

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\_\_\_\_\_  
NATURAL RESOURCES DEFENSE )  
COUNCIL, INC., 1200 New York )  
Ave., NW, Suite 400, Washington, )  
DC 20005; DAKOTA RESOURCE )  
COUNCIL, 113 W 1st Street, Dickinson, )  
ND 58602; and DAKOTA RURAL )  
ACTION, 910 4th St., Old Sanctuary )  
Bldg., Suite A, Brookings, SD 57006, )

Plaintiffs, )

-v.- )

UNITED STATES DEPARTMENT OF )  
STATE, 2201 C St., NW, Washington, )  
DC 20520; CONDOLEEZZA RICE, )  
in her official capacity as Secretary of )  
State; REUBEN JEFFERY III, in his )  
official capacity as Under Secretary of )  
State for Economic, Energy and )  
Agricultural Affairs, )

Defendants. )  
\_\_\_\_\_ )

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This case involves the federal permitting of the Keystone Pipeline Project ("Pipeline"), whose purpose is to transport heavy crude oil from Canadian tar sands to terminals and refineries in the United States. The prospect of the new Pipeline is spurring refinery expansions and modifications that will lead to increased air and water pollution for residents of the Midwest and other states. Refining and other industrial

activities resulting from the Pipeline will also increase emissions of greenhouse gases that contribute to global warming and related harmful effects on the environment.

2. Defendants are responsible under the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* ("NEPA"), for assessing all reasonably foreseeable environmental impacts of the Pipeline, including direct, indirect, and cumulative effects, before granting a Presidential Permit for the Pipeline to cross into the United States. Although Plaintiffs and others repeatedly admonished Defendants that NEPA requires them to address (and, as warranted, to mitigate) the predictable increases in pollution from the refining of oil transported through the Pipeline, Defendants refused to consider these environmental impacts, and permitted the Pipeline without the benefit of this important information. Defendants' limited view of their NEPA duties defeats the statute's dual goals to ensure informed government decisionmaking and to promote full public participation in actions that will significantly affect the human environment.

3. Plaintiffs are non-profit organizations with members who live, work, and recreate near the refineries that will emit more air and water pollution as a direct consequence of Defendants' actions in permitting the Pipeline. This added pollution will stem from both expanded refining operations and, to the extent it replaces oil from other sources, the more highly contaminated tar sands crude. The pollution impacts, including cumulative impacts, may be particularly onerous to communities located near oil refineries, which are often burdened with contamination from multiple industrial sources.

4. Plaintiffs' members will also be harmed by increases in greenhouse gases that will contribute to global warming and associated severe ecological disruption.

Greenhouse gas emissions from refineries will increase both because the Pipeline will lead to expanded operations and because, even to the extent tar sands crude is replacing existing sources of oil, refineries must expend more energy to process each barrel.

5. Plaintiffs urge this Court to halt construction of the Pipeline and order Defendants to revoke the Presidential Permit until they properly address all significant environmental effects that are likely to result from the Pipeline, as required by law.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201-2202 (declaratory judgment), and 5 U.S.C. §§ 701-706 (Administrative Procedure Act ("APA")).

7. Venue in this Court is proper under 28 U.S.C. § 1391(e), because all Defendants reside in this District, and because a substantial part of the events or omissions giving rise to the claim occurred in this District.

### **THE PARTIES**

#### **Plaintiffs**

8. Plaintiff Natural Resources Defense Council, Inc. ("NRDC") is a national, not-for-profit membership corporation headquartered in New York City. NRDC has more than 420,000 members nationwide, including over 19,000 members who live in Illinois, more than 2,900 who live in Kansas, and over 600 who live in South Dakota. NRDC is dedicated to the preservation, protection, and defense of the environment, public health, and natural resources. Since its founding in 1970, NRDC has been actively involved in efforts to reduce air and water pollution from, and destruction of

natural lands by, industrial activity. NRDC has also long been active in efforts to reduce greenhouse gas emissions that contribute to global warming. NRDC has worked since its founding to ensure compliance with NEPA and other environmental laws.

9. Dakota Resource Council ("DRC"), founded in 1978, is a nonprofit, grassroots activist organization with headquarters in Dickinson, North Dakota. The mission of DRC is to form enduring, democratic local groups that empower people to influence decisionmaking processes that affect their lives. DRC is committed to preserving sustainable agriculture and natural resources. DRC's members include approximately 20 individuals and families in North Dakota who are members because of their concerns regarding natural resources and agriculture. DRC members are specifically concerned about protection of water resources in North Dakota, and a majority of them own property in the Pipeline corridor.

10. Dakota Rural Action ("DRA") is a statewide, grassroots membership organization dedicated to sustainable, family-based food systems, thriving rural communities, and natural resource conservation. DRA builds leadership and successful campaigns that give people a voice in decisions that affect their lives. DRA organizes South Dakotans to protect their family farmers and ranchers, natural resources, and unique way of life. DRA has around 400 family and individual members representing over 500 South Dakotans. Membership stretches across the state of South Dakota, including nearly every county. Most DRA members live in communities of fewer than 10,000 people.

11. On September 24, 2007, Plaintiffs NRDC and DRC submitted detailed comments to Defendants regarding the draft Environmental Impact Statement ("EIS")

for the Pipeline Project. Among other issues, these comments discussed Defendants' failure to address adequately the pollution impacts of refining oil the Pipeline will transport.

12. On February 11, 2008, Plaintiffs NRDC and DRC submitted detailed comments to Defendants regarding the final EIS for the Pipeline Project. Among other issues, these comments discussed Defendants' continued failure to consider pollution impacts of refining oil transported by the Pipeline.

13. Plaintiffs bring this action on behalf of their members who live, work, and recreate in areas that will be affected by increases in air and/or water pollution from refineries processing oil from the Pipeline, and by the deleterious impacts of increased emissions of greenhouse gases resulting from the Pipeline. These members face increased risk of harm to their health, recreational, economic, and aesthetic interests as a result of Defendants' actions in permitting the Pipeline without adequate environmental review. Defendants' failure to provide required information and analyze and/or mitigate reasonably foreseeable direct, indirect, and cumulative impacts of the Pipeline has further deprived Plaintiffs' members of their legal rights to participate fully in the process leading to permitting of the Pipeline. The declaratory and injunctive relief Plaintiffs seek under NEPA will redress the injuries to Plaintiffs' members, by requiring Defendants to consider fully and provide to the public and other government decision-makers complete information about the anticipated environmental and public health impacts resulting from the Pipeline, and to take steps as warranted to minimize or avoid those impacts.

Defendants

14. Defendant United States Department of State is a federal agency responsible for foreign affairs, whose chief administrator is the Secretary of State. In carrying out its responsibilities, the Department must comply with applicable requirements of NEPA and the APA.

15. Defendant Condoleezza Rice is the Secretary of State. In her official capacity, Secretary Rice is responsible for issuing permits with respect to certain energy related facilities on the international boundaries of the United States, including the Pipeline. In carrying out these duties, Secretary Rice must ensure compliance with the requirements of NEPA and the APA.

16. Defendant Reuben Jeffery III is the Under Secretary of State for Economic, Energy and Agricultural Affairs. Defendant Secretary Rice has delegated to Under Secretary Jeffery responsibilities related to authorizing the Pipeline. In his official capacity, Under Secretary Jeffery signed the Presidential Permit for the Pipeline and the Record of Decision authorizing the Presidential Permit. In carrying out his duties, Under Secretary Jeffery must ensure compliance with the requirements of NEPA and the APA.

17. "DOS" as used below refers collectively to all Defendants.

**STATUTORY AND REGULATORY BACKGROUND**

National Environmental Policy Act

18. One core purpose of NEPA is to "promote efforts which will prevent or eliminate damage to the environment." 42 U.S.C. § 4321. It is the "basic national charter for" environmental protection. 40 C.F.R. § 1500.1. Among the statute's goals are to "insure that environmental information is available to public officials and citizens

*before decisions are made and actions are taken*"; and to "help public officials make decisions that are based on [an] understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." *Id.* § 1500.1(b)-(c) (emphasis added).

19. To achieve these objectives, NEPA requires all agencies of the federal government to prepare a "detailed statement" regarding all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). This statement – the EIS – must describe, among other things: (1) the environmental impact of the proposed action, and (2) any adverse environmental effects that cannot be avoided should the proposal be implemented. *Id.* § 4332(2)(C)(i), (ii).

20. The Council on Environmental Quality ("CEQ"), established under NEPA within the Executive Office of the President to be responsible for coordinating federal environmental efforts, has promulgated regulations implementing NEPA. 40 C.F.R. §§ 1500-1508. DOS's own NEPA regulations, which incorporate and supplement the CEQ regulations, are set forth at 22 C.F.R. §§ 161.1-161.12.

21. Pursuant to CEQ regulations, an EIS must include, among other things: (1) a "full and fair discussion" of the significance of all "direct," "indirect," and "cumulative" effects of the action, 40 C.F.R. §§ 1502.1, 1502.16(a)-(b), 1508.25(c); and (2) a discussion of "means to mitigate adverse environmental impact." *Id.* § 1502.16(h).

22. "Direct effects" are caused by the action and occur at the same time and place. 40 C.F.R. § 1508.8(a). "Indirect effects" are reasonably foreseeable effects caused by the action, but later in time or farther removed in distance. *Id.* § 1508.8(b). These may include "growth inducing effects and other effects related to induced

23. A "cumulative impact" is defined as the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency . . . or person undertakes such other actions." *Id.* § 1508.7. Cumulative impacts "can result from individually minor but collectively significant actions taking place over a period of time." *Id.*

24. CEQ regulations also require decisionmakers to address, in a single EIS, all "connected," "closely related," actions. *Id.* § 1508.25(a)(1). These actions are defined in the CEQ regulations as those that "(i)[a]utomatically trigger other actions which may require environmental impact statements"; "(ii) [c]annot or will not proceed unless other actions are taken previously or simultaneously"; and/or "(iii) [a]re interdependent parts of a larger action and depend on the larger action for their justification." *Id.*

25. NEPA directs federal decisionmakers to "recognize the worldwide and long-range character of environmental problems . . . ." 42 U.S.C. § 4332(2)(F).

26. When an agency is evaluating reasonably foreseeable significant adverse impacts in an EIS and there is incomplete or unavailable information that cannot be obtained, the EIS must at least (1) state that such information is incomplete or unavailable; (2) state the relevance of the information to evaluating reasonably foreseeable significant impacts; (3) summarize existing credible scientific evidence that is relevant to evaluating those impacts; and (4) evaluate such impacts based upon



theoretical approaches or research methods generally accepted in the scientific community. 40 C.F.R. § 1502.22(b). If the information is essential to a reasoned choice among alternatives, and can be obtained without exorbitant costs, the agency must include the information in the EIS. *Id.* § 1502.22(a).

27. An agency must first prepare a draft EIS that satisfies to the fullest extent possible the final EIS requirements of 42 U.S.C. § 4332(2)(C). 40 C.F.R. § 1502.9(a). After preparing the draft EIS and before preparing a final EIS, the agency must solicit comments from the public, "affirmatively soliciting comments from those persons or organizations who may be interested or affected." *Id.* § 1503.1(a).

28. After the public comment period, an agency must prepare a final EIS based on its assessment and consideration of the comments received from the public, as well as other relevant Federal, State and local agencies, on the draft EIS. *Id.* § 1503.4(a). An agency must respond to comments by such means as modifying alternatives; developing and evaluating new alternatives; supplementing, improving, or modifying its analyses; making factual corrections; and/or explaining in detail why the comments do not require further response. *Id.* § 1503.4(a); *see also id.* § 1502.9(b).

#### Executive Order 13337

29. Executive Order 13337 of April 30, 2004 (69 Fed. Reg. 25299), as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels at the border of the United States and to issue or deny such permits upon a determination that the action to be permitted serves the national interest.

30. By Department of State Delegation of Authority No. 118-2 of January 26, 2006, the Secretary of State delegated authority to issue Presidential Permits pursuant to Executive Order 13337 to the Under Secretary of State for Economic, Energy and Agricultural Affairs.

Administrative Procedure Act

31. The APA governs judicial review of an agency's compliance with NEPA. A court shall "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

**FACTS**

Environmental Impacts of Refining Canadian Tar Sands Crude

32. The Pipeline will supply U.S. refineries with extra heavy sour crude oil extracted from Canadian tar sands. Some of this heavy crude oil will replace supplies of "conventional" light crude oil, while some of it will represent additional supplies to meet projected increasing demands for oil in the United States.

33. According to a 2007 U.S. Geological Survey report, the type of oil extracted from Canadian tar sands contains eleven times more sulfur, six times more nitrogen, eleven times more nickel, and five times more lead than conventional oil.

34. Refining tar sands crude transported through the Pipeline will likely result in higher air emissions of harmful pollutants such as sulfur dioxide, hydrogen sulfide, sulfuric acid mist, and nitrogen oxides, as well as toxic metals such as lead and nickel compounds.

35. According to the U.S. Environmental Protection Agency ("EPA"), the human health effects of these pollutants may include premature death; cancer; permanent lung damage; reproductive, neurological, developmental, respiratory, and immunological problems; cardiovascular and central nervous system disorders; bio-mutations; respiratory illness, including bronchitis and pneumonia; and aggravation of heart conditions and asthma.

36. Also according to EPA, the environmental damage caused by these pollutants includes acid rain; concentration of toxic chemicals up the food chain; creation of ground-level ozone and smog; visible impairments that migrate to sensitive areas such as National Parks; and depletion of soil nutrients.

37. Refining oil transported by the Pipeline can be expected to produce more greenhouse gases, such as carbon dioxide, than refining conventional crude oil, because the tar sands crude requires more energy to refine. The requisite additional energy is most likely to come from sources, such as coal-fired power plants, that emit large quantities of greenhouse gases. This will add to harmful emissions emanating from the refineries themselves.

38. Further, the Pipeline is intensifying development of Canadian tar sands, which results in increased emissions of greenhouse gases from the energy-intensive extraction process, as well as associated activities such as destruction of forests.

39. Greenhouse gases, such as carbon dioxide, contribute to global warming and a wide range of related adverse ecological and human health effects, including both water shortages and coastal flooding, increased risk of wildfires and stronger hurricanes, new pests and insect-borne diseases, and disruption of habitats.

40. Refineries processing Canadian tar sands crude from the Pipeline are likely to increase discharges of water pollutants, including ammonia and total suspended solids, which may damage surrounding waterways. Refinery construction and expansion may also compromise or destroy wild or agricultural lands.

41. Compliance with existing air pollution and water pollution laws will likely not prevent increases in air and water pollution. For example, both the federal Clean Air Act and the federal Clean Water Act exempt from applicable permit limits so-called "upsets," which can result in releases of excess pollutants, notwithstanding those limits. In addition, some of the refineries processing oil from the Pipeline will be in so-called "attainment" areas where total air emissions may lawfully be increased, but even these "legal" emissions may have harmful impacts. Finally, the Clean Air Act does not currently control emissions of carbon dioxide or other greenhouse gases from refineries.

42. Local and regional effects of increased air and water pollution will harm Plaintiffs' members who live, work, and recreate in the vicinity, downwind, and downriver of the refineries processing oil from the Pipeline, while the impacts of increased releases of greenhouse gases, including releases attributable to activities occurring in Canada, will be experienced by a broader group of Plaintiffs' members. Some refineries that will process oil from the Pipeline are in areas that are already heavily polluted from other local sources, including existing oil refineries. Adverse cumulative environmental effects in such areas may be significant.

#### Background of the Pipeline Project and Its Approval by DOS

43. On April 19, 2006, TransCanada Keystone Pipeline LLC ("Keystone"), filed an application with DOS for a Presidential Permit for the construction, connection,

operation, and maintenance of pipeline facilities for the transport of crude oil across the U.S.-Canadian border.

44. The stated purpose of the Pipeline is to transport heavy crude oil from Canadian tar sands for refining in the United States.

45. The first portion of the Pipeline, known as the "Mainline Project," consists of over 1,000 miles of pipeline in the United States, traversing portions of North Dakota, South Dakota, Nebraska, Kansas, Missouri, and Illinois. The Mainline Project will deliver oil to an existing crude oil refinery in Wood River, Illinois, and to an existing crude oil terminal in Patoka, Illinois.

46. A planned extension, known as the "Cushing Extension," will consist of nearly 300 miles of pipe extending from Steele City, Nebraska, through Kansas, to Cushing, Oklahoma. The Cushing Extension will interconnect with other, existing crude oil pipelines that supply refinery markets in Cushing, Oklahoma and the U.S. Gulf Coast.

47. According to the final EIS, the Pipeline will deliver approximately 435,000 barrels of crude oil per day ("bpd") from Canada to oil terminals and refineries in the U.S. Midwest and Gulf regions. The addition of supplemental pumping capacity can increase the daily throughput in the Pipeline to approximately 591,000 bpd.

48. According to the final EIS, much of the oil from the Pipeline initially will be refined at ConocoPhillips' Wood River Refinery in Wood River, Illinois. The Wood River Refinery is planning a major capital expansion because the Pipeline will increase both the refinery's total crude processing capacity and the percentage of heavy crude oil

processed there. As the final EIS acknowledges, however, the Wood River Refinery is not the only refinery that will be processing oil from the Pipeline.

49. As the lead agency, DOS is responsible for conducting all environmental reviews for the entire Pipeline project, under NEPA and other statutes.

50. On August 10, 2007, DOS released a Draft EIS for the Pipeline. While the draft EIS contained a very brief discussion of the Wood River Refinery, DOS did not fully analyze the reasonably foreseeable significant environmental effects of refining Pipeline-transported oil at the Wood River facility.

51. The draft EIS contained no information at all about reasonably foreseeable significant environmental impacts of the Pipeline at any other refinery. Nor did the Draft EIS contain any discussion of cumulative impacts, greenhouse gas emissions, or means to mitigate any indirect or cumulative adverse impact the Pipeline will generate or to which it will contribute.

52. Plaintiffs and others submitting comments on the draft EIS noted DOS's failure to address the environmental impacts of the Pipeline with regard to the issues identified in the preceding paragraphs.

53. On January 11, 2008, DOS released a final EIS for the Pipeline. Again, except for a cursory, inadequate discussion of impacts from the Wood River Refinery, DOS failed to address at all the pollution effects of processing oil from the Pipeline at any refinery, either specifically or in more general terms. Nor did DOS address global warming impacts related to extracting Pipeline oil from tar sands or refining it downstream. With regard to global warming impacts from refining tar sands crude at Wood River, DOS noted only EPA's opinion that, for the present, permitting under the

Clean Air Act is not an appropriate vehicle for addressing climate change concerns. DOS did not discuss any means to mitigate global warming impacts from refining oil conveyed by the Pipeline.

54. In Appendix A to the final EIS, DOS, as required by NEPA, responded to comments on the draft EIS. In response to a comment from Plaintiffs that raised the issue of increased local pollution and greenhouse gas emissions due to the refining of tar sands crude oil, DOS stated (emphasis supplied): "The D[raft] EIS addresses the reasonably foreseeable environmental impacts of the construction and operation of the proposed Keystone Pipeline within the United States and is *limited to the pipeline which is a transportation system. The scope of the EIS* is necessarily limited to the scope of the proposed project and *does not extend to the supply of crude oil to the transportation system or the operation of refineries that are supplied by it.*"

55. DOS made the same or similar statements in response to other comments raising the issues of environmental impacts from refining, cumulative impacts, and global warming impacts of extraction.

56. In response to a comment from Plaintiffs that raised the issue of environmental impacts of refinery expansions planned or undertaken to refine the expanded amount of tar sands oil conveyed by the Pipeline, DOS noted its discussion of the Wood River Refinery, opined that impacts associated with other refineries "would be extremely difficult to quantify," and concluded: "It is purely speculative to identify any refinery other than Wood River that is reasonably certain to process Keystone crude oil."

57. DOS responded in the same vein to other comments from Plaintiffs about cumulative impacts from upgrading tar sands crude oil, and to comments about public health impacts from increased pollution in local communities near refineries being modified because of the Pipeline.

58. In response to a comment from Plaintiffs that raised the issue of increased conventional air pollutants and carbon dioxide due to the extra energy needed to refine tar sands crude oil, DOS noted its Wood River discussion, then stated: "Other refineries that would receive oil from the Keystone pipeline would be held to air emissions requirements of their existing air quality permits."

59. In response to a comment from Plaintiffs that raised the issue of increased water pollution from refinery expansions, DOS noted only its discussion of Wood River impacts.

60. On February 28, 2008, DOS issued a Record of Decision ("ROD") to issue a Presidential Permit for the Pipeline, along with a determination that issuance of the permit would serve the national interest. The ROD did not supply any meaningful additional environmental information or analysis, but rather relied on DOS's deficient final EIS.

61. On March 11, 2008, DOS issued the Presidential Permit authorizing the Pipeline to cross the U.S.-Canadian border.

#### Relation between Refineries and Pipeline

62. While the final EIS contains no information on the environmental impacts resulting from the refining of oil from the Pipeline at refineries other than Wood River,



there was ample evidence before the EIS was issued of likely ties between the Pipeline and other, identifiable refineries. For example:

(a) In its 2007 Annual Report, the National Cooperative Refinery Association, which operates a refinery in McPherson, Kansas, stated that it had entered into a ten-year agreement with Keystone for 20,000 bpd of Pipeline oil, in conjunction with a study assessing the refinery's ability to process additional heavy Canadian crude.

(b) In a 2007 filing with the Securities and Exchange Commission, CVR Energy, Inc., which owns a single refinery in Coffeyville, Kansas, supplied in part by a pipeline from Cushing, Oklahoma, reported that it had entered into a ten-year contract with Keystone for at least 25,000 bpd to be delivered to Cushing, while also reporting steadily increasing volume of oil processed at the refinery.

(c) In 2006 testimony before the Illinois Commerce Commission, a consultant hired by Keystone addressed the need for the Pipeline. In conjunction with stating that the Pipeline would deliver its oil to Wood River and Patoka, Illinois, the consultant noted that ConocoPhillips operates a pipeline from Wood River to its refinery in Ponca, Oklahoma, and that oil delivered to Patoka could be transported from there to four other refineries in southern Illinois, Indiana, Ohio, and Kentucky. In particular, the consultant singled out a Marathon refinery in Robinson, Illinois to be supplied by the Pipeline. The Marathon refinery is in the process of considering a full conversion to Canadian heavy crude.

(d) A new Hyperion refinery proposed for Elk Point, South Dakota is close to the path of the Pipeline. In the fall of 2007, a Keystone spokesman stated that, although there was no relationship at that time between the Hyperion refinery and the

Pipeline, Keystone was always looking for new customers, it could increase Pipeline capacity, and a spur line of approximately thirty miles to meet the Hyperion refinery was possible.

63. The information in the previous paragraph, along with other information available to DOS, should have allowed DOS to address in the final EIS the significant environmental impacts of refining Pipeline-transported oil at facilities other than Wood River.

64. DOS failed to consider adequately the Pipeline's indirect effects at Wood River, and failed to consider at all its indirect effects at any other refinery. DOS did so despite the fact that the purpose of the Pipeline is to convey Canadian tar sands crude to refineries downstream. Without downstream refining, there is no purpose to the Pipeline, and no national interest in its construction.

65. DOS failed to assess the Pipeline's cumulative impacts, recognize the broader and longer-range problems its global warming-inducing effects may pose, address incomplete or unavailable information concerning reasonably foreseeable and significant adverse project-related impacts, or consider or propose appropriate mitigation measures.

66. Defendants approved the Presidential Permit for the Pipeline in reliance on the deficient final EIS they prepared.

#### **CLAIM FOR RELIEF**

67. Plaintiffs incorporate herein the allegations of paragraphs 1-66 above.

68. Defendants failed to include in the draft EIS and final EIS for the Pipeline a full and fair discussion of the significant direct, indirect, and cumulative environmental effects of the action it approved, in violation of NEPA.

69. Defendants failed to include in the draft EIS and final EIS for the Pipeline a full and fair discussion of the effects of all actions "connected" or "closely related" to the action it approved, in violation of NEPA.

70. Defendants failed to include in the draft EIS and final EIS for the Pipeline a sufficient discussion of means to mitigate adverse environmental impacts, in violation of NEPA.

71. Defendants failed to comply with NEPA with respect to analyzing impacts as to which there may be unavailable or incomplete information.

72. Defendants failed to respond adequately under NEPA to comments on the draft EIS from Plaintiffs and others.

73. Defendants approved the Presidential Permit for the Pipeline based on a final EIS that did not comply with NEPA. Accordingly, the approval is arbitrary, capricious, an abuse of discretion, and contrary to law, in violation of the APA.

74. Unless and until DOS prepares a full EIS that considers all of the Pipeline's reasonably foreseeable, significant direct, indirect, and cumulative impacts on human health and the environment; identifies mitigation to address such impacts; and then rules on Keystone's permit application in a fully informed, reasoned manner, Plaintiffs will suffer irreparable harm.

75. Plaintiffs have no adequate remedy at law.


**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs request that this Court enter a judgment:

- (1) declaring that DOS's failure to prepare a sufficient EIS before issuing the Presidential Permit violates NEPA;
- (2) declaring that DOS's issuance of the Presidential Permit based on an insufficient EIS violates the APA;
- (3) directing DOS to revoke the Presidential Permit, to require Keystone to remove the portion of the Pipeline subject to the Presidential Permit, and to ensure that no further activity in furtherance of Pipeline construction or operation is undertaken unless and until DOS complies fully with the requirements of NEPA and the APA;
- (4) awarding Plaintiffs their costs and reasonable attorneys' fees incurred in prosecuting this action; and
- (5) ordering such other relief as the Court may deem just and proper.

Dated: Washington, D.C.  
August 6, 2008

Respectfully submitted,



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