

NORTHERN ROUTE APPROVAL ACT

MAY 17, 2013.—Ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3) to approve the construction, operation, and maintenance of the Keystone XL pipeline, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 3, the “Northern Route Approval Act,” was introduced by Representative Lee Terry (together with a bipartisan group of 93 original cosponsors) on March 15, 2013. The legislation removes the requirement of a Presidential Permit for approving the Keystone XL pipeline, deems the final EIS that was issued in August 2011 by the Department of State to be sufficient in satisfying the requirements of the National Energy Policy Act and the National Historic Preservation Act, and issues all Federal permits necessary for constructing Keystone XL pipeline, including permits required by the Endangered Species Act, the Mineral Leasing Act, the Federal Land Policy and Management Act of 1976, the Federal Water Pollution Control Act, the Rivers and Harbors Appropriations Act of 1899, and the Migratory Bird Treaty Act. The legislation also limits judicial challenges to the project.

BACKGROUND AND NEED FOR LEGISLATION

A Canadian pipeline company, TransCanada, has long sought to increase the capacity of its Keystone pipeline system in order to bring more oil from the Canadian oil sands to U.S. refineries in the Midwest and Gulf Coast. The pipeline also could accept U.S. crude from the Bakken oil fields that are being developed in North Dakota and Montana. A Presidential Permit application for its proposed 1,384 mile expansion project, Keystone XL, was submitted to the U.S. Department of State (DOS) in September 2008.

During the more than 1,700 days since the original permit application was filed, the U.S. has faced consistently high gasoline prices, stubbornly-high unemployment rates, and continued risks of relying on oil from unstable sources that are often adversaries to U.S. interests. Construction of Keystone XL would help address all of these concerns, but the Obama Administration denied approval of the Presidential Permit for the pipeline in January 2012.

TransCanada submitted a new application for a Presidential Permit in May 2012 that will undergo the same lengthy review process as the previous application, with zero certainty that the President will approve the application. Even if the Presidential Permit application is eventually approved, the pipeline faces litigation and additional Federal permits that are required under various environmental laws, further eroding certainty that the pipeline will ever be completed. In addition, a point may be reached soon where continued inaction will force the Canadian government to pursue other markets for its oil, at which time the benefits to the American people of Keystone XL would be lost.

Additional Canadian oil would benefit the U.S. in many ways. Oil imports are needed to fill the gap between consumption and domestic production. Although domestic production has soared in recent years, the U.S. still imported about 40% of its oil in 2012. Unfortunately, many nations that serve as a source of these imports continue to display substantial instability and anti-American hostility, such as Nigeria, Venezuela, and Russia. This raises concerns about the risks—both economic and otherwise—of continued reliance upon such nations.

For these reasons, Canadian oil is critical to U.S. energy security. In addition to being a very stable country, a strong ally, and

our largest trading partner, Canada is the single largest source of oil imports for the U.S. Canadian output is on the rise, especially oil sands production from the province of Alberta. Coupled with incredible growth in oil and gas development in the U.S., multiple independent analysts project that the Canadian oil sands can be a key factor in helping create North America energy self-sufficiency.

One of the critical factors in reaching self-sufficiency is expanding the existing pipeline infrastructure to move oil and gas resources from development sites to areas that have consumption needs. And pipelines are among the safest means of transporting that oil. However, the existing pipeline system between the two nations is unable to keep up with the growing volumes (and especially the capacity from Canada to the Gulf Coast), necessitating the need for a major expansion project such as Keystone XL.

The Keystone XL project, if fully completed, would be able to move 830,000 barrels of oil per day from the oil sands region of Alberta, and it also could accept U.S. crude from the Bakken oil fields. This would reduce substantially the need for imports from the Middle East, as well as providing a stable source to help protect supply disruptions. And it can do so for the long term, as the output from Alberta is expected to provide this additional oil for decades to come. According to a memorandum produced by the Department of Energy in June 2011, domestic demand for Canadian oil sands crude “will be much higher than can be supplied by just the Keystone pipeline” in the future, which shows how vital Keystone XL is.

TransCanada estimates that it would spend approximately \$7 billion to construct the full project and would directly create 20,000 jobs. In the draft supplemental EIS that was issued on March 1, 2013, the Department of State estimated approximately 42,100 direct and indirect jobs would be created over the project construction period, of which 3,900 would be directly involved with project construction.

Once constructed, Keystone XL would be the most advanced and safest pipeline in the world. Transporting oil via pipeline is the most economically efficient and environmentally sound means of doing so. In addition to operating under rigorous U.S. pipeline safety laws, Keystone XL will incorporate an additional 57 safety standards recommended by the Pipeline and Hazardous Materials Safety Administration.

In order to address the continued regulatory uncertainty Keystone XL pipeline faces, Rep. Terry introduced H.R. 3, the “Northern Route Approval Act,” which removes the need for a Presidential Permit, deems the NEPA compliance work that has been done to be sufficient analysis for the project, and addresses other necessary Federal permits. In addition, the legislation limits litigation challenges to the Keystone XL pipeline in a manner similar to the legislation authorizing the Alaska Natural Gas Pipeline, which was enacted in 2004.

Keystone XL permitting timeline

The President’s authority to approve applications for Presidential Permits is delegated to the Secretary of State under Executive Order 13337. Issuance of a Presidential Permit is dependent upon a finding that the project would serve the “national interest.” Also,

pursuant to the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) must be prepared by the Department of State because of the determination that Keystone XL would constitute a major Federal action have a significant impact upon the environment.

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

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

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

On May 4, 2012, TransCanada submitted a second application for a Presidential Permit for the Keystone XL pipeline project. This application triggered a new NEPA review process and national interest determination requirement. The new application was for 875 miles of pipeline for the Keystone XL project; the southern Gulf Coast segment, which did not require a Presidential Permit, had already begun construction and is currently 50 percent to 60 percent complete. On March 1, 2013, the Department of State issued a draft supplemental EIS for the second Presidential Permit application.

The ongoing permitting process for Keystone XL has taken over 50 months thus far and has included multiple opportunities for input from every affected level of government as well as the public. By comparison, the original Keystone pipeline project was permitted in less than 24 months.

The Trans-Alaska Pipeline precedent

There are many parallels between the debate over Keystone XL and the debate over the construction of the Trans-Alaska Pipeline in the early 1970s. In that case, a major discovery of oil in the North Slope of Alaska at Prudhoe Bay—the largest on the continent prior to development of the Alberta oil sands—necessitated a pipeline to bring this oil to southern Alaska for transport to West Coast refineries. A consortium of energy companies proposed to build the 800-mile Trans-Alaska Pipeline.

The project was thoroughly studied for several years during which all legitimate environmental and safety concerns were addressed. Nonetheless, Federal approval became bogged down by NEPA-related delays similar to those currently impeding Keystone XL.

However, Middle-East turmoil and rising oil prices finally sparked Congressional action. In 1973, Congress passed and President Nixon signed the Trans-Alaska Pipeline Authorization Act, which removed all Federal roadblocks to the project and deemed it approved. The statute's purpose was 'to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the trans-Alaska oil pipeline be constructed promptly without further administrative or judicial delay or impediment.'

Construction on the Trans-Alaska Pipeline began in 1974. Despite numerous engineering challenges associated with Alaska's extreme temperatures and rugged terrain, the pipeline was completed on time in 1977. It has been in operation ever since.

To date, the pipeline has delivered over 16 billion barrels of oil to the American market, considerably more than a number of the project's critics had predicted. It has contributed substantially to the health of Alaska's economy, while creating jobs across the country and strengthening national security. In addition, the pipeline has amassed an excellent environmental and safety record using technology far less sophisticated than what will be required for Keystone XL.

The Trans-Alaska Pipeline Authorization Act was an acknowledgement by Congress that the environmental review process it created had gotten out of hand, and that a project clearly in the national interest was being jeopardized. With that bill, Congress took back control of the process and put an end to the unnecessary delays. As a result, an important pipeline project at risk of being stopped by red tape was allowed to proceed. The North American Energy Access Act seeks to accomplish the same thing.

HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 3, the 'Northern Route Approval Act', on April 10, 2013. The Subcommittee received testimony from:

- Alexander Pourbaix, President, Energy and Oil Pipelines, TransCanada;
- Anthony Swift, Attorney, Natural Resources Defense Council;
- Keith Stelter, President, Delta Industrial Valves, Inc.;

- David Mallino, Jr., Legislative Director, Laborers International Union of America; and,
- Mark Jaccard, Professor and Research Director, Simon Fraser University.

COMMITTEE CONSIDERATION

On April 16, 2013, the Subcommittee on Energy and Power met in open markup session and approved H.R. 3 for full Committee consideration, without amendment, by a record vote of 17 yeas and 9 nays.

On April 17, 2013, the Committee on Energy and Commerce met in open markup session and ordered H.R. 3 reported to the House, without amendment, by a roll call vote of 30 yeas and 18 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 7**

BILL: H.R. 3, the "Northern Route Approval Act"

AMENDMENT: An amendment by Mr. Lujan, No. 4, to prohibit H.R. 3 from taking effect until the President determines that any oil and bitumen transported by the Keystone XL pipeline, and all refined petroleum products whose origin was via importation of crude oil or bitumen by the Keystone XL pipeline, will be entered into domestic commerce for use as a fuel, or the manufacture of another product, in the United States, except in specified situations.

DISPOSITION: NOT AGREED TO, by a roll call vote of 13 yeas and 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman			
Mr. Hall		X		Mr. Dingell		X	
Mr. Barton		X		Mr. Markey			
Mr. Whitfield		X		Mr. Pallone	X		
Mr. Shimkus				Mr. Rush			
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green		X	
Mr. Rogers				Ms. DeGette			
Mr. Murphy				Mrs. Capps	X		
Mr. Burgess		X		Mr. Doyle		X	
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney		X	
Mr. Olson		X		Mr. Braley	X		
Mr. McKinley		X		Mr. Welch			
Mr. Gardner		X		Mr. Lujan	X		
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 8**

BILL: H.R. 3, the "Northern Route Approval Act"

AMENDMENT: An amendment by Mr. Tonko, No. 5, to prohibit H.R. 3 from taking effect unless the Secretary of Transportation determines, pursuant to section 16 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, that hazardous liquid pipeline facility regulations are sufficient to ensure the safety of pipelines used for the transportation of diluted bitumen.

DISPOSITION: NOT AGREED TO, by a roll call vote of 17 yeas and 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Markey			
Mr. Whitfield		X		Mr. Pallone	X		
Mr. Shimkus				Mr. Rush			
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green		X	
Mr. Rogers				Ms. DeGette	X		
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Christensen			
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Braley			
Mr. McKinley		X		Mr. Welch	X		
Mr. Gardner		X		Mr. Lujan	X		
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers							

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 9**

BILL: H.R. 3, the "Northern Route Approval Act"

AMENDMENT: An amendment by Ms. Schakowsky, No. 7, to prohibit H.R. 3 from taking effect unless the Energy and Commerce Committee of the U.S. House of Representatives finds that operation of the Keystone XL pipeline is projected to reduce gasoline prices in the United States.

DISPOSITION: NOT AGREED TO, by a roll call vote of 16 yeas and 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell		X	
Mr. Barton		X		Mr. Markey			
Mr. Whitfield		X		Mr. Pallone	X		
Mr. Shimkus				Mr. Rush			
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green		X	
Mr. Rogers				Ms. DeGette	X		
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess		X		Mr. Doyle		X	
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Braley			
Mr. McKinley		X		Mr. Welch	X		
Mr. Gardner		X		Mr. Lujan	X		
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers							

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 10**

BILL: H.R. 3, the "Northern Route Approval Act"

AMENDMENT: An amendment by Mr. Luján, No. 9, to prohibit H.R. 3 from taking effect unless the President determines that Native American tribes, in States where the pipeline will be located, will be fully consulted and that cultural and paleological sites significant to such tribes will be protected to the fullest extent possible during construction and operation of the Keystone XL pipeline.

DISPOSITION: NOT AGREED TO, by a roll call vote of 18 yeas and 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Markey			
Mr. Whitfield		X		Mr. Pallone	X		
Mr. Shimkus				Mr. Rush			
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green		X	
Mr. Rogers				Ms. DeGette	X		
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Braley			
Mr. McKinley		X		Mr. Welch	X		
Mr. Gardner		X		Mr. Lujan	X		
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers							

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 11**

BILL: H.R. 3, the "Northern Route Approval Act"

AMENDMENT: An amendment by Mr. Tonko, No. 10, to prohibit H.R. 3 from taking effect unless all proceedings in which TransCanada Keystone Pipeline, L.P. has invoked the power of eminent domain for the purpose of taking ownership, rights-of-ways, easements, or other access or use of private property in the United States relating to the Keystone XL pipeline, and that have been challenged by a property owner in a State or Federal court, have been resolved by such court.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 17 yeas and 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell		X	
Mr. Barton		X		Mr. Markey			
Mr. Whitfield		X		Mr. Pallone	X		
Mr. Shimkus				Mr. Rush			
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green		X	
Mr. Rogers				Ms. DeGette	X		
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess		X		Mr. Doyle		X	
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Braley	X		
Mr. McKinley		X		Mr. Welch	X		
Mr. Gardner		X		Mr. Lujan	X		
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers							

04/17/2013

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 12**

BILL: H.R. 3, the "Northern Route Approval Act"

AMENDMENT: A motion by Mr. Upton to order H.R. 3 favorably reported to the House. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 30 yeas and 18 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Hall	X			Mr. Dingell		X	
Mr. Barton	X			Mr. Markey			
Mr. Whitfield	X			Mr. Pallone		X	
Mr. Shimkus				Mr. Rush			
Mr. Pitts	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green	X		
Mr. Rogers				Ms. DeGette		X	
Mr. Murphy	X			Mrs. Capps		X	
Mr. Burgess	X			Mr. Doyle		X	
Mrs. Blackburn				Ms. Schakowsky		X	
Mr. Gingrey	X			Mr. Matheson	X		
Mr. Scalise	X			Mr. Butterfield		X	
Mr. Latta	X			Mr. Barrow	X		
Mrs. McMorris Rodgers	X			Ms. Matsui		X	
Mr. Harper	X			Ms. Christensen		X	
Mr. Lance	X			Ms. Castor		X	
Mr. Cassidy	X			Mr. Sarbanes		X	
Mr. Guthrie	X			Mr. McNerney		X	
Mr. Olson	X			Mr. Braley	X		
Mr. McKinley	X			Mr. Welch		X	
Mr. Gardner	X			Mr. Lujan		X	
Mr. Pompeo	X			Mr. Tonko		X	
Mr. Kinzinger	X						
Mr. Griffith	X						
Mr. Bilirakis	X						
Mr. Johnson	X						
Mr. Long	X						
Mrs. Ellmers							

04/17/2013

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 3 will approve construction of the Keystone XL pipeline and limit the types of judicial challenges that can be brought against the project. The legislation removes the requirement of a Presidential Permit for approving the Keystone XL pipeline, deems the final EIS that was issued in August 2011 by the Department of State to be sufficient in satisfying the requirements of the National Energy Policy Act and the National Historic Preservation Act, and issues all necessary federal permits necessary for constructing Keystone XL pipeline.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 3 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 1, 2013.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3, the Northern Route Approval Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3—Northern Route Approval Act

H.R. 3 would specify various procedures pertaining to federal review and permitting of the proposed Keystone XL pipeline, which would be constructed by a private company to carry crude oil from Alberta, Canada, to destinations on the U.S. Gulf Coast. In particular, the bill would exempt the proposed project, which would cross international borders, from the existing requirement to obtain a Presidential permit. In addition, H.R. 3 would deem various actions by federal agencies involved with permitting decisions related to the proposed pipeline to be satisfied and certain federal permits to be granted.

CBO estimates that implementing H.R. 3 would have no significant impact on the federal budget. Based on information from affected agencies, CBO estimates that the proposed changes to administrative procedures would not significantly affect federal spending for such activities relative to current law. The bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 3 directs to be completed zero specific rule makings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1: Short title

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

Section 2: Findings

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

Section 3: Keystone XL permit approval

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

Section 4: Judicial review

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

Section 5: American burying beetle

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

Section 6: Right-of-way and temporary use permit

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

Section 7: Permits for activities in navigable waters

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

Section 8: Migratory Bird Treaty Act permit

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

DISSENTING VIEWS

BACKGROUND

As originally proposed by TransCanada, Keystone XL is a multi-billion dollar pipeline that would transport up to 830,000 barrels per day (bpd) of tar sands crude oil almost 1,700 miles from Alberta to refineries in the Gulf Coast.¹ That project is now proceeding in two parts. The southern portion, which extends from Cushing, Oklahoma to the Gulf Coast, does not require a presidential permit and is already under construction. The northern portion would extend 875 miles from the border crossing in Montana to Steele City, Nebraska.²

The President has delegated the authority to permit transboundary pipeline projects to the State Department pursuant to Executive Orders 11423 and 13337, which require a finding that a project is in the national interest.³ Prior to making the national interest determination, the National Environmental Policy Act (NEPA) requires the State Department to prepare an environmental impact statement (EIS) that assesses impacts on the environment that would result from a project and evaluates alternatives that would avoid or minimize adverse environmental effects.⁴

The State Department issued a final EIS on August 26, 2011.⁵ On November 10, 2011, the State Department announced that it needed to seek additional information and study alternative routes in Nebraska, given concerns from the State of Nebraska and many commenters regarding the proposed route through the sensitive Sand Hills area.⁶ President Obama supported this decision, noting the potential effects of the pipeline on health, safety, and the environment. He concluded that “we should take the time to ensure that all questions are properly addressed and all the potential im-

¹TransCanada Keystone Pipeline, L.P., *Application of TransCanada Keystone Pipeline, L.P. for a Presidential Permit Authorizing the Construction, Operation, and Maintenance of Pipeline Facilities for the Importation of Crude Oil to be Located at the United-States-Canada Border*, 7–9 (Sept. 19, 2008); U.S. Department of State, *Supplemental Draft Environmental Impact Statement for the Keystone XL Project*, 1–5 (Apr. 22, 2011) (online at <http://keystonepipeline-xl.state.gov/documents/organization/182272.pdf>).

²U.S. Department of State, *Draft Supplemental Environmental Impact Statement for the Keystone XL Project* (Mar. 1, 2013) (online at <http://keystonepipeline-xl.state.gov/draftseis/index.htm>) (*hereinafter Draft SEIS*). The pipeline would extend another 329 miles into Canada.

³Exec. Order No. 11423, 33 Fed. Reg. 11741 (Aug. 16, 1968); Exec. Order No. 13337, 69 Fed. Reg. 25299 (Apr. 30, 2004).

⁴National Environmental Policy Act of 1969, Pub. L. No. 94–83.

⁵U.S. Department of State, *Notice of Availability of the Supplemental Draft Environmental Impact Statement for the Proposed TransCanada Keystone XL Pipeline Project*, 76 Fed. Reg. 22744 (Apr. 22, 2011); U.S. Department of State, *Final Environmental Impact Statement Fact Sheet* (Aug. 26, 2011); U.S. Department of State, *Final Environmental Impact Statement for the Proposed Keystone XL Project; Public Meetings*, 76 Fed. Reg. 53525 (Aug. 26, 2011); U.S. Department of State, *Notice of Availability of the Final Environmental Impact Statement for the Proposed Keystone XL Project*, 76 Fed. Reg. 55155 (Sept. 6, 2011).

⁶U.S. Department of State, *Keystone XL Pipeline Project Review Process: Decision to Seek Additional Information* (Nov. 10, 2011).

pacts are properly understood.”⁷ Further, the President stated that the final decision on the permit “should be guided by an open, transparent process that is informed by the best available science and the voices of the American people.”⁸

On December 23, 2011, Congress passed the Temporary Payroll Tax Cut Continuation Act of 2011, which required the President to determine within 60 days whether the Keystone XL pipeline is in the national interest. On January 18, 2012, the State Department recommended that the permit for the proposed pipeline be denied because the Department did not have sufficient time to obtain the information necessary to assess whether the project is in the national interest.⁹ At that time, there was no identified route through Nebraska. Based on the State Department’s recommendation, President Obama denied the application, stating that “the rushed and arbitrary deadline insisted on by Congressional Republicans prevented a full assessment of the pipeline’s impact, especially the health and safety of the American people, as well as our environment.”¹⁰

TransCanada then split the project into two pieces, and submitted a new application for a presidential permit for the northern portion on May 4, 2012, triggering the need for a supplemental EIS.¹¹ On January 22, 2013, the Governor of Nebraska approved a new route for the pipeline through the state.¹²

On March 1, 2013, the State Department released a Draft Supplemental Environmental Impact Statement (SEIS) for the newly defined project.¹³ The 45-day public comment period closed on April 22, 2013, and the State Department received over one million public comments on the SEIS.¹⁴ The State Department will finalize the SEIS and begin a 90-day period for making the national interest determination, with input from other agencies and an opportunity for public comment during that period.¹⁵ The draft national interest determination will be circulated to other agencies and finalized after 15 days absent objection from another agency.

⁷The White House, *Statement by the President on the State Department’s Keystone XL Pipeline Announcement* (Nov. 10, 2011).

⁸*Id.*

⁹U.S. Department of State, *Report to Congress Under the Temporary Payroll Tax Cut Continuation Act of 2011, Section 501(b)(2), Concerning the Presidential Permit Application of the Proposed Keystone XL Pipeline* (Jan. 2012).

¹⁰The White House, *Statement by the President on the Keystone XL Pipeline* (Jan. 18, 2012).

¹¹TransCanada Keystone Pipeline LP, *Application of TransCanada Keystone Pipeline, L.P. for a Presidential Permit Authorizing the Construction, Operation, and Maintenance of Pipeline Facilities for the Importation of Crude Oil to be Located at the United-States-Canada Border* (May 4, 2012) (online at http://keystonepipeline-xl.state.gov/proj_docs/permitapplication/index.htm); U.S. Department of State, *Notice of Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) and To Conduct Scoping and To Initiate Consultation Under Section 106 of the National Historic Preservation Act for the Proposed TransCanada Keystone LX Pipeline Proposed To Extend From Phillips, MT (the Border Crossing) to Steele City, NE*, 77 Fed. Reg. 36032 (June 15, 2012).

¹²Governor Dave Heineman, *Governor Approves Pipeline Route* (Jan. 22, 2013).

¹³U.S. Department of State, *Draft SEIS*.

¹⁴See, e.g., *Keystone Foes Say 1 Million Comments Show Grassroots Power*, Bloomberg (Apr. 23, 2013) (online at www.bloomberg.com/news/2013-04-23/keystone-xl-foes-say-1-million-comments-show-power-of-grassroots.html).

¹⁵Letter from Kerri-Ann Jones, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, U.S. Department of State to Danielle Droitsch, Senior Attorney, Natural Resources Defense Council (Apr. 19, 2013).

IMPACT OF THE KEYSTONE XL PIPELINE ON CLIMATE CHANGE

The draft SEIS estimates that tar sands crude, on average, has 17% greater greenhouse gas emissions on a lifecycle basis than the average crude refined in the United States. Thus, it finds that if the project were to induce growth in the rate of tar sands development, it could cause additional greenhouse gas emissions.¹⁶ However, the draft SEIS concludes that approval or denial of the project is “unlikely to have a substantial impact on the rate of development in the oil sands.”¹⁷

The basis for this conclusion is a market analysis finding that if the Keystone XL pipeline is denied and alternative pipelines are also blocked (as appears likely), tar sands crude could still reach the Gulf coast through a massive expansion of rail transport at relatively little additional cost, which would not be sufficient to make most new tar sands projects unprofitable under most of the scenarios analyzed.¹⁸ These conclusions depend on assumptions regarding a number of factors, many of which are highly uncertain, including the logistical availability and cost of rail transport (including the assumption that competition for rail capacity between tar sands and U.S. shale oil would have minimal effects); the break-even costs of new tar sands projects; future world oil prices; and the relative attractiveness of alternative investments in oil production from shale oil in the United States, deep sea deposits, and Iraq. Overall, the draft SEIS estimates that because of the presumed availability of alternative transport, if all pipeline capacity were restricted, including the Keystone XL pipeline, tar sands production could decrease by approximately 2% to 4% by 2030, reducing greenhouse gas emissions by up to 5.3 MMTCO₂e (million metric tons of CO₂-equivalent).¹⁹

In comments to the State Department, EPA noted that the draft SEIS’s “market analysis and conclusion that oil sands crude will find a way to market with or without [Keystone XL] is the central finding that supports the DSEIS’s conclusions regarding the [pipeline’s] potential GHG emissions impacts.”²⁰ But EPA notes that the draft SEIS is “not based on an updated energy-economic modeling effort” and recommends the final SEIS include a more careful review of “rail capacity and costs, recognizing the potential for much higher per barrel rail shipment costs than presented in the DSEIS.”²¹

Dr. Mark Jaccard, Professor and Research Director at Simon Fraser University in Vancouver, British Columbia, raised questions

¹⁶ U.S. Department of State, *Draft SEIS* at ES-15.

¹⁷ *Id.*

¹⁸ *Id.* at ES-15, 1.4-1 to 1.4-71, 2.2-9 to 2.2-18. *See also, id.* at 2.2-27 (draft SEIS eliminates the options of moving additional volumes of tar sands crude west through British Columbia (beyond the current Kinder Morgan expansion) through either additional expansions or the proposed Enbridge Northern Gateway Pipeline from detailed analysis, given the uncertainty regarding such projects due to substantial opposition).

¹⁹ *Id.* at 4.15-106.

²⁰ Letter from Cynthia Giles, Assistant Administrator for Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, to Jose W. Fernandez, Assistant Secretary, Economic, Energy and Business Affairs, U.S. Department of State and Dr. Kerri-Ann Jones, Assistant Secretary, Oceans and International Environmental and Scientific Affairs, U.S. Department of State (Apr. 22, 2013).

²¹ *Id.*

about the draft SEIS's market assumptions in testimony before the Subcommittee on Energy and Power. He stated:²²

Quite simply, in the absence of Keystone XL, oil sands producers will find it more difficult to profitably get their product to market. Over the next two decades, the oil sands industry is considering plans to triple its production. To move forward, these projects require a significant expansion of low cost transportation infrastructure. They have potential alternatives to Keystone XL, but these are more costly and more difficult to scale up to the capacity of Keystone XL, and each faces significant impediments.

Anthony Swift from the Natural Resources Defense Council also challenged the draft SEIS's assumptions about the viability of transporting tar sands crude via rail car. In testimony before the Subcommittee on Energy and Power, Mr. Swift noted that while rail has proven a feasible transportation option for light crude from the Bakken formation, it is "significantly more expensive to move" tar sands crude by rail than Bakken light crude.²³

Dr. Jaccard also argued that the President should make a national interest determination in the broader context of the urgent need to cut greenhouse gas emissions and address climate change. He said we "must ask what should happen to the oil sands, and associated infrastructure like Keystone XL, in a world in which the international community acts to prevent a 2 °C increase of the average global temperature from pre-industrial levels—a threshold that scientists find significantly increases the likelihood of catastrophic climate change in this century."²⁴ Dr. Jaccard testified that because the global community has "procrastinated" in cutting carbon pollution, the only responsible choice is to "ask governments not to allow investments that make it easier to increase their contribution to carbon pollution, whether in North America or elsewhere. This means denying Keystone XL."²⁵

PIPELINE SAFETY IMPLICATIONS OF THE KEYSTONE XL PIPELINE

Pipeline safety and the risk of oil spills is another area of concern. Critics argue that bitumen is more corrosive than conventional oil and may exacerbate pipeline deterioration.²⁶ In addition, reports of substandard foreign steel used by TransCanada in the leak-prone Keystone I pipeline and supplied by Welspun, the same company with which TransCanada has contracts for Keystone XL, have further contributed to safety concerns.²⁷ A whistleblower who

²²Testimony of Dr. Mark Jaccard, Simon Fraser University, Committee on Energy and Commerce, Subcommittee on Energy and Power, *Legislative Hearing on H.R. 3, the Northern Route Approval Act*, 113th Cong. (Apr. 10, 2013).

²³Testimony of Anthony Swift, Attorney, Natural Resources Defense Council, Committee on Energy and Commerce, Subcommittee on Energy and Power, *Legislative Hearing on H.R. 3, the Northern Route Approval Act*, 113th Cong. (Apr. 10, 2013).

²⁴Testimony of Dr. Mark Jaccard, Simon Fraser University, Committee on Energy and Commerce, Subcommittee on Energy and Power, *Legislative Hearing on H.R. 3, the Northern Route Approval Act*, 113th Cong. (Apr. 10, 2013).

²⁵*Id.*

²⁶Anthony Swift et al., *Tar Sands Pipelines Safety Risks, a Joint Report by the Natural Resources Defense Council, National Wildlife Federation, Pipeline Safety Trust, and Sierra Club*, 6 (Feb. 2011) (online at www.nrdc.org/energy/files/tarsandssafetyrisks.pdf).

²⁷Cornell University Global Labor Institute, *Pipe Dreams? Jobs Gained, Jobs Lost by the Construction of Keystone XL*, 13–14, 28–29 (Sept. 2011).

worked as a safety inspector on TransCanada's first Keystone pipeline has raised numerous safety concerns about Keystone XL based on his experience, including that it will be "built with foreign materials which are not up to standards necessary for proper construction" to handle the high-pressure pumping of tar sands oil, which "has the consistency of peanut butter" and the abrasiveness of "heavy grit sandpaper."²⁸

The potential for oil spills with Keystone XL has been of particular concern because the pipeline would pass through the Ogallala Aquifer, which is part of a system that supplies drinking water for 2 million people and provides about 30% of the groundwater used for irrigation in the U.S.²⁹ Randy Thompson, a Nebraska ranch owner whose property lies along the original proposed path of the pipeline, testified before the Subcommittee on Energy and Power about the devastating effects that an oil spill would have on his livelihood, stating that his livestock watering wells and irrigation wells would "become virtually useless" if contaminated.³⁰

Pursuant to a bipartisan pipeline safety law enacted in 2012, the Pipeline Hazardous Materials Safety Administration (PHMSA) is required to conduct a study and make a determination regarding whether its existing regulations are sufficient to ensure the safety of pipelines used to transport diluted bitumen.³¹ The study is currently being conducted by the National Academy of Sciences.³² Cynthia Quarterman, the Administrator of PHMSA, testified before the Subcommittee on Energy and Power that the agency has not previously done a study to analyze the risks associated with transporting diluted bitumen.³³

POTENTIAL IMPACT OF THE KEYSTONE XL PIPELINE ON JOBS

In data it submitted to the State Department in its application for a permit for the full Keystone XL pipeline, TransCanada predicted "a peak workforce of approximately 3,500 to 4,200 construction personnel."³⁴ The draft SEIS finds that the project would produce an estimated 3,900 one-year construction jobs over a period of one to two years. The economic activity induced by construction is estimated to potentially support an additional 38,200 one-year jobs during that period. Ongoing operation of the project is estimated to generate 35 permanent and 15 temporary jobs.³⁵

²⁸ Letter from Michael R. Klink to Representative Henry A. Waxman (Feb. 1, 2012).

²⁹ U.S. Geological Survey, *High Plains Regional Ground-Water Study* (online at <http://co.water.usgs.gov/nawqa/hpgw/factsheets/DENNEHYFS1.html>).

³⁰ Testimony of Randall F. Thompson, Committee on Energy and Commerce, Subcommittee on Energy and Power, *American Jobs Now: A Legislative Hearing on H.R. 3548, the North American Energy Access Act*, 112th Cong. (Feb. 3, 2012).

³¹ Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90.

³² U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Diluted Bitumen Study* (online at www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf_2031050248a0c?vgnextoid=0f22597_c7386310VgnVCM1000001ech7898RCRD&vgnnextchannel=623b_143389d8c010VgnVCM1000008049a8c0RCRD&vgnnextfmt=print).

³³ Testimony of the Honorable Cynthia L. Quarterman, Administrator, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on the American Energy Initiative: Pipeline Safety*, 112th Cong. (Jun. 16, 2011).

³⁴ TransCanada Keystone Pipeline, LP, *Keystone XL Project Environmental Report*, 2-42 (Nov. 2008).

³⁵ *Id.* at ES-13 to ES-14.

Industry has been citing much higher numbers in its advocacy for the pipeline's approval. For example, TransCanada and the American Petroleum Institute have claimed that the project would generate 20,000 construction and manufacturing jobs in the short term.³⁶ This figure, which is five times higher than the State Department estimate and nearly five to six times higher than TransCanada's own original estimate, has been criticized as inflated.³⁷ It also was an estimate for the full project, while the current application covers only the shorter northern portion. In addition, a Perryman Group study commissioned by TransCanada predicted the full project would result in more than 118,000 person-years of employment, including indirect and induced jobs, over the assumed 100-year lifetime of the project.³⁸ However, this figure also has been called into question as flawed and poorly documented by independent third-parties such as the Cornell University Global Labor Institute (GLI).³⁹ GLI's report concluded that the Keystone XL pipeline "will not be a major source of U.S. jobs, nor will it play any substantial role at all in putting Americans back to work."⁴⁰ The Washington Post Fact Checker also cast doubt on exaggerated claims that Keystone XL would create "tens of thousands" of jobs.⁴¹

KEYSTONE XL PIPELINE AND GAS PRICES

Some supporters of the Keystone XL continue to suggest that the pipeline would somehow reduce gas prices, despite the lack of any evidence supporting that view.⁴² Oil is a global commodity and, absent unique regional market conditions, prices are generally set by the world market. In a May 2012 report, the Congressional Budget Office (CBO) concluded that "disruptions in the supply of oil anywhere in the world rapidly result in higher oil prices worldwide."⁴³ These price spikes are not prevented or mitigated by either higher levels of domestic oil production nor guaranteed supplies of imports. CBO examined gasoline prices in Canada, the United States, and Japan between 1999 and 2011. CBO found that gasoline prices in those countries rose and fell in tandem with the world market, even though Japan produced almost no oil, Canada was a net oil exporter, and the United States produced less than half of its oil.⁴⁴ More domestic supply did not protect Canadian consumers from price shocks.⁴⁵ It appears highly unlikely that addition of the northern portion of the Keystone XL pipeline would have any discernable effect on world oil prices.

But if Keystone XL were to have any effect at all on gas prices, it would be expected to increase, rather than lower, gasoline prices

³⁶TransCanada, (online at www.transcanada.com/economic_benefits.html) (accessed on Nov. 30, 2011); American Petroleum Institute, *Keystone XL? The benefits are stacking up.* (2011) (online at www.api.org/aboutapi/ads/upload/Stacks_Up_KeystoneXL_COS.pdf) (accessed on Jan. 24, 2012).

³⁷See, e.g., *Keystone Pipeline debate heats up*, Washington Post, (Nov. 5, 2011).

³⁸The Perryman Group, *The Impact of Developing the Keystone XL Pipeline Project on Business Activity in the US* (Jun. 2010).

³⁹Cornell University Global Labor Institute, *Pipe Dreams? Jobs Gained, Jobs Lost by the Construction of Keystone XL*, 17–21 (Sept. 2011).

⁴⁰*Id.* at 2.

⁴¹*Keystone pipeline jobs claims: a bipartisan fumble*, Washington Post (Dec. 14, 2011).

⁴²See, e.g., this Committee Report at 2.

⁴³Congressional Budget Office, *Energy Security in the United States* at 6 (May 2012).

⁴⁴*Id.* at 6, 8.

⁴⁵*Id.* at 8.

in the Midwest. Operation of the Keystone XL pipeline is widely expected to raise crude oil prices in the Midwest by diverting supply from refineries in the Midwest to refineries on the Gulf Coast. In its application for the Keystone XL pipeline, TransCanada told the Canadian government that the Midwest market is “over-supplied,” resulting in “price discounting” for Canadian heavy crude oil.⁴⁶ TransCanada concluded that a pipeline to the Gulf Coast will benefit all heavy crude producers in Western Canada “by increasing the price they receive for their crude.”⁴⁷ TransCanada also provided an independent analysis predicting that the Keystone XL pipeline would increase prices by \$6.55 per barrel of crude oil in the Midwest and \$3 per barrel everywhere else.⁴⁸ By 2013, this will generate between \$2 billion and \$3.9 billion in additional revenue for Canadian oil companies.⁴⁹

ANALYSIS OF H.R. 3, THE NORTHERN ROUTE APPROVAL ACT

H.R. 3 eliminates the President’s authority to permit the Keystone XL pipeline, effectively mandates approval of the pipeline, and effectively waives all other federal permitting requirements. It eliminates the final portion of the ongoing review process, thereby eliminating any further public participation, for a highly controversial project with significant long-term effects. Even for many who support building the Keystone XL pipeline, H.R. 3 is not viewed as an acceptable or appropriate way to move this project forward. The Administration needs to finish addressing the numerous and complex issues that have been raised regarding this project.

Supporters of H.R. 3 claim that this bill is necessary to expedite construction of the Keystone XL pipeline. But the review process for Keystone XL has been appropriate given the immense scope and potential effects of the project. The President’s earlier decision to deny the permit was necessary due to the arbitrarily short deadline for an up-or-down decision that Congress had set under the Temporary Payroll Tax Cut Continuation Act of 2011, which required a decision even though there was no final route through Nebraska for the State Department to evaluate at that time.

Rather than allowing the ongoing review process to produce a decision based on relevant information and public input, H.R. 3 would create a legislative earmark granting special treatment to a foreign company for a single project.

In addition to eliminating the requirement for a presidential permit, H.R. 3 effectively approves the Keystone XL pipeline, deeming all federal requirements met and all federal environmental permits issued. It deems the final EIS for the initial project from the Canadian border to the Gulf to satisfy all requirements of the National Environmental Policy Act and the National Historic Preservation Act.⁵⁰ It declares by fiat that the project will not adversely modify

⁴⁶TransCanada Keystone Pipeline Group Ltd., *Keystone XL Pipeline Section 52 Application, Section 3: Supply and Markets* at 7.

⁴⁷*Id.*

⁴⁸Purvin & Gertz, Inc., *Western Canadian Crude Supply and Markets*, Prepared for TransCanada Keystone Pipeline Group Ltd. (Feb. 12, 2009) at 27–28.

⁴⁹*Id.* at 29. See also, Philip Verleger, *If gas prices go up further, blame Canada*, Minnesota Star-Tribune (Mar. 13, 2011).

⁵⁰H.R. 3, § 3.

critical habitat of the endangered American burying beetle and deems the Secretary of Interior to have issued an opinion to that effect under the Endangered Species Act.⁵¹ It also deems the Secretary of Interior to have granted right-of-way permits for use of public lands managed by the Bureau of Land Management and to have issued a permit under the Migratory Bird Treaty Act.⁵² It requires the Secretary of the Army to issue a permit for filling wetlands under section 404 of the Clean Water Act within 90 days of an application, allows the Secretary to waive any statutory or regulatory procedural requirement for issuing such a permit as the Secretary considers “desirable,” deems the permit issued if it is not issued within the 90 day period, and bars the Administrator of the Environmental Protection Agency from imposing any restrictions.⁵³

In addition, H.R. 3 gives the D.C. Circuit Court of Appeals exclusive jurisdiction to review any federal action regarding a permit for the pipeline, the constitutionality of the Act, and the adequacy of any analysis with respect to any action under the Act. It also directs the court to expedite review of any such case.⁵⁴ By directing all challenges to the D.C. Circuit rather than the local and regional federal courts of jurisdiction, H.R. 3 could make it more difficult for concerned stakeholders, such as those along the pipeline’s route, to exercise their right to challenge a federal action that could affect their property, health, and livelihoods.

The majority suggests that the Trans-Alaska Pipeline Authorization Act provides a precedent for H.R. 3, but that Act differed in critical ways. Unlike H.R. 3, the Trans-Alaska Pipeline Authorization Act did not waive federal environmental permitting requirements. Rather, it directed the Secretary of Interior and other appropriate Federal officers to issue rights-of-way and permits needed to construct the pipeline, and to include in those rights-of-way and permits all terms and conditions required by the underlying provisions of law that would have otherwise applied.⁵⁵ The Act allowed the Secretary and other Federal officers to waive only procedural requirements, and even those waivers were not required.⁵⁶ In addition, the Trans-Alaska Pipeline Authorization Act largely prohibited export of the crude oil transported on the pipeline.⁵⁷

For the reasons stated above, we dissent from the views contained in the Committee’s report.

HENRY A. WAXMAN.



⁵¹ *Id.* at § 5.

⁵² *Id.* at §§ 6, 8.

⁵³ *Id.* at § 7.

⁵⁴ *Id.* at 4.

⁵⁵ Pub. L. No. 93–153 203(c) (1973).

⁵⁶ *Id.*

⁵⁷ Pub. L. No. 93–153 101 (1973).