of our responsibility under the Mineral Leasing Act to FERC, and some of the accelerated timeframes in the bill it begs the question whether or not if there is any additional consultation requirements under Section 106 of the National Archeological Protection Act or any additional consultations that may be required through the Fish and Wildlife Service if that is possible.

I think the other thing that I think is very important is the BLM has established relationships in the west. We have many offices geographically in the west. We are accustomed to working with county, local governments, State governments. We work with our Federal counterparts as well. So we have been in this process for 3 years as it relates to our right of way, the right away application in Montana, so we have an already-established relationship with our Federal and State entities as we work through, you know, this particular project or future projects.

And I think that helps ensure ourselves and with the involvement of the Federal agencies that we are fulfilling, you know, our Congressional mandates.

Mr. RUSH. As far as you are concerned does FERC have the same vast foot front in the west to make similar decisions?

Mr. POOL. Well, I know from a jurisdictional ownership standpoint they do not. They are a regulatory entity. I mean, you know, when it comes to transcontinental natural gas line, FERC usually assumes that lead, and when they are in that role, we are a cooperating agency.

But it is important to point out that, you know, and the more recent example being the Ruby Pipeline in the west, they had the lead, but all our other mandates regarding segments that cross public lands or other Federal jurisdictions, that was administered and authorized under the Mineral Leasing Act, and all other mandates were also required as well.

Mr. RUSH. Ms. Gaffney-Smith, the Army Corps of Engineers has a role in this submitting process and concerning this—so your responsibilities and some of your activities regarding this matter. Would you care to expound more on how this bill will affect your role?

Ms. GAFFNEY-SMITH. Our interpretation and understanding of the bill as it is currently proposed would eliminate any opportunity

for the Corps of Engineers to process any applications related to Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act, and so we would have—under the current language within the bill, we would have no authority to regulate the activities in waters that are under our jurisdiction under those two laws.

Mr. RUSH. So this would aggregate your significant responsibilities and dilute the authority and the experience the Army Corps of Engineers have built up over centuries?

Ms. GAFFNEY-SMITH. Yes. It would remove all of our authority and remove any existing experience that we could lend to the review of the proposal.

Mr. RUSH. All right. Can either of you tell the committee on the provision of this bill which agency or agencies would then be responsible for enforcing the terms of the environmental impact statement?

Ms. GAFFNEY-SMITH. From the Corps of Engineers perspective it looks like the entire responsibility would be provided to the Federal Energy Regulatory Commission.

Mr. RUSH. Do you agree, Mr. Pool?

Mr. POOL. That is the way the bill comes across to us as well. It is the transfer of authority that we currently have at BLM in terms of, you know, issuing the rights of ways from the Mineral Leasing Act, and that would be conferred to FERC.

I think it is also important to point out that in terms of, you know, BLM's Rights of Way Program, that these are cost reimbursement programs for—so the work that we perform, the studies that may be necessary depending on where any pipeline may be right across public land, industry provides a cost reimbursable account. So that account would, under this bill would pretty much, you know, we would not happen anymore. We would be out of the picture.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. WHITFIELD. At this time I recognize the gentleman from Oklahoma, Mr. Sullivan, for 5 minutes.

Mr. SULLIVAN. Thank you, Chairman Whitfield.

During this State of the Union address President Obama turned his back on the Keystone Pipeline. He actually rejected the advice of his own Jobs Council who recommended an all-in approach to energy policy that included expediting energy projects like pipelines.

Like many Americans I was surprised that the primary reason the President stated for his denial saying Congress forced his decision with an arbitrary deadline. If excuses were barrels of oil, this administration would have filled out strategic petroleum reserves several times over.

The truth of the matter is the administration had 3 years to reach a decision on Keystone XL but failed to do so. If more than 1,100 days is not enough time, then exactly how much time do you need to secure our energy future, Mr. President?

This begs the question of just who is in control of our national, Nation's energy agenda. Time and time again we hear about President Obama's commitment to American-made energy that creates jobs and reduces our dependence on foreign oil, yet he rejects a no-brainer like Keystone XL. The truth is he made a calculated polit-

ical decision to reject it to keep his anti-jobs environmental base happy in an election year.

By rejecting the pipeline President Obama turned his back on American jobs. What logical reason could there be to say no to 20,000 new private sector jobs and potentially 100,000 indirect jobs while our Nation's unemployment rate remains above 8 percent? It is in both our economic and national security interests to use the oil and gas reserves right here in our own backyard.

Mr. President, why not embrace bolstering our energy supply with a stable source of oil from Canada and North Dakota instead of politically tumultuous OPEC nations. Unlike the trillion-dollar failed stimulus law, the Keystone Project is privately funded and does not cost the taxpayers one dime. The Keystone XL Pipeline is a game changer for energy security. The pipeline when fully complete would transport nearly 1.3 million barrels of oil per day from Alberta and North Dakota to refineries in the Midwest and Gulf Coast.

I believe this is in our national interest to move forward with this pipeline, and the State Department's 3-year delay is considering—in considering this pipeline is a national travesty. Three years into the Obama's Presidency he has severely limited access to both on and offshore oil and gas reserves, pushed the most expensive environmental regulatory agenda in history, and sent a half-billion dollars of taxpayer money to Solyndra, a now-bankrupt solar company.

The fact of the matter is that our country needs all the energy we can get to continue growing our economy. With gas prices expected to rise in the coming months, his decision to reject the Keystone Pipeline means that our energy security is now in the hands of China, Iran, and other OPEC nations; not a good choice.

Mr. Chairman, the Keystone Pipeline is the right thing to do to create jobs and make our Nation more energy secure. I would like to yield the balance of my time to Congressman Lee Terry from Nebraska.

Mr. TERRY. If the gentleman doesn't mind, can I reject that since I only have a minute 30 left?

Mr. SULLIVAN. Yes, you can.

Mr. TERRY. But I appreciate that opportunity.

Mr. SULLIVAN. Yes, sir.

Mr. WHITFIELD. The gentleman yields back his time.

At this time I will recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Mr. Chairman, the topic that we are discussing is the Keystone Pipeline, but I must say the Republicans are like Keystone cops in the way they have handled this whole issue. They have been going way out on a limb to get this pipeline approved, even to the point where a tax cut for middle class Americans and unemployment benefits and money for physicians was—a bill was held up to make sure that there was a provision that gives special treatment to the Keystone Pipeline.

But these brilliant people put in a provision that said the President has to decide the issue within a certain period of time. They forgot to tell him how he had to decide it, and the President said,

"I want to get all the facts first, and I am not going to approve it in this timeframe."

So now they have come up with a bill. This is a remarkable bill. This bill says—I wish people would read it. This—it says—this is a—the pipeline in this bill is the Keystone XL Pipeline. No question about it, and they are exempted from review except for 30 days, but if the FERC doesn't give them a permit in 30 days, then they will be deemed approved. They are not taking any chances now.

And in addition they say that the two other agencies and all the other agencies that might be involved in reviewing this bill will no longer have the power to review the bill. So we have witnesses here from two of the agencies that ordinarily would review any legislation, not legislation, any application for something that would go over public lands, over waterways. Suddenly they are out. They can't review it.

So when we found out, when Mr. Terry found out that was the case, he just said to us for the first time this morning, oh, we are not going to do that. We are going to put them back in the bill.

So the application has to be approved in 30 days, or it is approved. If they want to make a modification, they can ask for a review for 30 days, but if it is not approved in 30 days, it is approved. For this one project.

Now, we wanted to find out what interest the Koch Industries had. Now, why did we want to find that out? Well, the Koch Industries is one of the largest crude oil exporters in Canada. The Koch Industries own the terminal in Canada where the pipeline would begin. The Koch Industries has a refinery near where the pipeline would end, and the chairman said they—he would take their word for it they don't have any interest, even though there is evidence to the contrary.

But then he throws out a real herring as no one better than a Keystone cop could do, and his argument, oh, well, wait a minute. There is another guy who agrees with the Democrats some of the time, who owns a railroad, and they might put the coal, tar sands on the railroad. So really what the Democrats are doing is fronting for another industry. Boy, does that make sense. You got the crude oil owner with the pipeline and a refinery, and we should just take their word for they have no interest, but we should then point the finger at Warren Buffett's company.

And then what did they do? They say in hearings, well, we know what is going on. We are attributing the worst possible motives to the President of the United States. It is all political. Well, that is quite a statement. How did they get into the President's head? What the President said is I want to get information before I approve it, and they said, aha. What is really going on is the President is trying to take care of the environmentalists, and he is going to annoy them. They have got it all written down. They could be on 24-hour news radio. They have figured it all out without getting more information.

Well, we have two witnesses right now, and before acting we should get some further information about this special interest bill. It directs the FERC to deal with the matter, but Ms. Gaffney-Smith, under the section 404 of the Clean Water Act, the U.S.

Army Corps of Engineers has a permitting process to ensure that wetlands are protected from discharges of dredge or fill material.

Now, doesn't this bill take away jurisdiction of your agency over this pipeline?

Ms. GAFFNEY-SMITH. It appears to do so. Yes.

Mr. WAXMAN. And Mr. Pool, the—your agency has to do with wildlife. Tell me what your agency would ordinarily review and whether you have that ability to review it.

Mr. POOL. Congressman, we—all these type actions we review them per land-use plans. That is the Congressional mandate under—

Mr. WAXMAN. And now are you being taken, is that jurisdiction being taken away from you?

Mr. POOL. It appears it would, that we would no longer apply those other Congressional—

Mr. WAXMAN. We used to have a party in this country called the Know Nothings, and the people that are pushing this bill want us to know nothing about this pipeline except what the proponents want us to know, and if the Koch Brothers are proponents and are going to benefit, I would like to know about it, and the American people ought to know about it as well.

My time has expired, and I hope we have another round.

Mr. WHITFIELD. At this time we will recognize the gentleman from Oregon, Mr. Walden, for 5 minutes.

Mr. WALDEN. I thank the gentleman very much.

Mr. Pool, tell me again the agency you are with.

Mr. POOL. Bureau of Land Management.

Mr. WALDEN. And tell me how many acres are at play and that you have reviewed as part of the Keystone Pipeline review process?

Mr. POOL. Congressman, the majority of that acreage is in Montana.

Mr. WALDEN. Yes.

Mr. POOL. A little over 42-mile segment and it comprises given the linear width 50 feet, it comprises about 250 acres with an additional 900 acres that would be needed probably for staging during the construction phase.

Mr. WALDEN. Yes. I was thinking, I was looking for it here in your testimony. I thought it was actually 270 acres is what your testimony is but it is the same.

Mr. POOL. Yes.

Mr. WALDEN. Two fifty, 270. And you have done the environmental work on that. Right? The review process through NEPA already?

Mr. POOL. Our segment was reviewed through the NEPA process. That was led by the State Department, and so the segment that we are associated with through our mandates was evaluated, and as a result of the final EIS that came out in August we did not identify any major constraints to that segment in terms of authorization.

Mr. WALDEN. So you have done the full review, you have been through the EIS, the SEIS, the final environmental impact statement, and this is all about a 50-foot wide swath that covers 278. Now, the other land that you talked about, did you say 900, roughly 900 acres?

Mr. POOL. You know, we issue——

Mr. WALDEN. Temporary in and out.

Mr. POOL. It is. It is, you know, temporary use for grants to facilitate staging during the construction phase.

Mr. WALDEN. And then that would revert back.

Mr. POOL. That is for a 3-year period.

Mr. WALDEN. OK, and then talk to me about any issues related to the work that your fine agency did on the biological opinions related to the Endangered Species Act. Did you find any threat to threatened or endangered species?

Mr. POOL. I think the initial biological opinion that was provided indicated there would not likely be a jeopardy to the existence of threatened or endangered species.

Mr. WALDEN. Uh-huh.

Mr. POOL. Obviously it was subsequently withdrawn and——

Mr. WALDEN. But it was an FEIS as well. Right? I mean, it had gone through the full——

Mr. POOL. That is correct. It was issued after the issuance of the FEIS.

Mr. WALDEN. Right. So your agency, your biologists, all the people that do this work have thoroughly reviewed the Keystone part that would cross Federal land over which you have jurisdiction.

Mr. POOL. That is correct.

Mr. WALDEN. And found no—not—no likely jeopardy of any threatened or endangered specie, and you are talking about a total of 270 acres roughly for the full pipeline. Correct? So the State Department had all that information.

Mr. POOL. Yes, they do.

Mr. WALDEN. On the public lands.

Mr. POOL. Yes. We were very cooperative to the State Department, one of many, so——

Mr. WALDEN. Right.

Mr. POOL [continuing]. That is the area that we were responsible is where it crosses public land.

Mr. WALDEN. All right.

Mr. POOL. I think we have got a sliver, about a mile and a half, in South Dakota, but the majority of that crossing of public land occurs in Montana.

Mr. WALDEN. All right. All right. I appreciate that. I think that is important for the record because we have heard a lot of spin-up rhetoric here, and I just want to get to the facts. I went through some of the FEIS in the last hearing we had, and, you know, we hear about this jobs number. It gets batted all over, you know. I think we would want private sector investment, and this is \$7 billion, I believe, in shovel ready, private sector construction jobs, and there are estimates of 20,000.

Now, I think what Mr. Waxman referenced was actually only the construction jobs during the phase of the construction, but I know having been a small business owner for more than 2 decades that when you get involved in a big project, it is not—I mean, we were just in the radio business, but, you know, if I bought a transmitter, somebody had to build that thing, and I had to hire an engineer to install it, and I had to go through a lot of other efforts.

There were a lot of other indirect jobs associated, and I think that is maybe where the difference of opinion here is on the jobs. If you only looked at just exactly the, you know, several thousands of jobs that would be there for 2 years in an industry that has been devastated over the last 3 years I would take whatever jobs we could, and if there is no environmental impact on the Federal lands, and it doesn't appear there would be.

I think we can make the change Mr. Terry recommended to deal with the issue that Ms. Gaffney-Smith, if we change this bill to allow you to continue to have your statutory authority, that wouldn't be a problem, would it?

Ms. GAFFNEY-SMITH. No. We would evaluate all the crossings and impacts under the current authority, statutory authorities in our—

Mr. WALDEN. And have you done that already?

Ms. GAFFNEY-SMITH. No, we haven't done it. We have only received preconstruction notifications for certain aspects of the pipeline.

Mr. WALDEN. I see. My time has expired. Thank you very much.

Mr. WHITFIELD. At this time we will recognize the gentleman from Texas, Mr. Gonzalez, for 5 minutes.

Mr. GONZALEZ. Thank you very much, Mr. Chairman, and welcome to the witnesses, and we had a witness from FERC that the way I recall his testimony was, one, they weren't really equipped to do it, two, the timeline that is being imposed by this particular bill, 3548, was not realistic. And I believe what you are providing and what you bring to the equation of building this pipeline safely is invaluable and essential, and I don't believe that this bill is the best method of accomplishing the building out of the Keystone Pipeline, which I support. I just don't think this is the way to do it.

My greater fear and we are going to have some other witnesses that may address some other implications, and that is unrealistic expectations of what this pipeline is going to provide this country. I am going to do this as briefly as I can.

First of all, when it comes to price, fuel prices reduces economic growth at a very, very sensitive time in this country. High gas prices reduced economic growth in this country in 2012, by 0.5 percent when we know that total growth for the year we are looking at around 2 percent. So it was substantial.

I do not believe that the Keystone Pipeline would reduce fuel prices, and that is what we are telling the American public, and we keep going on. I wish we had a hearing that would really explore the impact on price, because eventually it will be our constituents that will be dumbfounded when we complete the pipeline and they are still paying an extraordinary amount of money for a gallon of gasoline.

Gasoline supplies are being exported to the highest bidder. I said this last week. Leading all exports in this country was fuel last year. So it is a global market. That is what we are in competition with, and this is from Tom Kloza, Chief Oil Analyst at Oil Price Information Service, which he said it is a world market and will go to the highest bidder.

At a Senate hearing the president of Shell back in May of last year said, simply stated, oil is a global commodity, and oil companies are price takers, not price makers. That is the same lesson that is going to be imposed on refiners. It is a global market.

So who owns all the oil that is coming and is going to be stored somewhere? Well, that is really curious, and maybe we can understand global markets and how the prices are arrived at. This is a story, Dallas Morning News, 15th of May last year, some 70 percent of contracts for future oil delivery are now bought by financial speculators, largely big investment banks, and hedge funds who never take control of the oil. They just flip the contract for a quick profit. Only about 30 percent of oil contracts are bought by a purchaser that actually intends to use the oil such as an airline. That is according to the Commodity Futures Trading Commission which regulates trade in those contracts.

Michael McMasters, Wall Street investor, testified before Congress repeatedly that speculators are pushing prices well beyond what the supply and the demand warrant.

And then I want to end this by—until the early 1990s the ratio of speculative trades to trades made by commercial users of oil was tilted heavily towards the users of oil, but from 1991, forward the big financial players such as Goldman Sachs and J.P. Morgan won exemptions that freed them from limits on how much they could speculate in future markets.

Now, we have attempted to do something about that, but the majority party has fought us tooth and nail on this, whether it is Dodd-Frank or anything else that addresses some sort of a regulatory scheme that will now allow the play in of futures and commodities to the detriment of the American consumers. This is all part of it, but we seem to be ignoring a holistic approach.

Now what really concerns me is we are going to have a witness that is going to tell us that this may not be the answer to national security. Now, I think that it can be depending on how we use the raw product and the refined product that we derive from oil. But if, in fact, it is a global market, the only way you maintain that edge is somehow making sure that there is available, accessible, and affordable supply in the United States.

But if you have investors that are charged with the fiduciary duty of making a good profit for their investors, and that is the American way, and I have no problem with that, what do you do? Do you keep it in the domestic market, or do you export it?

So there is not just about the safety of the pipeline. I believe that I would rather be dependent on Mexico and Canada than Saudi Arabia and Venezuela. I mean, there is no doubt about that. Venezuela. But the problem we have is not a realistic approach, and I guess that is what really concerns me, and I am hoping to return for the witnesses that are going to be touching on some of the subject matter that I just touched on. I appreciate your testimony today. I think you are invaluable to this whole equation of building a safe Keystone Pipeline.

Thank you, Mr. Chairman.

Mr. WHITFIELD. At this time I recognize the gentleman, Mr. Terry.

Mr. TERRY. Thank you, and I guess I am one that would like to submit items for the record, so Mr. Chairman, I ask unanimous consent that I may submit for the record a memorandum from the U.S. State Department, Mr. Keith Benes, dated June 22, 2011.

And on the issue that my friend from St.—not St. Louis, San Antonio, a little further south, mentioned, it is on the record from the State Department's review of this pipeline that eliminating transportation constraints from Cushing to Houston would not adversely affect Midwest gasoline consumers. In fact, it goes on and says that it would help crude prices decline considering that the transportation is consistent, reliable, and less expensive.

Let us keep in mind that what we are talking about is around 700,000 barrels initially going up to a million barrels that would completely offset the need for us to send tankers to Venezuela and fill up with their heavy crude and ship it up here. It defies logic—

Mr. WHITFIELD. I might just say without objection that—

Mr. TERRY. Thank you. I submit that so I will put it up here.

[The information follows:]

MEMORANDUM

TO: MR. KEITH J. BENES
ATTORNEY-ADVISER
U.S. DEPARTMENT OF STATE

FROM: CARMINE DIFIGLIO, Ph.D.¹ *CD*
DEPUTY ASSISTANT SECRETARY FOR POLICY ANALYSIS
OFFICE OF POLICY AND INTERNATIONAL AFFAIRS
U. S. DEPARTMENT OF ENERGY

SUBJECT: COMMENTS ON "THE TAR SANDS ROAD TO CHINA"

DATE: JUNE 22, 2011

The paper by Philip K. Verleger, "The Tar Sands Road to China",² asserts that the Keystone XL pipeline, if approved by the State Department, would not transport Alberta's diluted bitumen (dilbit) to PADD III refineries. Verleger suggests that the dilbit would instead be loaded on to tankers at Port Arthur for delivery to Asian refineries.

This memorandum provides data and analysis about a number of issues raised in the paper by Dr. Verleger. It concludes that PADD III refiners will likely consume additional Canadian oil sands well in excess of what would be provided by the Keystone XL pipeline. It also concludes that exports of Canadian oil sands from Port Arthur are unlikely.

Alternative Routes to Asia

There are three currently-proposed projects that could ship Canadian oil sands to Asia via pipeline to the British Columbia coast. We summarize below the capacities, distances and estimated shipment costs of these three projects as well as a possible rail option to the British Columbia coast and Verleger's "Tar-Sands Road to Asia" (number 5 below).

1. The Enbridge Gateway pipeline from Edmonton to Kitimat
 - a. Capacity: 525,000 bpd Initial
 - b. Pipeline distance: 715 miles
 - c. Sea voyage distance: 9872 nautical miles
 - d. Estimated total shipment cost: \$6/bbl
2. The Kinder Morgan TMX Expansion to Vancouver
 - a. Capacity: 400,000 bpd (in two stages)
 - b. Pipeline distance: 725 miles
 - c. Sea voyage distance: 10416 nautical miles

¹ Significant contributions to this memorandum were made by Martin Tallett of EnSys Energy and Systems, Inc., as well as Peter Whitman and Thomas White in the Office of Policy Analysis.

² Phillip P. Verleger, "The Tar Sands Road to China", 2011

- d. Estimated total shipment cost: \$7/bbl
- 3. The Kinder Morgan TMX Northern Leg to Kitimat
 - a. Capacity: 400,000 bpd
 - b. Pipeline distance: 750 miles approx
 - c. Sea voyage distance: 9872 nautical miles
 - d. Estimated total shipment cost: \$6/bbl
- 4. Unit train from Edmonton to Kitimat
 - a. Capacity: Not defined except that a single unit train terminal can process 1 or 2 65,000 barrel trains per day
 - b. Rail distance: 715 miles approx
 - c. Sea voyage distance: 9872 nautical miles
 - d. Estimated total shipment cost: \$8-\$12/bbl³
- 5. "Tar Sands Route to China"
 - a. Capacity: depends on availability via KXL or other pipelines
 - b. Pipeline distance: 1704 miles
 - c. Sea voyage distance: 20,596 nautical miles via Panama, 31,702 via Cape of Good Hope
 - d. Estimated total shipment cost: \$15/bbl

Verleger discounts any Canadian pipeline to British Columbia:

"Northern Gateway, however, faces significant objections from British Columbia residents, as well as First National tribes, over whose reservations the pipeline would pass. Under Canadian law, these objections can prove formidable and they might stop the project in its tracks."

Dr. Verleger's paper makes no mention of the Kinder Morgan alternatives (number 2 and 3 above), nor does it mention possible rail shipments to the British Columbia coast (number 4 above). Nonetheless, Verleger concludes that the Keystone XL pipeline would be the *only* way Canadian oil sands could be shipped to Asia.

How Much Oil Sands would the Keystone XL Pipeline Carry to the Gulf Coast?

Dr. Verleger states that the Keystone XL pipeline would carry 1.1 million barrels/day of Canadian oil sands to the Gulf Coast.⁴ We estimate that Keystone XL would have a capacity of 700 to 830 thousand barrels/day. Of this capacity, 200-250 thousand barrels/day would be devoted to Bakken and Midcontinent crude. This reduces the expected volume of Canadian dilbit to 450-630 thousand barrels/day. TransCanada has already secured contracts for 380 thousand barrels/day, leaving only 70-

³ Preliminary estimate.

⁴ Verleger states "TransCanada has proposed an alternative line. The Keystone XL expansion line would run south from Hardisty, Alberta, to Houston. The proposed line would carry 1.1 million barrels per day." It is possible that Verleger is assuming that the Keystone Base and Extension are carrying Canadian oil sands to the Gulf Coast instead of Wood River/Patoka Illinois. The Keystone XL is the only TransCanada pipeline that would carry oil sands to the Gulf Coast. It should also be noted that TransCanada has indicated that it will not seek a special permit to increase pipeline throughput to 900 thousand barrels/day as previously estimated.

250 thousand barrels/day of dilbit capacity that has not found firm contract buyers but could be offered in the spot market.

Impact of the Keystone XL Pipeline on Midwest vs. Gulf Coast Oil Prices

Dr. Verleger points out that Midwest refiners are not willing to pay as much for Canadian oil sands as Gulf Coast refiners. There are two reasons why this is the case. Because of the congestion at Cushing, not enough oil from any in-land source is getting to Gulf Coast refineries. The Cushing congestion will be alleviated in a few years as more pipeline capacity is built from Cushing to Houston. As the congestion is alleviated, the current price distortion of WTI relative to Brent and under-pricing of landlocked crudes will be reduced or eliminated. The second and more important reason Gulf Coast refiners are willing to pay more for dilbit than Midwest refiners reflects differences between Midwest and Gulf Coast refining capacity. Having made investments to process heavier crude imports from Mexico and Venezuela (that are expected to decline, see below), PADD III can more easily process large volumes of dilbit. Thirty percent of the world's coking capacity is in PADD III. While PADD II refineries import and process significant volumes of Canadian oil sands, additional refining upgrades and capacity would be needed to process the projected supply growth of Canadian crudes.

In its National Energy Board filing, TransCanada makes the statements

"Existing markets for Canadian heavy crude, principally PADD II, are currently oversupplied, resulting in price discounting for Canadian heavy crude oil. Access to the USGC via the Keystone XL Pipeline is expected to strengthen Canadian crude oil pricing in PADD II by removing this oversupply. This is expected to increase the price of heavy crude to the equivalent cost of imported crude. Similarly, if a surplus of light synthetic crude develops in PADD II, the Keystone XL Pipeline would provide an alternate market and therefore help to mitigate a price discount."⁵

From this, Verleger concludes:

"TransCanada, acting as a good monopolist, proposes to divert crude from Midwestern refiners so Canadian producers can get a price higher than the competitive prices, that is, oil would be diverted until those refiners have to pay the same prices as Gulf Coast refiners."

Verleger's interpretation of TransCanada's National Energy Board submission stretches beyond what is stated. It is not clear why he uses the term "monopolist" to describe TransCanada's plan to move oil sands that would otherwise be oversupplied in PADD II to PADD III. TransCanada merely recognizes that PADD II is oversupplied with crude, which by definition means the region is not in competitive equilibrium. PADD II is oversupplied because transportation constraints do not allow sufficient shipments of crude out of the region. As Dr. Verleger points out, Midwest refiners used to pay more for oil because oil had to flow north from the Gulf. Now, with Bakken crude, Canadian dilbit and other landlocked supplies, oil needs to flow south. With adequate PADD II to PADD III pipelines, price discounts

⁵ The Keystone XL Pipeline Section 52 Application, Section 3: Supply and Markets, Section 3.4.3, "Crude Pricing Impact"

currently enjoyed by Midwest refiners would diminish. This wouldn't cause a less competitive oil market. Midwest refiners would still enjoy a \$2.00 to \$2.50⁶ transportation cost advantage over Gulf Coast refiners. This is about one-tenth the current discount of WTI compared to Brent (approximately \$20/barrel).⁷ Current transport *constraints* give Midwest refiners a crude price advantage that is not justified by long-term transportation costs. Eliminating those constraints would produce a *more* competitive oil market.

Effect on Midwest Gasoline Prices⁸

Eliminating transportation constraints from Cushing to Houston would not adversely affect Midwest gasoline consumers. While Midwest refiners are currently benefiting from high crude discounts compared to PADD I and PADD III refiners, Midwest gasoline consumers are not benefiting from them. Retail gasoline prices reflect the wholesale price of marginal gasoline supplies. In 2010, marginal gasoline supplies to the Midwest were from PADD III (310 thousand barrels/day) and PADD I (180 thousand barrels/day). With substantial additional volumes of light-sweet and other crudes accessible to Gulf Coast refineries, WTI prices would increase. Brent, Argus and other marker crude prices would decline. Crude costs to PADD I and PADD III refineries would be lower. Gasoline prices in all markets served by PADD I and III refiners would decrease, including the Midwest.

Eliminating Cushing Congestion Benefits Domestic Oil Producers

Verleger emphasizes how the Keystone XL pipeline would reduce transportation constraints for Canadian oil sands. To quote:

“Thus crude reaching the Gulf of Mexico from Canada will compete there with imported crude. On the Gulf Coast, refiners will pay the cost of imported crude for Canadian oil.”

However, the current price disparity between oil at Cushing and oil in Houston is not merely a Canadian oil story. The following chart shows the current sources of oil being delivered to Cushing.

⁶ An estimate based on the tariffs on oil pipelines of similar length.

⁷ Historically WTI has traded at slightly higher prices than Brent since WTI is lighter and sweeter than Brent.

⁸ Dr. Verleger states that Keystone XL pipeline would “extract another \$2 to \$4 billion from U.S. consumers” as a result of increasing the value of currently land-locked oil in the Midwest by increasing its availability to the Gulf Coast.

Figure 1 Sources of Oil into Cushing

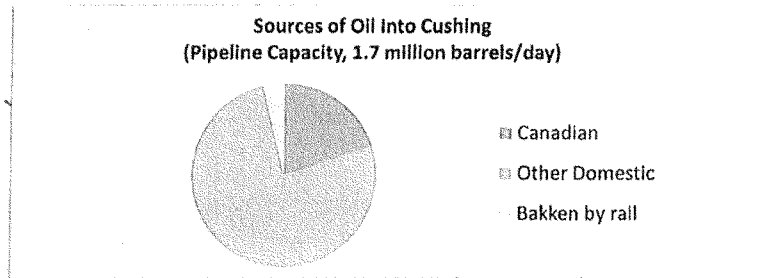
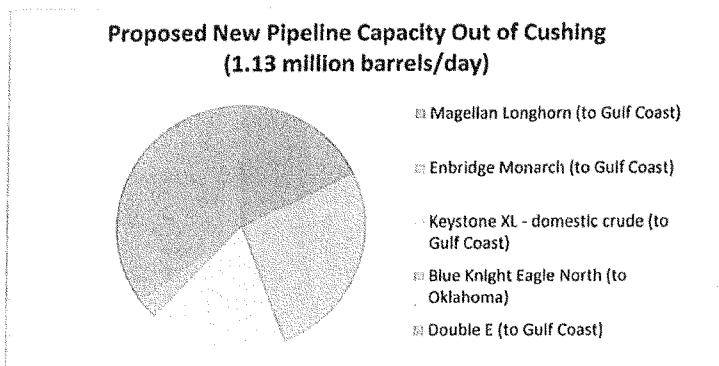


Figure 1 shows that only 21% of oil deliveries to Cushing are from Canada. Consequently, increased transport capacity from Cushing to Houston would enhance the aggregate value of domestic crude oil far more than the aggregate value of Canadian crude oil.

Figure 2 shows the currently proposed pipeline projects from Cushing. Taken together they could increase Cushing exports by 1.13 million barrels/day of which 1.10 million barrels/day would go south to the Gulf Coast. These projects would reduce or eliminate the current distortion of Midwest vs. Gulf Coast oil prices caused by transportation constraints.

Figure 2 Proposed Pipeline Projects Out of Cushing⁹

⁹ Proposed and likely projects as of May 2011. Estimates for Enbridge Monarch include the upper limit of expandable capacity. The estimates for Keystone XL include only the estimated domestic crude shipments to the Gulf Coast (200 thousand barrels/day). If the estimate for Enbridge Monarch is taken at its initial capacity, the total additional capacity would be 0.98 million barrels per day.

Canadian Oil Would Still Be Shipped to the Gulf Coast without the Keystone XL Pipeline

If the Keystone XL pipeline is not approved, another pipeline proposal to ship oil sands from PADD II to PADD III would likely emerge that would not require a new U.S./Canadian crossing.¹⁰ Additional Canadian oil sands can be supplied to PADD II via the Enbridge Mainline, Alberta Clipper, Keystone, and Keystone Extension. Taken together, these pipelines would allow Canadian oil sands imports to increase by 1 million barrels per day without the Keystone XL pipeline (2015). Surplus capacity to import Canadian oil sands is not expected to be exhausted until about 2020. If the Keystone XL pipeline is built, surplus capacity from existing projects would not be exhausted until at least 2025.

As substantial capacity is available to bring more Canadian oil sands into PADD II without the Keystone XL pipeline, a domestic pipeline from PADD II to PADD III could ship as much Canadian oil sands to Houston as the Keystone XL. This alternative PADD II to PADD III pipeline would only require permits from affected Midwestern and Gulf Coast region states.

To summarize, the current distortion of Midwest and Gulf Coast oil prices caused by the Cushing congestion will be alleviated whether or not the President approves or disapproves the Keystone XL pipeline permit application. In addition, if the Keystone XL pipeline is not constructed, more oil sands would still be delivered to Houston via increased PADD II to PADD III capacity.

The Jones Act¹¹

Verleger claims that the Jones Act would prevent waterborne shipments to a variety of Gulf Coast refineries. This fails to account for 1) a network of crude oil pipelines along the Gulf Coast, 2) the option to build a pipeline connection from the Keystone XL to the LOOP (thus connecting Keystone XL oil to a pipeline network serving many Gulf Coast refineries) and 3) the likelihood of swaps among refineries that would make physical transport of oil sands unnecessary. Lastly, should some marine shipments be made, there currently exists an excess of Jones Act barge capacity in the Gulf.¹²

Would Canadian Crude Be Exported from the Gulf?

Verleger states:

“The completion of the Keystone XL pipeline would create a surplus in the U.S. Gulf. This surplus would require some oil to move from the Gulf to other markets unless existing importers vacate the market. As noted below, existing importers are not expected to concede market share to Canada. Instead, some Canadian oil will need to be exported from the Gulf. At this point, Asia would be clearing the market.”

¹⁰ EnSys Energy, *Keystone XL Assessment*, December 23, 2010, p. 28

¹¹ The Jones Act (Section 27 of the Merchant Marine Act of 1920, P.L. 66-261) requires that all goods transported by water between U.S. ports be carried in U.S.-flag ships, constructed in the United States, owned by U.S. citizens, and crewed by U.S. citizens and U.S. permanent residents.

¹² U.S. Department of Transportation Maritime Administration, *Coastal Tank Vessel Market Snapshot, 2009*, June 2010, p. 9.

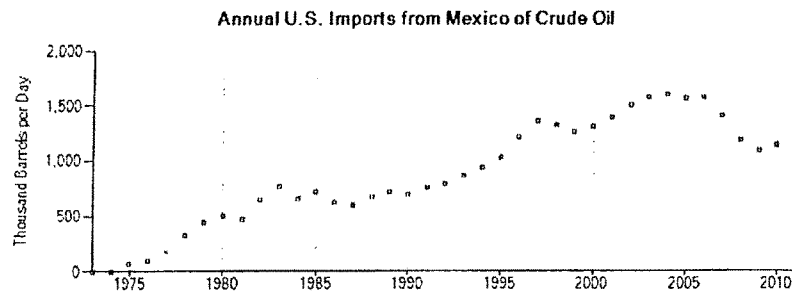
Would 450-630 thousand barrels/day of additional dilbit shipments create a surplus in the U.S. Gulf? We can answer this question by looking at current oil imports into PADD III, evaluating whether the most important suppliers will be able to maintain these supplies and consider whether any declining supplies would best be replaced with dilbit.

Table 2 Oil Imports into PADD III (Selected Countries)
Thousand Barrels Per Day as of March 11, 2011

All Countries	5,097
Saudi Arabia	706
Nigeria	518
Canada	117
Mexico	1,170
Venezuela	901
Others	1,685

Note that the largest source of PADD III imports is Mexico (1.1 million barrels/day). However, Mexican oil imports to the United States have been in decline. As shown in Figure 3, between 2006 and 2010, imports from Mexico have declined by 0.5 million barrels/day from a previous peak of 1.6 million barrels per day. There is every reason to expect this trend to continue. The Mexican Cantarell field is experiencing declines (dropping from 2.1 million barrels/day in 2004 to less than 1 million barrels/day by 2009¹³). The prospects do not look promising to offset losses of Cantarell with oil from other major Mexican fields such as Chicontepec Basin (poor permeability) and Ku-Maloob-Zaap (poor oil quality). Oil imports from Mexico (PADD III's largest foreign supplier) are declining and are expected to decline further. According to the International Energy Agency's *2010 Medium Term Oil and Gas Report*, Mexican production is expected to decline by 500 thousand barrels per day between 2010 and 2015.¹⁴

Figure 3 Annual U.S. Oil Imports from Mexico



Source: U.S. Energy Information Administration.

¹³ Energy Information Administration, <http://www.eia.gov/emeu/cabs/Mexico/pdf.pdf>

¹⁴ International Energy Agency, *Mid Term Oil and Gas Markets*, 2010, p. 130

Venezuela is the second largest supplier of PADD III imports. Verleger believes that Venezuela will “work hard to maintain its arrangements with buyers due to the unique characteristics of its crude” and places great stress on the fact that certain refiners have contracts to purchase Venezuelan crude. However, as shown in Figure 4, Venezuelan oil supplies to the U.S. are in decline. Venezuela is increasing its focus on markets in Cuba, China, and other non-Japanese Asian countries. Venezuelan production is expected to increase but their exports to Asia will also increase, especially as the Panama Canal is expanded to allow larger tankers. Taken together, U.S. imports of crude oil from Mexico and Venezuela are about 1 million barrels/day lower than their previous peak levels. With an expected decline of Mexican crude production of 500 thousand barrels per day and the likelihood of increased exports of Venezuelan crude to Asia, current heavy oil imports to PADD III are likely to decrease by a significant amount within the next five years.

Figure 4 Annual U.S. Oil Imports from Venezuela

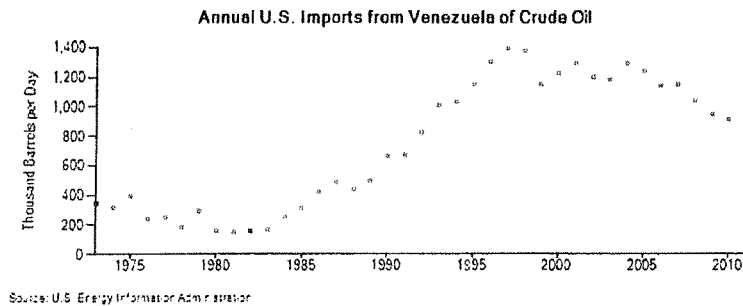


Figure 4 also offers a useful commentary on Verleger’s claim that, in 1987, Saudi Arabia aggressively priced its crude to prevent Venezuela from gaining a foothold in the U.S. market. Looking at Figure 4, this could not have been a very successful strategy since Venezuelan imports to the U.S. steadily increased from about 400 thousand barrels/day in 1986 to 1.4 million barrels per day 10 years later.

Verleger’s overall view that oil exporting countries will find it necessary to maintain U.S. oil markets is also inconsistent with trends in the world oil market. The International Energy Agency expects that increases in OPEC production will not keep up with increases in oil demand and non-OPEC investment will be needed to meet new demand, especially in nonconventional oil.¹⁵ Middle Eastern producers will not have any trouble finding takers for their crude. Even if, as Verleger claims, Saudi Arabia makes price concessions to maintain 700 thousand barrels per day of exports to PADD III, PADD III refiners import between 5-6 million barrels/day of crude oil. PADD III crude imports from its largest suppliers (1.2

¹⁵ International Energy Agency, 2010 *World Energy Outlook*

million barrels/day from Mexico and 0.9 million barrels/day from Venezuela) are declining. Several PADD III refineries are configured to process oil from Mexico and Venezuela.¹⁶ With these supplies in decline, there is a significant market opportunity for competitively-priced Canadian dilbit to offset lost heavy oil supplies. There is no reason to believe, as Verleger asserts, that PADD III refiners would not use the Canadian oil shipped in the Keystone XL pipeline (450-630 thousand barrels/day). As mentioned above, TransCanada has already secured contracts for 380 thousand barrels/day, leaving only 70-250 thousand barrels/day of Keystone XL capacity that has not yet found buyers. The Gulf Coast appetite for Canadian oil sands in PADD III will be much higher than can be supplied by just the Keystone XL pipeline. Refinery modelling analysis shows that PADD III imports of Canadian oil sands could rise to 1.8 million barrels per day by 2030 (using a modeling scenario that assumes no additional oil sands pipelines to the British Columbia coast).¹⁷

Summary and Conclusions

Without a surplus of heavy oil in PADD III, there would be no economic incentive to ship Canadian oil sands to Asia via Port Arthur. Dilbit is more suited to many PADD III refineries than more expensive oil from other sources. Many of these refineries rely on declining supplies of Mexican and Venezuelan heavy crudes (2.1 million barrels/day). They would be natural customers for increased supplies of Canadian dilbit. Shipments of Keystone XL oil sands that are not under contract would be quite small (70-250 thousand barrels/day), especially when compared to the potential PADD III market for dilbit (as high as 1.8 million barrels/day by 2030). Consequently, it is not likely that refiners would import more oil from other sources in order to replace dilbit that is already in Port Arthur.¹⁸

We also expect that the Cushing congestion will be reduced or eliminated whether or not the Keystone XL pipeline is constructed. There are several proposed pipeline projects to move oil south to Houston (1.1 million barrels per day¹⁹). These projects, whether or not they include the Keystone XL pipeline, would reduce the crude price discounts now enjoyed by Midwest refiners. Nonetheless, these pipeline projects would not increase gasoline prices to Midwest consumers.

¹⁶ Venezuelan crude tends to be low gravity (18-20), high TAN and relatively low sulfur. Maya is low gravity (around 22), high sulfur and low TAN. Dilbit is moderate sulfur, moderate TAN and low gravity (around 20)

¹⁷ EnSys Energy, *Keystone XL Assessment*, December 23, 2010. The 1.8 million barrels per day estimate is from a scenario that assumes the EIA Annual Energy Outlook Reference Case U.S. oil demand, completion of the Keystone XL pipeline, completion a PADD II to PADD III pipeline and no new pipelines from Alberta to British Columbia (i.e., Enbridge Gateway pipeline, Kinder Morgan TMX expansion or TMX Northern Leg). Scenarios that assume completion of one or more of these pipelines to the Canadian Pacific Coast show less use of Canadian oil sands in PADD III and increased PADD III imports from other countries.

¹⁸ It should also be noted that the Keystone XL-Port Arthur-China route would have higher shipping costs to Asia than any alternative route through British Columbia, including rail shipments from Alberta to Kitimat (pp. 1-2).

¹⁹ As shown in Figure 2, current proposed or likely projects would ship 1.1 million barrels/day of oil from Cushing to Houston. While the Keystone XL pipeline is counted among these projects, we only include the estimated 200 thousand barrels/day of domestic oil that would otherwise stay in PADD II, not shipments of Canadian oil.

Mr. TERRY. But it simply defies logic to me that when you have a transportation system that the State Department even testified was safer, the safest means of transport, the most environmentally safe transport that there be arguments that it not add to our energy security.

And then secondly on the jobs, you know, it befuddles most Americans as polling has shown that this President denied the permit, and the jobs that would be created if you look into the union hall at the—for the laborers or the IBEW, there is people sitting on the bench waiting to have their names on the list to be called that when this starts they go to work. Right now in Nebraska there is an engineering company that has ceased doing work because of the denial of this permit on the Nebraska route.

And, yes, it befuddles me and most of Americans when my friends on the other side of the aisle say that, geez, 6,000 direct jobs out on the pipeline is not enough for them, and by the way it is only temporary. Well, I don't know an infrastructure project that isn't temporary. So evidently we are against all infrastructure now. It just—it befuddles me why they would oppose it.

Now, Ms. Gaffney-Smith, I appreciate your testimony here today and with the help of the State Department you have made some valid points that we realized and have decided before this hearing today, even after last week, that we needed to make sure that we are clear in the fact that the intent of this bill was the Presidential authority needed to be moved away from the White House to an agency that had expertise in pipelines to make a decision on whether it is safety and soundness of the pipeline versus the politics that seem to have overwhelmed this issue.

Now, with that making that correction that recognizes that we aren't usurping the Corps of Engineers' powers, we want you to make that review. Do you have any objections to this legislation?

Ms. GAFFNEY-SMITH. I can't speak to legislation where I haven't seen the actual language, but it would be appropriate, I think, for us to look at that and see if it, in fact, puts us back.

Mr. TERRY. Can I ask why when we asked the Corps of Engineers last week why—

Mr. WHITFIELD. Your microphone.

Mr. TERRY. That you didn't want to be here, but you are here to be an opposing, hostile witness.

Ms. GAFFNEY-SMITH. I am not aware that an official invitation was provided.

Mr. TERRY. Let me ask you, Mr. Pool, in the State of Nebraska—thank you. I hear it now. In the State of Nebraska what Federal lands did the original route take? Did the original route go through an Federal lands?

Mr. POOL. Yes, Congressman. There was a small piece of land administered by BOR, Bureau of Reclamation, had to do with the canal area, that we would have—

Mr. TERRY. That was South Dakota, wasn't it?

Mr. POOL. No. That is Nebraska.

Mr. TERRY. OK.

Mr. POOL. Yes, and so—

Mr. TERRY. All right. My time is up. I am sorry. I will have to get—I will submit that one for the record for you to get back to me on.

Mr. POOL. I will do.

Mr. TERRY. All right.

Mr. WHITFIELD. At this time I recognize the gentleman from Michigan, Mr. Dingell, for 5 minutes.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy. I would like to make a couple quick observations.

In 1970, Scoop Jackson and I wrote the National Environmental Policy Act. It was to depoliticize the approval of projects and to see to it that we had the information we needed when we were going into those kinds of questions. So it required an environmental impact statement. That can be speeded up and properly so. But I would caution that if you speed it up too fast you are going to repoliticize this and make a fine mess out of the thing and cause no end of trouble and litigation. So I would beg you not to do this.

I say that parenthetically I want to support this legislation. I think the Canadians are going to do this whether we like it or not, and they are either going to build a pipeline going west or going south, and it is better in my view that if that pipeline goes anywhere, it goes south to the United States. It will be a much more dependable source of energy for the United States.

So I would urge my colleagues not to drive away members like me by moving too fast on this, because if you do, you will just simply create a wealth of litigation. The lawyers will have a fine time, make lots of money, and the business of the country will be, in fact, delayed by carelessness in this committee.

Having said that, first question here to Mr. Pool, did the State Department refer the application to your Department or to the BLM? Yes or no?

Mr. POOL. Say again, sir.

Mr. DINGELL. Did the State Department refer the application to your Department or to the BLM? Which?

Mr. POOL. The—well, the application that we received was from the applicant for the segment of public land that was coming across Montana. It is a right-of-way application.

Mr. DINGELL. Now, Ms. Gaffney-Smith, did the State Department refer the application to the Corps?

Ms. GAFFNEY-SMITH. No. Like the Department of Interior, the application came from the applicant.

Mr. DINGELL. OK. Did BLM provide views on the permit application? Answer yes or no.

Mr. POOL. Provide what, sir?

Mr. DINGELL. Did BLM provide views on the permit application? Please answer yes or no.

Mr. POOL. We were part of the environmental impact process that was led by the State Department, and so the mandates that we have obligations with in terms of issuing a right-away grant in Montana then we did review the application in the context of the overall NEPA product.

Mr. DINGELL. Now, Ms. Gaffney-Smith, did the Corps provide views on the permit application?

Ms. GAFFNEY-SMITH. In three Corps districts in Galveston, Fort Worth, and Tulsa District we received a preconstruction notification for Nationwide Permit 12. We initiated coordination with other agencies, and we did provide a response to the applicant in accordance with our Nationwide Permit rules based on comments we received from the Department of State.

Mr. DINGELL. So your answer is yes?

Ms. GAFFNEY-SMITH. Yes.

Mr. DINGELL. Under H.R. 3548 environmental review process would need to be completed within 30 days. Even though BLM would no longer be involved in the permit review process under this bill, is 30 days enough time for BLM to do the necessary due diligence on submitting its views for the Keystone Pipeline? Yes or no?

Mr. POOL. Congressman, I would say no, it is not enough time.

Mr. DINGELL. Very good. Ms. Gaffney-Smith, the same question to you. Is 30 days enough time for the Corps to submit its views?

Ms. GAFFNEY-SMITH. No, I don't believe so.

Mr. DINGELL. Do you believe—this goes to both, yes or no. Do you believe that FERC has the experience that BLM has to review a permit of this scope? Please answer yes or no.

Mr. POOL. I don't believe they do.

Mr. DINGELL. Thank you. Madam.

Ms. GAFFNEY-SMITH. No, sir.

Mr. DINGELL. All right. Now, Ms. Gaffney-Smith, do you believe that FERC has the experience that the Corps has to review a permit of this scope? That is practically the same question as the prior one, but it is a little more subtle. Yes or no?

Ms. GAFFNEY-SMITH. No.

Mr. DINGELL. Now, and I want to thank you and apologize for the fact that I curtailed you in your time.

Mr. Chairman, we could hurry this process in a way which is going to create lots of trouble and wind up ultimately with a delay or veto or profound litigation that could go on for years. If that occurs, we will then find ourselves in the splendid position of having to reenter this issue with all of the politics that goes to it and all the difficulty, or we could begin moving to try to work this thing out. I would like to move in that direction. I hope the committee will exceed to that kind of view, and we can begin working on this in that way rather than getting ourselves in a splendid fight which will generate monstrous ill will and create a situation where there will actually be more delay rather than less.

Thank you, Mr. Chairman.

Mr. WHITFIELD. Thank you, Mr. Dingell.

We do have votes on the floor, but we do have about 6 minutes left, so Ms. Capps, I believe you were here, so I would recognize you for a period of 5 minutes.

Mrs. CAPPS. Thank you, Mr. Chairman, and because I know Mr. Markey also was here and wants to speak, I am asking Mr. Markey, do you want some of my time? OK. I will do it.

I come from an area that is energy producing as well, and I am very impressed with—I have one image in my mind because it was you, Mr. Pool, when you were in charge of the BLM for the State of California, and I was newly elected, who escorted me for the first

time to see what we call the Shangri-La of the West, the Carrizo Plain, eastern portion of San Luis Obispo County, fragile ecosystem that is remnant of the way the land was 300 years ago, in which the—all of the vested interests, the mineral rights, the cattle ranchers, and all of the stakeholders have found a way to preserve the natural history under the leadership of the BLM. And also make that an economically viable area.

Oil and gas industry have all—have their role there, and I picture this pipeline going through the Carrizo Plain, and I am very concerned that we take the time that is needed to preserve in the Midwest what I know from my area to be the possibility of protecting the land as well as furthering economic interest. And I see this latest attempt by House Republicans to short-circuit the review process, and I want to ask you because I know your expertise, Mr. Pool, and I also have a number of Army Corps projects in my district as well and have had the pleasure of working with that agency.

Mr. Pool, would it make sense for the Bureau of Land Management or the Fish and Wildlife Service to issue permits for a pipeline with an unknown route, which is what we have before us today?

Mr. POOL. Congresswoman, I can only speak to the segment in Montana that we are knowledgeable of that area, and the application is very precise as to where it will be located.

Mrs. CAPPS. Right, but now for the further part of it you have no knowledge exactly where the precise, about the preciseness. Is that correct?

Mr. POOL. Generally speaking we do on a map. I mean, we see the whole delineation of the pipeline from north to south, but if it doesn't fall within public land jurisdiction, then it is not going to pertain to BLM.

Mrs. CAPPS. OK. Would you like to respond and then I want to turn to my colleague?

Ms. GAFFNEY-SMITH. Can you repeat the question, please?

Mrs. CAPPS. Does it make sense for the—does the Army Corps of Engineers typically provide permits for pipeline projects when the route of the pipeline is unknown?

Ms. GAFFNEY-SMITH. No. We only evaluate permits for applications that have been submitted by project applicants that have a project.

Mrs. CAPPS. And I would like to yield the balance of my time to Mr. Markey.

Mr. MARKEY. I thank the gentlelady. Under this bill are there any guarantees that all of the friendly Canadian oil that is sent through the pipeline will be sold here in the United States? No. No. So let me get this plan right.

Step one. TransCanada puts the dirtiest oil on the planet into the brand new pipeline that the Republicans are giving them.

Step two. TransCanada sends that oil to the Gulf Coast where they can make billions more than where they currently sell it in the Midwest.

Step three. Refineries in the Gulf Coast re-export it to other countries at world oil prices and don't pay any taxes for doing it.

Step four. Americans get higher gas prices and no increase in energy security.

And step five. TransCanada and the sheiks in Saudi Arabia laugh all the way to the bank.

That is pretty much what this bill allows. Make no mistake. This bill is not about energy security. It is not about jobs. It is about oil company profits plain and simple. This bill just turns the United States into a middleman in a multi-national oil deal between Canada, South America, Europe, or China.

The Republican slogan last year was "drill here, drill now, pay less." Now we are letting Canada drill here, ship here, and re-export so all we have to do is pay more, both in terms of money at the gas pump and costs to the environment.

Today I along with Mr. Waxman and Congressman Cohen and Connolly and Welsh will introduce a bill to require that if this pipeline is permitted, the oil will stay here to benefit Americans. If we are going to go to the extreme lengths of legislating the construction of an environmentally-destructive pipeline to benefit a Canadian company, we should at least be sure that we in the United States can realize the energy security and consumer benefits that we have been told the project will bring. Let us play it straight about the Straits of Hormuz. Without my bill this pipeline will not do a thing to enhance the security of our country or of our brave men and women stationed all over the world for purposes of protecting our fossil fuel interests.

We need a bill, if it does pass, that guarantees the oil from this pipeline stays here in the United States. The CEO of TransCanada sat right there and said he would not support that legislation. That is all we have to know about our relationship with this TransCanada company. This oil is to be exported around the world, not to keep prices lower here in the United States.

I yield back the balance of my time, Mr. Chairman.

Mr. WHITFIELD. I might say that of all the U.S. petroleum products today we are currently exporting less than 5 percent.

At this time—

Mr. MARKEY. The number one export for the United States in 2011, was oil petroleum products. That was the number one export of all products in the United States.

Mr. WHITFIELD. We want to increase our exports and—

Mr. MARKEY. Not of oil. Not our security.

Mr. WHITFIELD. All the Members are gone. We still have a vote on the floor, so I am going to release this panel. Ms. Gaffney-Smith, thank you for being here. Mr. Pool, thank you for being here.

We will recess for about I would say 35 or 40 minutes, and then we will come back, and we will begin with panel two. Thank you. We are in recess.

[Whereupon, at 11:22 a.m., the subcommittee recessed, to reconvene at 11:57 a.m. the same day.]

Mr. WHITFIELD. I will call the hearing back to order, and before I introduce the witnesses I—as we were finishing up with the first panel there was a lot of back and forth about whether or not we were going to release the first panel, and in consultation with the majority, a decision was made to release them, but I had already

told Mr. Bilbray before he left that he could come back and ask them questions, and since they are not here, I am going to recognize Mr. Bilbray for 3 minutes to say whatever he wanted to say about the Corps of Engineers or whatever the issue was.

Mr. BILBRAY. Thank you, Mr. Chairman, and Mr. Chairman, I appreciate you giving me the time. It is frustrating that you, you know, think you have an agreement and I think some of these questions are important, but I will raise them even with the Army Corps here because I have got a little experience in 404 permit. I was actually cited or given my Miranda rights for a potential violation of the 404 permit because I was involved in damming up sewage coming in from Mexico, and they constituted a sewage break as possible navigable waters. So it is very near and dear.

Also, Mr. Chairman, there is a lot of talk here in Washington, DC, about certain jobs, aggressive job programs by the Federal Government, and the Tennessee Authority was one of them that has been cited again and again, and I would like to point out to everybody that the Tennessee Authority, though it crossed thousands of so-called navigable waterways, never received one 404 permit because there was no such thing as a 404 permit there.

So when we talk about all these great job programs as ways of stimulating the economy that were in the past, we have got to remember just how much regulatory oversight and regulatory obstructionism de facto has occurred since then, that there were things that we have done in the past that would not be legal to do under today's regulations, and we need to address that.

The other issue I wanted to raise was the fact that though it takes a 404 permit to build a—put a pipeline over a navigable waterway to transport oil, there is no 404 permit required to transport the same oil by truck over a bridge that spans a navigable waterway, the same way there is no requirement for a 404 permit for a train to go across a bridge that spans a navigable waterway, even though statistically the risk of having spills caused by truck and train transport into those navigable waterways is much higher. There is also the issue of the fact that no one talks about is they look at the risk of the pipeline but don't look at the no-project option risk that if you transport the same oil that 1,700 miles, it is 87 times more dangerous to human life that an accident would occur than with transport by oil.

So as—when we get into these issues, if somebody has worked in environmental agencies, have had the privilege of being a regulator, I think the environmental impact of the no-project option is one that any reasonable person who really cares about the environment has to understand. And the fact that the State Department has admitted that the transport of this oil by alternative sources on the same route or in any route related to it would be many times more polluting than the use of a pipeline, I am shocked that the same State Department, though, cannot quantify how many metric tons a year would be admitted by going to those other alternative transports, the truck and the train.

I mean, coming from California and working on the Air Resources Board we would tell you down to the minute of what it is because we use good science to make those decisions. The State Department admits that the air pollution impacts for transport by the

alternatives are higher than the transport of this pipeline. So I think in all fairness the adverse environmental impact of the no-project option has not been given a fair hearing, has not been identified and quantified in a responsible way. And before you start turning down these projects, you have got to look at what is going to be the impact to the environment before you do that.

And let me just close. One of the things I am really concerned about is that Canada is being treated like we can't trust Canada with their environment. I think their history on environmental issues is something that really puts into question why we approved the many crossings in Mexico and we are holding up this one to Canada.

And I yield back, Mr. Chairman.

Mr. WHITFIELD. Thank you, Mr. Bilbray.

At this time I would like to—

Mr. WAXMAN. Mr. Chairman.

Mr. WHITFIELD. Yes, sir.

Mr. WAXMAN. I understand Mr. Engel would like to have his 3 minutes on our side as well—

Mr. WHITFIELD. Sure.

Mr. WAXMAN [continuing]. And I hope he can be recognized.

Mr. WHITFIELD. Absolutely.

Mr. Engel, you are recognized for 3 minutes.

Mr. WAXMAN. Would the gentleman yield to me?

Mr. ENGEL. Yes. Yes. I will yield to the—

Mr. WAXMAN. I want—I thank you for yielding because this last statement by my colleague from California made no sense to me. He is criticizing the different alternatives of bringing these tar sands down from Canada and saying if it is done by railroad as opposed to a pipeline. The real issue is whether they are going to do these tar sands at all because if they can't bring it into the United States, they are not going to develop those tar sands, and in developing those tar sands, which is the dirtiest source of coal, they have to spend so much energy to refine it sufficiently to have it go through a pipeline and maybe on a train. At some point it is going to have to be refined, and the energy used to refine it adds to the greenhouse gases.

So I just want people to understand there is not just a question of how it is going to be transported. If it is going to be transported, a pipeline is a way we often use to transport these things. We have pipelines, by the way. We are not against pipelines but any pipeline ought to be reviewed by the appropriate agencies, and the two witnesses we had on the first panel who are going to be taken out of their opportunity to review any proposal, and, of course, this bill isn't about pipelines. It is only about one specific pipeline that is going to be given a treatment that no other pipeline has had, and that is—nobody reviews it. If they review it, they have 30 days, and they got to come up with the right conclusion.

That is a special interest bill earmarked for this one project, and it is really troubling because we have had—we are going to be adding to the greenhouse gases which not just affects Canada but the whole world at a time when we ought to be reducing greenhouse gases. We are going to be committed to that source of energy where we ought to be looking for other ways to use less energy and make

us more independent. I think our witnesses on the second panel have more to say about that issue.

I thank the gentleman for yielding part of his time.

Mr. ENGEL. I would like to reclaim my time and say, you know, I have an open mind in general about the whole issue of Keystone, but I have—I am very concerned about this. Removing all Federal review of all agencies except FERC and then mandating that FERC issues the permit to me doesn't sound like we are really weighing the pros and cons. We are rushing to make a decision on one side.

The health and safety of the American people is paramount, and if we are not going to take that seriously, it really troubles me.

The other thing that troubles me is that I have, you know, I would feel much more comfortable if I knew that the oil that was coming down to be refined from Canada to be refined in Texas went for domestic consumption in the United States. I sat through hearings that this committee has had, and I am still not satisfied or convinced that that oil isn't going to get shipped to China or some other place.

So those are some of the questions that I have about this.

Mr. WAXMAN. Mr. Chairman, just for the record I misstated. I said the word coal. I didn't mean coal. I meant oil. This is the dirtiest source of oil from these tar sands, and that is what I meant to say.

Mr. WHITFIELD. I am glad you were not talking about coal.

Mr. WAXMAN. Yes. We are not. I wouldn't want to take you on on that issue.

Mr. WHITFIELD. At this time I would like to introduce the panel, the second panel. We have with us Retired Brigadier General Steven Anderson, United States Army. He was originally from California, and we have Mr. Randall Thompson, who is a rancher in Nebraska, and we welcome you to the hearing. We appreciate your being here very much, and at this time, General Anderson, I will recognize you for your 5-minute opening statement, and I think the little box on the table there, a red light will come on when the 5 minutes is up. So you are recognized for 5 minutes.

STATEMENTS OF STEVEN M. ANDERSON, BRIGADIER GENERAL (RETIRED), UNITED STATES ARMY; AND RANDALL F. THOMPSON, NEBRASKA RANCHER

STATEMENT OF STEVEN M. ANDERSON

Mr. ANDERSON. Thank you, Mr. Chairman. I am Steve Anderson, a concerned citizen and part owner of a service-disabled-veteran-owned small business based in Knoxville, Tennessee. I would like to begin by thanking the subcommittee for this opportunity as well as thanking my President for the courageous decision he made to deny the Keystone XL Pipeline.

Frankly, as a political conservative and a long-time registered Republican, I don't often agree with President Obama, but on this matter he absolutely got it right. I strongly oppose the Keystone XL Pipeline because it will degrade our national security. The critical element is simply this: The pipeline keeps our great Nation ad-

dicted to oil, a dependence that makes us both strategically and operationally vulnerable. As a retired general officer with over 31 years of service, I believe that I am fully qualified to comment on both of these vulnerabilities.

The pipeline will keep us dependent upon outside sources to meet most of our energy needs. In reality Keystone only addresses a symptom of our illness, the source of our oil. It does nothing to cure the disease itself, which is our overreliance on oil, and as nations like China and India continue to demand more oil themselves, competition will increase and such international tension threatens our security and stability that we enjoy today.

Additionally, continued carbon-based energy consumption drives CO₂ emissions that will lead to climate change and increasingly catastrophic weather events. The potential instability puts us all at risk.

Furthermore, the pipeline keeps us strategically vulnerable because our economy will remain petrocentric, and many thousands of companies developing clean energy technologies and providing renewable energy solutions won't grow capacity and capability as quickly as America needs. I believe Keystone will set back the alternative energy industry in this country 20 years.

Now, 2 weeks ago I read that Dubai will invest \$2.7 billion in solar energy next year. Now, Dubai is an emirate surrounded by the world's largest oil fields. Their economy is 250 times smaller than ours, yet they are astute enough to see the consequences of an oil-dependent economy and are willing to invest now in renewable energy in a big way. Why aren't we? And because we are not fully committed to developing renewable energy capabilities, our soldiers in harm's way are operationally vulnerable, too.

Serving for 15 months as General Petraeus's senior logistician in Iraq, I struggled with the challenge of providing 3 million gallons of fuel every day to sustain our forces. I saw the huge impact of not having any renewable energy systems and being completely dependent upon oil-based power generation.

In consideration of the fully burdened cost of fuel in the combat zone, taxpayers have been spending well over \$30 billion annually for our fuel needs. That is with a B, billion, and now that Pakistan has cut off our access to Afghanistan it will be even higher this year. But the dollar cost doesn't concern me near as much as the human cost.

Over 1,000 American troops have been killed during the wars in Iraq and Afghanistan executing fuel missions. We should all be outraged by this loss of life, and to make matters worse, our oil addiction is empowering our enemy. Our long supply lines provide thousands of convenient targets, and the revenues from satiating our oil habit bring the enemy the resources they use to kill us.

Imagine the benefits to our military if they were fighting a much less-capable enemy. Imagine leveraging solar, wind, and geothermal technologies to end the war sooner to save billions of dollars and soldier lives.

Now, allow me also to comment on the jobs issues associated with this pipeline. As a former soldier I am extremely concerned of the high unemployment rates for our vets. Of course I want more in employment opportunities for my brethren, but they need jobs

with staying power. They need careers. America is best served by an economic climate that generates jobs for vets for 100 years, not 100 days, and every job that the pipeline produces, a clean energy economy could produce a thousand.

Bottom line, the pipeline feeds an addiction that makes us less secure and enables our enemies. Now is the time to make the hard choices and deal with this disease head on and put our future economic prosperity in the capable hands of middle America rather than big oil. I stand before you today absolutely convinced that the national mission and focus that put a man on the moon 42 years ago can once again prevail. Stopping this pipeline today will help set the conditions needed such that our innate American will to win and entrepreneurial drive will succeed in breaking our terrible addiction to oil.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Anderson follows:]

ANDERSON OPENING STATEMENT:

Good morning, my name is Steve Anderson, a concerned citizen and part owner of a Service Disabled Veteran Owned Small Business based in Knoxville, Tennessee. I would like to begin by thanking the sub-committee for this opportunity, as well as thanking my President for the courageous decision he made to deny the Keystone XL pipeline. Frankly, as a political conservative and a long-time registered Republican, I don't often agree with President Obama, but on this matter he absolutely got it right.

I strongly oppose the Keystone XL pipeline because it will degrade our national security. The critical element is simply this: the pipeline keeps our great nation addicted to oil, a dependence that makes us both strategically and operationally vulnerable. As a retired general officer with over 31 years of service, I believe I'm fully qualified to comment on both of these vulnerabilities.

This pipeline will keep us dependent upon outside energy sources to meet most of our energy needs. In reality, Keystone only addresses a symptom of our illness -- the source of our oil; it does nothing to cure the disease itself, which is our overreliance on oil. And, as nations like China and India continue to demand more oil themselves, competition will increase. Such international tension threatens the security and stability we enjoy today.

Additionally, continued carbon-based energy consumption drives CO2 emissions that may lead to climate change and increasingly catastrophic weather events. This potential instability puts us at risk as well.

Furthermore, the pipeline keeps us strategically vulnerable because our economy will remain petro-centric, and many thousands of companies developing clean energy technologies and providing renewable energy solutions won't grow capacity and capability as quickly as America needs. I believe Keystone will set back our alternative energy industry twenty years.

Two weeks ago I read that Dubai will invest \$2.7B in solar energy next year. Now Dubai is an emirate surrounded by the world's largest oil fields and their economy is 250 times smaller than ours, yet they are astute enough to see the consequences of an oil-dependent economy and are willing to invest now in renewable energy in a huge way. Why aren't we?

And because we are not fully committed to developing renewable energy capabilities, our soldiers in harm's way are operationally vulnerable, too.

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In consideration of the fully burdened cost of fuel in the combat zone, taxpayers have been spending well over \$30B annually for our fuel needs. And now that Pakistan has cut off our access to Afghanistan, it will be even higher this year.

But the dollar cost doesn't concern me as much as the human cost. Over 1,000 American troops have been killed during our wars in Iraq and Afghanistan executing fuel missions – we should all be outraged over this loss of life.

And to make matters worse, our oil addiction is empowering our enemy. Our long supply lines provide thousands of convenient targets, and the revenues from satiating our oil habit provide our enemy the resources to kill us.

Imagine the benefits to our military if they were fighting a much less capable enemy... Imagine leveraging solar, wind and geothermal technologies to end the war sooner, save billions of dollars and soldier lives.

Allow me to also comment on the jobs issue associated with this pipeline. As a former soldier, I am extremely concerned about the high unemployment rates of our veterans. Of course, I want more employment opportunities for my brethren, but they need jobs with staying power – they need careers. America is best served by an economic climate that generates jobs for vets for 100 years, not just 100 days. And for every job the pipeline produces, a clean energy economy could produce a thousand.

Bottom Line, this pipeline feeds an addiction that makes us less secure and enables our enemies. Now is the time to make hard choices and deal with this disease head on – and put our future economic prosperity in the capable hands of Middle America rather than Big Oil.

I stand before you today absolutely convinced that the national mission focus that put a man on the moon 42 years ago can once again prevail. Stopping this pipeline today will help set the conditions needed such that our innate American will to win and entrepreneurial drive will succeed in breaking our terrible addiction to oil.

Thank you again for inviting me here today and I look forward to your questions.

Mr. WHITFIELD. Thank you, General Anderson.

Mr. Thompson, you are recognized for 5 minutes for your opening statement.

STATEMENT OF RANDALL F. THOMPSON

Mr. THOMPSON. My name is Randy Thompson. I am from Martell, Nebraska. I am here as a Nebraska citizen and landowner. I would like to thank the chairman and the committee for the opportunity to be here today.

I would like to start my testimony today by thanking President Obama for making the right decision by denying the permit for the Keystone XL Pipeline. I am proud to think that the voices of Nebraskans had an impact on his decision. Those of us who live and work along the proposed path of this pipeline applaud him for placing our welfare ahead of the interests of big oil companies.

As a lifelong Nebraskan I can honestly tell you that I have never witnessed any project that has stirred the emotions of my fellow Nebraskans like the Keystone XL has. Contrary to what you may have heard from some of our elected officials, I can assure you that the dust has not settled in Nebraska on this issue.

TransCanada has built a mountain of distrust among the ordinary citizens of our State and either with their voluntary agreement to move the pipeline out of the Sandhills we remain very skeptical. Many Nebraskans, including myself, view TransCanada as an overly-aggressive company who thought they could come in and intimidate and bully their way across our State, and having witnessed TransCanada's actions during the application process has made us weary of what they would do if they were empowered by a pre-mature permit. And I fear that an early permit would place a tremendous amount of pressure on the State of Nebraska to hurry through its review process.

TransCanada has been granted plenty of free passes and now they seek yet another. They want their political allies to free them from the tangled mess that they themselves help to create. Perhaps it is time for the free passes to come to an end. If the Keystone XL truly has merit, then it should be able to withstand a rigorous and comprehensive review that it deserves and has not gotten.

If this pipeline is built, thousands of us in the heartlands will have to live and work next to it for the rest of our lives and probably for the rest of my kids and my grandkids' lives. It will cross hundreds of our waterways, our lakes and streams, and it will only get riskier with the passage of time.

Short circuiting the review process would be an injustice and, in fact, a gross injustice to all of us that have to live and work along the proposed path of this pipeline. Many of us feel that approval of this project would strip us of our individual property rights. We do not feel that a foreign corporation has any right to take our land for their private use and gain, especially when there has been no determination that this project is in the national interest. We have seen no evidence that this pipeline is anything other than export pipeline, providing access to the world oil market for Canadian tar sands. Outside of providing a few months of temporary employment for some Americans, it yields few other benefits.

Mr. Terry himself in a speech a week or 2 weeks ago in the State of Nebraska said there would be no more than 30 permanent jobs as a result—in the State of Nebraska as a result of the pipeline project, and we are being asked to risk some of our greatest national resources and a lot of folks' livelihoods, and we are going to get 30 permanent jobs.

Completion of the pipeline would actually increase the price of the oil we are currently importing from Canada. This is an undisputed fact. I mean, really, does this make any sense? We help them build the pipeline, and as a result we end up with higher oil and fuel prices in the Midwest? You know, why don't we just take the gun out and shoot ourselves in the foot. That would make more sense to me.

Perhaps it is just my Nebraska logic, but from my perspective it appears that the United States is getting the short end of the stick on this deal. Canada and the big oil companies are reaping all the rewards while Americans are being left behind to fix the fences.

Thank you very much.

[The prepared statement of Mr. Thompson follows:]

My name is Randy Thompson, I'm from Martell, Nebraska. I am here as a Nebraska citizen and landowner. I would like to thank the chairman and the committee for the opportunity to be here today.

I would like to start my testimony today by thanking President Obama for making the right decision by denying the permit for the Keystone XL pipeline. I am proud to think that the voices of Nebraskans had an impact on his decision. Those of us who live and work along the proposed path of this pipeline applaud him for placing our welfare ahead of the interests of big oil companies.

As a lifelong Nebraskan I can honestly tell you that I have never witnessed any project that has stirred the emotions of my fellow Nebraskans like the Keystone XL has. Contrary to what you may have heard from some of our elected officials, I can assure you that the dust hasn't settled in Nebraska. TransCanada has built a mountain of distrust among the ordinary citizens of our state, and even with their voluntary agreement to move the pipeline out of the Sandhills we remain very skeptical. Many Nebraskans view TransCanada as an overly aggressive company who thought it could bully and intimidate its way across our state, and having witnessed TransCanada's actions during the application process has made us wary of what they would do if empowered by a premature permit.

TransCanada has been granted plenty of free passes and now they seek yet another. They want their political allies to free them from the tangled mess that they, themselves, helped to create. Perhaps it's time for the free passes to come to an end. If the Keystone XL truly has merit then it should be able to withstand the rigorous and comprehensive review that it deserves, and has not gotten.

If this pipeline is built thousands of us in the heartlands will have to live and work next to it for the balance of our lives, and in many cases the balance of our kids and grandkids lives. It will cross hundreds of our waterways, lakes, and streams, and it will only get riskier with time; so please, don't tell us that this permit needs to be hurried through.

In the heartlands many of us feel that approval of this project would strip us of our individual property rights. We feel this way because we would be forced to give up a portion of our hard earned property for the personal gain and benefit of corporate entities. We have seen no evidence that this pipeline is anything other than an export pipeline providing access to the world oil market for Canadian Tar Sands. Outside of providing a few months of temporary employment for some Americans it yields few other benefits. Completion of the pipeline would actually increase the price of the oil we are currently importing from Canada to our Midwest refineries. This is an undisputed fact.

Perhaps it's just my Nebraska logic, but from my perspective it appears that the United States is getting the short end of the stick on this deal. Canada and the big oil companies are reaping the rewards while Americans are being left to fix the fence.

Thank you for allowing me to be here today.

Randy Thompson

Mr. WHITFIELD. Thank you, Mr. Thompson. I appreciate your opening statement.

I am going to defer my 5 minutes of questions and at this time recognize Mr. Pompeo of Kansas for his 5 minutes of questions.

Mr. POMPEO. Great. Thank you, Mr. Chairman. Mr. Chairman, I begin by asking unanimous consent to enter into the record an article that appeared in the Wall Street Journal February 4, written by Ted Olson. Thank you.

[The information follows:]

THE WALL STREET JOURNAL.

WSJ.com

OPINION

FEBRUARY 1, 2012

Obama's Enemies List

David and Charles Koch have been the targets of a campaign of vituperation and assault, choreographed from the very top.

By **THEODORE B. OLSON**

How would you feel if aides to the president of the United States singled you out by name for attack, and if you were featured prominently in the president's re-election campaign as an enemy of the people?

What would you do if the White House engaged in derogatory speculative innuendo about the integrity of your tax returns? Suppose also that the president's surrogates and allies in the media regularly attacked you, sullied your reputation and questioned your integrity. On top of all of that, what if a leading member of the president's party in Congress demanded your appearance before a congressional committee this week so that you could be interrogated about the Keystone XL oil pipeline project in which you have repeatedly—and accurately—stated that you have no involvement?

Consider that all this is happening because you have been selected as an attractive political punching bag by the president's re-election team. This is precisely what has happened to Charles and David Koch, even though they are private citizens, and neither is a candidate for the president's or anyone else's office.

What Messrs. Koch do, in fact, is manage businesses that provide employment to more than 50,000 people in North America in legitimate, productive industries. They also give millions of dollars to medical researchers, hospitals and cultural institutions. Their biggest offense, apparently, is that they also contribute generously to nonprofit organizations that promote personal liberty and free enterprise, and some of those organizations oppose policies advocated by the president.

Richard Nixon maintained an "enemies list" that singled out private citizens for investigation and abuse by agencies of government, including the Internal Revenue Service. When that was revealed, the press and public were outraged. That conduct will forever remain one of the indelible stains on Nixon's presidency and legacy.

When Joseph McCarthy engaged in comparable bullying, oppression and slander from his powerful position in the Senate, he was censured by his colleagues and died in disgrace. "McCarthyism," defined by Webster's as the "use of unfair investigative and accusatory methods to suppress opposition," will forever be synonymous with un-Americanism. Army

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Mode

counsel Joseph Welch's "Have you no sense of decency?" are words that evoke the McCarthy era and diminish the reputations of his colleagues who did nothing to stand up to him.

In this country, we regard the use of official power to oppress or intimidate private citizens as a despicable abuse of authority and entirely alien to our system of a government of laws. The architects of our Constitution meticulously erected a system of separated powers, and checks and balances, precisely in order to inhibit the exercise of tyrannical power by governmental officials.

Our Constitution even explicitly prohibits bills of attainder so that Congress may not single out individual citizens or groups for disfavored treatment or unequal application of the force of government. Prosecutorial power is rigidly constrained and judicially supervised so that government may not accuse private citizens of crimes or investigate them without good cause.

Whoever may be the victim of such abuse of governmental authority, the press and public almost invariably unify with indignation against it. If a journalist, labor-union leader or community organizer on the left can be targeted today, an academic or business person on the right can be the target tomorrow. If we fail to stand up against oppression from one direction, we abdicate the moral authority to challenge it when it comes from another.

This is why it is exceedingly important for all Americans to respond with outrage to what the president and his allies are doing to demonize and stigmatize David and Charles Koch. They have been the targets of the multiyear, carefully orchestrated campaign of vituperation and assault described above—and much more. It has been choreographed from the very top. When the president personally takes leadership, his political surrogates and army of allies in the press and Congress quickly and surely follow the direction and tone he sets.

The misuse of government power to damage or demean one's political enemies is abhorrent and the very antithesis of a free society and a government of laws, not men. It is time for the public to ask those engaged in these practices, "Have you no sense of decency?"

Mr. Olson, a lawyer in Washington, D.C., and a former solicitor general of the United States, represents Koch Industries.

Mr. POMPEO. You know, I understand that Mr. Waxman doesn't like this pipeline. He called this hearing. He asked for witnesses to come, but the incredible political nature of it became really apparent when he had his chance to ask questions. He had 5 minutes. I watched the clock. He spent 4 minutes and 31 seconds testifying. So he drug two folks out from the United States Government, brought them here this morning ostensibly because he was keenly interested. He thought it was absolutely critical that this committee hear from them, and he got between two and two and a half questions, depending on how you count them. Twenty-nine seconds. * * *

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Mr. WAXMAN. Mr. Chairman, I want to make a point of order. I know the rules on the House Floor would not permit the gentleman to make such a personal attack on Members' motivations or actions. I am happy to answer it when I get my turn, but if I answer it and don't have enough time for questions to these witnesses, he will say I didn't ask them enough questions. But I think it is inappropriate, and I make a point of order that the words be stricken.

Mr. POMPEO. Mr. Waxman, I——

Mr. WHITFIELD. Would the gentleman hold for 1 minute?

Mr. POMPEO. Certainly.

Mr. WAXMAN. Unless the gentleman wants to withdraw those comments, and then he can go on with his questions.

Mr. POMPEO. Well, I am happy to withdraw them so that we can proceed this morning. That is fine. I am happy to withdraw the comments.

Mr. WAXMAN. Then I withdraw my point of order.

Mr. WHITFIELD. The gentleman withdraws——

Mr. WAXMAN. Appreciate the gentleman——

Mr. WHITFIELD [continuing]. At his point.

Mr. WAXMAN [continuing]. Withdrawing his personal statements.

Mr. POMPEO. Certainly. We have now this standard that is apparently being applied by folks across the aisle. The folks across the aisle have this we try and decide whether there is a personal benefit, whether someone would or would not benefit from a particular stance. This is a private investment. Seven-billion-dollar private investment.

But, you know, I watched. I wasn't here, but I watched this committee last year as we were debating and discussing—it was a little different. We didn't have hearings like this very often, but I watched them on the floor debate Obamacare and the Stimulus Package, and there was no discussion from the left about who might or might benefit from those takings from the taxpayer, those enormous government programs. And I just think it is intellectually desperate, dishonest to now for us to all have this different standard. We should have a standard about policy. We ought all to do that and not have a standard that—where we say, Hey, we are looking to see who benefits or who does not benefit from a particular piece of legislation.

And with that I yield back my time.

Mr. WHITFIELD. The gentleman yields back the balance of his time.

At this time I recognize the gentleman from California for 5 minutes for questions.

Mr. WAXMAN. Mr. Chairman, before I get to questions I want to point out that since it has been commented that I am being political, the chairman of the subcommittee raised the issue of whether the President is in the full campaign mode trying to respond to these extremists in the environmental side, attributing his motives for that, and so this is all Presidential politics and suggested that perhaps we ought to look at Mr. Soros who has a train that could take this tar sands oil down to Texas instead of using a pipeline. Well, my point was never that—

Mr. WHITFIELD. Warren Buffett, not Mr. Soros.

Mr. WAXMAN. Excuse me. The other guy that you don't like, Mr. Buffett. Mr. Soros, Mr. Buffett. So I consider that an ad hominem political kind of argument.

But my Republican colleagues and the American Petroleum Institute make several arguments for building this pipeline. They say we need the oil, it will lower gas prices, it will make us more secure as a Nation, but the facts just don't support these claims.

The Energy Information Agency, which is part of the Department of Energy, is projecting that what America, that America's oil consumption is no longer growing. It is no longer growing, and the reason it is no longer growing is because we have insisted on more efficient automobiles that have better fuel mileage. The standards for these model years 2017, through 2025, will further reduce our oil dependence.

So with growth and consumption now in check, I don't think we have to be stampeded into something like this oil tar sands deal from Canada. This pipeline will not reduce gas prices. In fact, last year TransCanada admitted to this subcommittee that the pipeline will raise crude oil prices in the Midwest. There is a debate over how much it will raise those prices, but certainly it won't lower them.

So that leaves the question of national security as a reason why we need to go along with this pipeline, and we have General Anderson, could you just briefly state what your experience, your relevant military experience has been?

Mr. ANDERSON. Thirty-one years service in the Army. I am a professional logistician, most recently served in the Pentagon for 2 years as a chief of logistics operations and readiness in the Pentagon, and before that I was general David Petraeus's senior logistics officer at the multinational force in Iraq C-4.

Mr. WAXMAN. In your statement you said that you didn't think this pipeline was in our national security interest. You said that America's oil dependence threatens our national security. Is this a controversial view among national security experts?

Mr. ANDERSON. I don't think so. Certainly, although I am not sure if I would call myself a national security expert, I am an expert in regards to experiencing the operational impacts of our oil addiction in Iraq and Afghanistan, and I still do work in Afghanistan. I have spent quite a bit of time over there with my private interests, and I can tell you that we haven't changed at all in 10 years over there. We are still incredibly wasteful and inefficient,

and we don't have any of the renewable energy technologies that I believe we need to save soldiers' lives.

Mr. WAXMAN. This is not oil that is coming out of Canada that is going to be put through a pipeline through the United States. This is a different kind of oil. It comes from tar sands, and therefore, can have problems in the pipeline.

The TransCanada has already one pipeline. It has been around for I think a year and a half, and they have already had 14 spills over the last year and a half. So a lot of people are concerned about the safety of the pipeline, but that is a pipeline that is not carrying these—this crude oil tar sands if I am—if I understand the situation. It is not going to carry this kind of tar sands, and to get the tar sands ready to go through any pipeline there has to be such a use of energy to refine it sufficiently to go through the pipeline that it is going to cause us more greenhouse gases adding to climate change problems. Is that the way you see it?

Mr. ANDERSON. That is exactly the way I see it, sir, and I think that it is very detrimental to this Nation to continue the CO₂ emissions that we are doing and will no doubt do with the encouragement of this pipeline because I believe that it ultimately brings about climate change and global instability. And when that happens, I think the likelihood that soldiers like myself will have to fight and die in order to protect the stability of the world is much more likely.

Mr. WAXMAN. The threat of tar sands oil spills from TransCanada's pipeline is another reason why people oppose it, and Mr. Michael Klink, who is an engineer and a safety inspector for TransCanada's first Keystone Pipeline that had those 14 spills, wrote an op-ed in the Lincoln Journal Star, which I would like to have put into the record, and he describes seeing the first Keystone Pipeline constructed with cheap foreign steel that cracked when workers tried to weld it.

I would like to ask unanimous consent that article be——

[The information follows:]



Mike Klink: Keystone XL pipeline not safe

By Mike Klink | Posted: Saturday, December 31, 2011 11:50 pm

There has been a lot of talk about the safety of the proposed Keystone XL pipeline.

I am not an environmentalist, but as a civil engineer and an inspector for TransCanada during the construction of the first Keystone pipeline, I've had an uncomfortable front-row seat to the disaster that Keystone XL could bring about all along its pathway.

Despite its boosters' advertising, this project is not about jobs or energy security. It is about money. And whenever my former employer Bechtel, working on behalf of TransCanada, had to choose between safety and saving money, they chose to save money.

As an inspector, my job was to monitor the construction of the first Keystone pipeline. I oversaw construction at the pump stations that have been such a problem on that line, which has already spilled more than a dozen times. I am coming forward because my kids encouraged me to tell the truth about what was done and covered up.

When I last raised concerns about corners being cut, I lost my job — but people along the Keystone XL pathway have a lot more to lose if this project moves forward with the same shoddy work.

What did I see? Cheap foreign steel that cracked when workers tried to weld it, foundations for pump stations that you would never consider using in your own home, fudged safety tests, Bechtel staffers explaining away leaks during pressure tests as "not too bad," shortcuts on the steel and rebar that are essential for safe pipeline operation and siting of facilities on completely inappropriate spots like wetlands.

I shared these concerns with my bosses, who communicated them to the bigwigs at TransCanada, but nothing changed. TransCanada didn't appear to care. That is why I was not surprised to hear about the big spill in Ludden, N.D., where a 60-foot plume of crude spewed tens of thousands of gallons of toxic tar sands oil and fouled neighboring fields.

TransCanada says that the performance has been OK. Fourteen spills is not so bad. And that the pump stations don't really count. That is all bunk. This thing shouldn't be leaking like a sieve in its first year — what do you think happens decades from now after moving billions of barrels of the most corrosive oil on the planet?

Let's be clear — I am an engineer; I am not telling you we shouldn't build pipelines. We just should not build this one.

Pipelines can and do stand the test of time, but TransCanada already has shown that they cannot. After working on engineering projects all over the world, I can tell you that a company that cared about safety would not follow these types of practices.

If it were a car, the first Keystone would be a lemon. And it would be far worse to double down on a proven loser with Keystone XL.

The stories of how TransCanada has bullied landowners in Nebraska rings true to me. I am living it, as well. After repeatedly telling the contractor and TransCanada about my concerns, I lost my job.

But I couldn't watch silently as a company put innocent people at risk with a haphazardly built pipeline. I am speaking out on behalf of my children and your children.

Oil spills are no joke. We need to do all we can to protect our water and our food. I am glad the Nebraska Legislature stepped up to protect Nebraskans. I can only hope that they stand up to TransCanada. We should all take a hard look at the damage that this pipeline will do. I should know; I've seen it in person.

Please do not sell out to foreign oil and foreign suppliers. There is no guarantee the product will stay in the United States, only the toxic waste. God bless the United States and those of us who still believe in the fact that her people matter.

Mr. WAXMAN. And I also have a letter, this is—in addition to his op-ed I also have a letter from Mr. Klink that I would also ask unanimous consent to put in the record.

Mr. WHITFIELD. Without objection.

[The information follows:]

Michael Klink
730 North Main St.
Auburn, IN 46706
February 1, 2012

The Honorable Henry A. Waxman
U.S. House of Representatives
564 Ford House Office Building
Washington, D.C. 20515
Telephone (202) 225-3976
Fax (202) 225-4099

Dear Representative Waxman,

I am writing to you to express my concerns about the TransCanada Pipeline Keystone XL project. I met with your staff this fall in Washington DC while I was testifying at the State Department as an expert on the engineering and construction issues regarding the building of the first Keystone pipeline. I first off want to thank your staff for the sincerity which they demonstrated during my visit to your office.

The past six months have been an exceptionally exciting time for me as I have made multiple trips to Washington DC for meetings, done countless newspaper interviews, radio shows and recently was on National TV for an interview on MSNBC. My reason for being so vocal about the Keystone XL project is from my first hand experience as a safety inspector on the Keystone I (One) project. The number of problems, specifically with regard to safety, which I experienced as an inspector on Keystone was extremely concerning and the concern stays with me to this day. As far as my personal stance, I am not against pipelines, as good could resonate from such a project for our economy and jobs, but to build the pipeline with the current lack of construction oversight and safety measures is a huge mistake. This pipeline is being built with foreign materials which are not up to standards necessary for proper construction; no matter how many jobs this will create, the slight percent this project weans off our dependence on foreign oil, the impending future damage of the Keystone XL pipeline is daunting for each town and city it passes by. These spills will happen and they will happen on a magnitude that will result in destroyed vegetation such as crops and wetlands, loss of livestock, and has the potential to cause the loss of human lives. I have been on the job site and I have seen these issues which I will explain later in my letter. My agenda is nothing more than to voice what I have seen as a safety inspector on Keystone I, from the sit down I had with you earlier this fall, I know this will not fall on deaf ears.

As a regular everyday citizen, sitting in Indiana, reading articles and watching the news about decisions on the Keystone XL pipeline, it seems like many elected officials are trying to allow the Keystone XL project to continue at the expense of the taxpayer opposed to working for the taxpayer. A disaster as mentioned before would have immeasurable impact not only on the lives of those within the reach of the toxic tar sand sludge, but to the rest of the country as well as this pipeline runs through the heartland of the US and one of the largest sources of freshwater which supplies irrigation for 27% of the irrigated land in the US in addition to providing drinking water

to 82% of the people who live within the aquifer boundary. I have seen this tar sands when it is spilled from this pipeline, and I can speak with 100% confidence when I say, there is no way to restore these damaged areas once this tar sand has polluted it. Looking simply at the bottom line in terms of dollars and cents, as it seems monetary discussion is what catches people ears, it would be far more expensive to attempt to clean the spills, compensate those whose land has been ruined, explain to each taxpaying citizen why the consumer goods index has skyrocketed because we lost 30% of the irrigation water for our farmlands than it would be to postpone the pipeline, create and enforces a new stringent set of safety requirements.

The pipeline must be built and held to such standards that these risks be mitigated. Below are areas which I personally witnessed as being substandard and as before, would be willing to testify on any of the below points:

- Pipe standards need to be different than for oil thickness need to be much greater due to abrasiveness of tar sands and due to the pressure at which the tar sands are pumped.
 - Only when one has been on the jobsite can one see that the tar sands are not like regular oil. This "oil" has the consistency of peanut butter and is similar to sending heavy grit sandpaper down the steel pipe at over 1700 Pounds per Square Inch (PSI).
- Welding standards need to be upgraded to Nuclear Regulatory Commission (NRC) standards.
 - The Government does not need to reinvent the wheel on this. There are already standards in place which must be met in order to build a pipe which is carrying hazardous materials.
- The hiring process and certification for welders needs to be overhauled.
 - Current hiring practice allows for the welders to be trained on and make their certifying welds on steel with different properties and origin than the steel used on the pipeline. By training and certifying on steel or pipes that are different than that of the pipeline, welders are creating an inferior finished product. Welders should be certified on the exact pipe or steel being used on that phase of the pipeline. If the steel or pipe properties change throughout the pipeline, re-certification should be required.
- When the pipeline is being buried, it should be done at a greater depth with proper compaction of certified backfill material so the pipeline does not shift.
 - Currently, there is no compaction to the soil when the pipeline is being laid. The hole is dug, pipe is thrown, welded and the dirt is shoveled over the pipe risking damage to the pipe. Ultimately, the pipe should be encased in a concrete tube in the underground sections to contain any leaks. The best solution to all of this is to make all pipelines above ground.
- There shall be mandated no underwater crossing of any water.
 - All water crossings should be above ground with sleeves to catch any leaks.

- Complete containment of all pump stations should be implemented.
 - The pump stations should be housed in concrete building with sealed doors to contain all spills. American construction contractors, farmers, and businesses have obeyed containment laws for chemicals which are not nearly as toxic and dangerous.
- TransCanada has maintained the pipeline as being built with a fifty-year life expectancy.
 - A 50 year life expectancy is impossible on this project. Housing electrical components and control sensors in modular trailers and old sea containers previously used on ships is a recipe for disaster. Subpar practices leave these units more susceptible to fire, tornados, or electrical failure.
- Make sure it is built as designed and approved by the United States Government.
 - Many instances of shortcuts and disregard for standards in place by Trans Canada have been documented with no repercussions. For example, do not allow Trans Canada to substitute parking bumpers found at your local grocery store for concrete foundations.
- Do not allow Pipeline and Hazardous Materials Safety Administration (PHMSA) inspectors give a two week notice to Trans Canada as to time and location they will be inspecting.
 - This happened while I was on the job. We were informed the PHMSA inspectors were arriving in 2 weeks and to make every attempt to ensure standards are implemented. The local building inspector of a house does not even supply forewarning, why would US Department of Transportation agency do this?
- Ensure there is an EPA certified cleanup plan that works.
 - There is no cleanup method for spills of tar sands. This is very apparent in the tar sand oil spill in Battle Creek, Michigan where over 1.5 years later and tens of millions of dollars have been spent, the 800,000 gallon spill still plagues residents.
- DOT warning signs with placards showing "Hazardous Material" should be placed on the pump stations and the pipeline every 100 feet.
 - PHMSA is under the DOT and is the tar sands were being hauled in a truck, these placards would be mandatory under their regulations.
 - First responders (firefighters, police, EMT) need to be trained on how to deal with this toxic material. Especially as most of the first responders in the small towns scattered along the pipeline's path are volunteers.
- Currently there is no safeguard to keep people away from the pipeline.
 - The threat of an attack on the pump stations is very real and would ensure a disaster. Currently, even a stray shot fired from a hunting rifle could damage the pump stations.

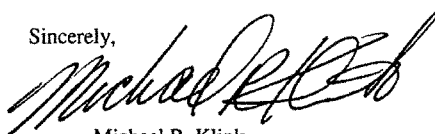
As mentioned previously, I have made multiple trips to Washington DC to speak with Senators, Congressmen and women, reporters, at a State Department hearing, as well as environment

groups, and one thing that continues to resonate with me is that the people making the decisions, as well as other parties involved, have yet to set foot on the construction site where Keystone I was built or the visited the build site for the Keystone XL pipeline. Not one of these people I talked to has been to Marshall, Michigan to observe firsthand the impact a spill of over 840,000 gallons of tar sands into the Kalamazoo River and witnessed the highly volatile mixture of thinning compounds and other toxic chemicals which now coat the river and lake and caused evacuation of people from their home which they were never allowed to return to. This spill is minimal, in fact exponentially smaller than what will happen on the Keystone Pipeline projects if something is not done now to ensure proper construction.

Do you know that there are more safety standards and requirements put into place by regulatory committees to build a sewer line from your house to the main sewer line than there are to transport toxic tar sands which are filled with poisons like arsenic, mercury, and benzene across our country?

Again, I am not saying that pipelines are bad; I am not saying that an attempt to lessen our country's dependence on foreign oil isn't important, but I am however hoping that you can see that pipelines need to be built safely. Pipelines can be built using materials made in the US. This project, as proposed, should be stopped, investigated, and done correctly from start to finish. You not only owe it to yourself, your children, your grandchildren and generations after them, but you owe it to your constituents and their families.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Klink". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael R. Klink
BS Civil Engineering

Mr. WAXMAN. My time has expired. I want to thank the two gentlemen, Mr. Thompson and General Anderson, for their testimony. I think that we ought to hear another side to this issue, not have it ram-roaded through the Congress, not have it given special-interest treatment. This is a big decision. We are going to be living with the consequences for maybe 50 to 100 years, and it is in the wrong direction that it is going to take our Nation in terms of greenhouse gases, in terms of carbon emissions, in terms of pipeline safety, in terms of danger to the people around the pipeline, and the taking of the property from those people whose property is going to be taken for this special interest purpose.

I yield back the balance of my time.

Mr. WHITFIELD. The gentleman from Virginia, Mr. Griffith, is recognized for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman, and I do appreciate you gentlemen taking your time to be with us today. We may disagree on some of this but do appreciate you all's American citizen success and your rights under our constitution to speak to your government and do commend you for being here.

I do have some issues with some of the comments about jobs, you know. We can always argue over the numbers, but one thing that I find just really interesting is that if you accept the argument that folks are going to—the oil is going to come in and then the oil is going to go to other countries, and this is just a pipeline to send the oil somewhere else, if that argument is accepted, you also have to accept the argument that before it goes to the other countries, it is going to be refined in the United States, thus adding value. To do that you have to add jobs to add that value, and when you add that value you add strength in our economy and tax dollars.

So I recognize the situation you have, Mr. Thompson, being personal and the property rights involved, and I have not personally looked at that, but what I do see is a significant situation where it has been studied for a long time, and I do believe that there are jobs that are created by having the Keystone XL Pipeline, and I think a lot of the opposition, not necessarily yours but others, are folks who do not feel that we should continue to use carbon-based energy. I think that the general falls into that category, and I don't agree with that.

Coming from a coal ridge and a natural ridge area of the United States, I would be remiss if I didn't tell you that I think that at least for the foreseeable future we are going to need to use oil, we are going to need to use coal, we are going to need to use natural gas. While we should be looking at green energy sources long term, I certainly wouldn't want to put us in a situation where our military had to rely on solar panels in order to provide it with the energy that it needs to move forward. It is certainly something that we should look at long term, but I think over the next 20 years we are still going to need our carbon-based fuels, and with that, Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentleman from Texas, Mr. Gonzalez, for 5 minutes.

Mr. GONZALEZ. Thank you very much, Mr. Chairman, and I want to thank the witnesses.

And I am going to agree with my colleague that if you are exporting fuels and this is a refined product from obviously what we receive from Canada, exporting is good, balance of trade, creates jobs and such. The real question then comes as to how you refine it, and I just want to remind my colleagues on the other side of the aisle that we attended to make sure that we did it in a more cleaner fashion and more safe fashion, and that they opposed this every step of the way.

Now, we were able to get a bill out of the House, but we have never been able to conclude that. So I am hoping that they recognize the necessity of a safe and clean refining industry in this country in the way that we can accomplish and meet all of the demands of this country.

Mr. Anderson, is that right?

Mr. ANDERSON. Yes, sir.

Mr. GONZALEZ. Again, thank you for your service, first of all, and thank you for being here today. Thank you, Mr. Thompson. It is good to hear from you.

I understand what you are saying, and I am going to agree with you. This is my fear. I am for the Keystone. I am from Texas, so you know that I still believe in fossil fuel. The question is how much longer will we still require a reliable source of fossil fuel in this country.

I understand that many of the studies that are published come from the oil companies, and they will tell you that we are going to have domestic dependence for some years to come and globally even for a longer period of time. I hear your fear that my support of Keystone may well simply expand the duration of the time that we may be still dependent.

My position is we will be importing because we need it, and I would rather get it from Canada and Mexico than anyone else for national security purpose, but that does not mean that we should not continue to aggressively view efficiency and conservation, renewables and alternatives.

So I agree with you there has to be a healthy balance to be able to accomplish this. To my colleagues on the other side of the fence, the problem is that you truly just have almost 100 percent dedication to fossil fuels. As much as I understand that they have to be part of the fix, I am going to give you a quote from John Quigley, former Secretary of Pennsylvania Department of Conservation and Natural Resources, in making reference to how we explore today for fossil fuels and such.

He says, "We are burning the furniture to heat the house." And that is the caution. That is the cautionary tale to all of us. Be realistic about our needs in the future, how we wean ourselves from the dependency on fossil fuel. Everyone is going to tell you that exploration, production, and refining of fossil fuels is a twilight industry, but I am here to tell you that it is a real long twilight, and we can't afford to be caught without an adequate supply and be depending on individuals, countries that we will be in jeopardy and in a flux for years to come.

So I do agree with you, and I thank you again for your observation.

Mr. Thompson, I do have a question about you. We hear a lot of complaining about regulation and such in this country, about its owners, its overburdened. The greatest exercise of governmental regulation is eminent domain, and you have made reference to that. So I want to know have you been approached by TransCanada to negotiate anything regarding some possible use of your property?

Mr. THOMPSON. Absolutely.

Mr. GONZALEZ. Can you tell me about that experience?

Mr. THOMPSON. Yes. We were first notified verbally that they intended to use eminent domain if we didn't go along with the offer that they had presented us for the use of our property. We definitely declined to do—enter into any kind of agreement with them. So they followed up with a written letter expressly stating that if we did not accept the terms of the agreement that they had sent to us, that they—if we did not accept those terms within 30 days, that they would then immediately proceed to take our land through eminent domain.

And my problem with that, sir, they were still in the permitting process at this time, and yet they are threatening me with eminent domain, and they did this throughout the State of Nebraska. And I will guarantee you, sir, that many, many of the easements that landowners signed was due to the fact that TransCanada told them, threatened them with eminent domain. And there are not too many ranchers or any other ordinary citizens that are willing to take on a multibillion-dollar corporation, as we well know.

Mr. GONZALEZ. Well, keep us posted, Mr. Thompson. I would ask you that.

My time is up.

Mr. THOMPSON. OK.

Mr. GONZALEZ. And I hate cutting you off, but I thank you, and thank you, General. I yield back.

Mr. WHITFIELD. I am going to continue to defer all my questions, and I will recognize the gentleman from California, Mr. Bilbray, for 5 minutes.

Mr. BILBRAY. Thank you very much.

First of all, General Anderson, I appreciate your concerns about, you know, the global environmental issues. Your concern about this pipeline and its short-term and long-term impact I think is very, you know, what we want to talk about.

Do you feel that the construction of the Alaskan Pipeline in the '70s was detrimental to the national security?

Mr. ANDERSON. I think at that time that was the right thing to do. It was a different, much different situation, of course. Now the world has changed, and greenhouse gases and climate change and world instability are all these things that are much more in the forefront than they were 40, 50 years ago when we contemplated the Alaskan Pipeline.

Mr. BILBRAY. General, do you think that the, you know, the physics of environmental reality and the reality of the political instability of places like the Middle East have changed dramatically since we—the Congress voted on that pipeline?

Mr. ANDERSON. I am not sure if I understand what you are—

Mr. BILBRAY. I am just saying, I am saying again do you believe that the physics of environmental impact, issues like climate change, issues like emissions, toxic emissions and everything else, and the situations that have historically been unstable in the Middle East, do you think that there wasn't, those issues weren't at least if not perceived weren't reality at that time also?

Mr. ANDERSON. No. I don't think that they were as developed as they are today, as apparent as they are today. I don't think we knew back then the impact of CO₂ emissions.

Mr. BILBRAY. We didn't know. That is my point. We might not have known, but the fact is that it was still there. Wouldn't you agree?

Mr. ANDERSON. I would concede you that point. Yes.

Mr. BILBRAY. What—do you believe the use and or the development and expansion of the use of nuclear power is a—contributing to the national security, or do you think that it is a detriment to the national security?

Mr. ANDERSON. I consider nuclear power to be clean energy, and I support its development.

Mr. BILBRAY. And I appreciate you using that because one of the frustrations I have as somebody who has worked in clean air is people mix the word renewable as if it is all clean and deny clean energies across the line, and as you know the number one purchaser of nuclear reactors in this country is the United States Government, and I appreciate that.

Do you believe that the mandated use of ethanol aids in the security of this country and its long-term environmental and economic and military stability?

Mr. ANDERSON. Not really. No, I don't really believe that.

Mr. BILBRAY. In other words, you go along with those of us that have addressed in the issue in California that ethanol is not only a very expensive, non-sustainable option, but it is also a fluting option with evaporative emissions and related issues that was not clarified when the mandate occurred here in Washington.

Mr. ANDERSON. I would agree with that.

Mr. BILBRAY. Even though those of us in California tried to warn Washington of this environmental and economic impact.

Mr. ANDERSON. I would agree with that. Of course, I am not an expert in this field. I am talking about national security.

Mr. BILBRAY. I understand that, but we are getting back to this issue of how energy policy affects it.

Would you agree that giving ethanol all of the benefits or the overwhelming majority of benefits like tax credits, blender fuels, and everything else while denying other environmental options such as algae, the same packet, is counterproductive to the stated purpose of a national energy independence?

Mr. ANDERSON. I would agree with that.

Mr. BILBRAY. Well, I want to thank you very much for your testimony, and I appreciate that we approach the challenges.

I would ask that the record show the general very clear about the fact that what some people perceived as being environmental damaging in Washington may not be perceived by the general or

myself of being not only damaging but maybe absolutely essential for environmental and national security purposes.

And I appreciate it, General, and I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentleman from Massachusetts, Mr. Markey, for 5 minutes.

Mr. MARKEY. The Keystone Pipeline would carry some of the dirtiest oil in the world right through the middle of our country. It is a double-barrel threat to the environment, pumping out millions of tons of the pollutants that cause global warming, also risking oil spills into our ground water.

We have been repeatedly told that approving this pipeline would lower gas prices at the pump, even though TransCanada projects that oil prices and its profits would rise because they can charge more for Keystone oil in the Gulf than it does in the Midwest.

We have also been repeatedly told to get over our concerns because the oil coming through this pipeline would enable us to reduce our dependence on oil imported from unfriendly Middle Eastern nations, but it turns out that these energy benefits may be a complete fiction. Many of the refineries where the Keystone crude will be sent say they will re-export the refined fuels. They are also located in Port Arthur, Texas, which is a designated foreign trade zone. This means that when these refineries re-export the Keystone oil fuels, they won't even have to pay U.S. taxes on those exports.

And in December when I asked the president of TransCanada whether he would agree to ensure that the oil and refined fuels stay here in the United States instead of being re-exported, he said, no.

Mr. Anderson, last month Canadian Prime Minister, Stephen Harper, said that, "When you look at the Iranians threatening to block the Straights of Hormuz, I think that just illustrates how critical it is that supply for the United States be North American."

Mr., do you think that this bill to legislate a permit for the Keystone Pipeline is guaranteed to reduce our dependence on oil transported through the Straights of Hormuz if we don't have some provision which ensures that the oil stays here in the United States?

Mr. ANDERSON. No. I do not believe that it will guarantee energy security at all for our Nation.

Mr. MARKEY. The American Petroleum Institute has cited our friendly relationship with Canada and polls that find that Americans would prefer to import more oil from Canada. Under this bill are there any guarantees that all of the friendly Canadian oil that is sent through the pipeline will be sold here in the United States?

Mr. ANDERSON. No. I am not aware of any guarantees that that will happen.

Mr. MARKEY. So what I am hearing you saying then is that there is a threat because they are extracting the oil from tar, that there is a greater likelihood of a dangerous warming on the planet and that the benefits as the pipeline goes through our country are not certain in terms of the oil staying here in our country to break our dependence upon imported oil.

And so what is the benefit to the American people out of such a proposal?

Mr. ANDERSON. There is no benefit. I believe it is a detriment to the American people.

Mr. MARKEY. Again, summarize why is it a detriment?

Mr. ANDERSON. The detriment because it keeps our addiction to oil, and our addiction to oil makes us strategically and operationally vulnerable.

Mr. MARKEY. OK. Mr. Thompson, the route that TransCanada originally proposed would have gone through Nebraska's Sandhills. Even if a new proposed route would avoid the Sandhills, won't it still go through the Ogallala Aquifer?

Mr. THOMPSON. We—well, we don't know where they are proposing a new route, so that is a problem. From that I have heard and what initial proposals they were talking about it would still cross the Ogallala Aquifer even though—

Mr. MARKEY. What is the risk if that happens if there is a spill?

Mr. THOMPSON. Absolutely there is a risk if that happens.

Mr. MARKEY. And what would happen to the water table?

Mr. THOMPSON. Well, if I could quickly explain that our water table is so high that the pipeline would actually be buried or submerged directly in the water in many places.

Mr. MARKEY. Wow.

Mr. THOMPSON. And so if any type of leak, it is going to go into our water supply.

Mr. MARKEY. Wow and what would the impact of that be?

Mr. THOMPSON. Well, it could be from small to tremendous. I mean, you got all kinds of small communities and like myself, I have livestock watering wells, I have irrigation wells that would be close to the pipeline. They become contaminated, that property has become virtually useless.

Mr. MARKEY. And how do you feel about that in terms of the impact it could have upon your life and the lives of all the people in those smaller communities?

Mr. THOMPSON. Well, you know, to put it bluntly, I am angry as hell when people want to play political football games with my livelihood.

Mr. MARKEY. Well, we agree with you. We want Nebraska, the University of Nebraska to have a good football team, but we don't want oil pumping at the football games.

Mr. THOMPSON. You are absolutely correct.

Mr. MARKEY. With the people in Nebraska and we can see how their public health could really be in jeopardy.

Mr. THOMPSON. I just think, you know, somewhere in this process we need to take a look at the people of America that actually are going to be, you know, impacted by this thing. It is not all about money and this and that. I mean, there is people's livelihoods at stake here, and I mean thousands of us and our resources. So that needs to enter the debate somewhere in the process.

Mr. MARKEY. Thank you, sir, for being here. Thank you, General, for being here.

Thank you, Mr. Chairman.

Mr. WHITFIELD. The gentleman's time has expired.

I will now recognize myself for 5 minutes.

And the first thing I want to do is read from a memorandum from Carmine Defiglio, who is a Ph.D. deputy assistant secretary

for policy analysis at the U.S. Department of Energy, and in this memo he specifically talks about the issue that Mr. Markey raised and that is this oil coming from Canada is going to be ending up exported out of the U.S. And I am going to read this verbatim.

He said, "This memorandum provides data and analysis about a number of issues. It concludes that refiners in the U.S. will likely consume additional Canadian oil sands well in excess of what would be provided by the Keystone XL Pipeline. It also concludes that exports of Canadian oil sands from Port Arthur are highly unlikely."

Now, when you hear this argument that as the President stated in his decision not to make a decision, he said that one of the reasons he was not going to make a decision was that he did not have sufficient information to make a decision, that Congress did not give him enough time. Well, as I had stated in my opening statement, this pipeline has now been under study for 40 months.

In the fall of 2011, a supplemental draft environmental impact statement was issued by the State Department. After months of public hearings along the proposed route, the State Department issued its final environmental impact statement, and in that final environmental impact statement between two options, one of not building the pipeline versus, two, building the pipeline, they indicated that the preferred option was to build the pipeline as proposed.

Now, a person just on the outside not paying any attention to this—everyone expected the State Department was going to make its final decision some time in the fall of 2011, and then all of sudden now it is they said that they would seek a new route through the State of Nebraska and undergo another round of studies that would not be complete until the first quarter of 2013. And that was the stated reason for President Obama not making a decision, was that—because of this new route through Nebraska.

Now, when some of the political leaders in Nebraska realized their concerns were being used by the President to stop this project, they had a special session of the legislature was called, and a new law was passed to give the Nebraska Department of Environmental Quality the ability to cite and evaluate a new route for the pipeline within Nebraska's borders in half the timeframe that the State Department envisioned.

So taking that development into account, the Keystone provision that was put into the Temporary Payroll Tax Cut Extension Act allowed the President to approve the pipeline while the State of Nebraska completed its environmental review. The final environmental impact statement that the State Department issued in August of 2011 was deemed satisfactory of all National Environmental Policy Act requirements, and no additional Federal review should be required.

Because the route modification of this long pipeline is, in Nebraska is not an interstate modification, there really was no Federal role, and since the rest of the pipeline route outside of Nebraska and its evaluated environmental impact remained unchanged, there was really no reason for the White House or State Department to believe that there is not enough time to make the decision of the pipeline by February 21.

I simply wanted to talk about that because when people hear, oh, well, the route has changed and that is why we don't have enough time, but there was a clear explanation of all of this, and I think I clearly stated it.

In concluding I would just say that, General Anderson, we genuinely appreciate you being here. I would also like to thank you for your support and service to our country, and Mr. Thompson, we appreciate your being here and speaking up on your personal views about this issue, and Nebraska is in the Big Ten now. Right? Or Big 12. Right? OK. So we know they will continue to do well, and we will keep the record open for 10 days for any additional material that might want to be submitted, and with that we will conclude the hearing, and thank you all very much for your assistance and helping us out.

With that, the hearing is concluded.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned.]

