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The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street N.W.
Washington, D.C. 20520

Dear Secretary Clinton:

I write concerning the Keystone XL pipeline project under consideration by the Department of State. As you may know, I have repeatedly expressed concern that regulatory actions related to this permit application be executed such that maximum care is taken to safeguard the Ogallala Aquifer, an irreplaceable natural resource in the state of Nebraska. As noted in the Draft Environmental Impact Statement (DEIS) released on April 16 of this year, the Aquifer "...supplies 78 percent of the public water supply and 83 percent of irrigation water in Nebraska." The document further acknowledges that "...crude oil could migrate into subsurface aquifers and into areas where these aquifers are used for water supplies."

As a Senator, it is my duty to review federal actions that might impact resources critical to the State of Nebraska. My letter to you on July 23, 2010, reflected these concerns. Since then, I have continued to review materials related to the permit application and its environmental review documents. I am troubled by the product of that review. The information below outlines my additional concerns and asks for additional review by the Department of State.

I noted with interest that the alternative route discussion in the DEIS considers only routes that originate at or near Morgan, Montana, and therefore the shortest route was not considered. Because the preferred route is roughly a straight line between Steele City, Nebraska, and Morgan, Montana, any derivation from that straight line describes a line or alternative route that necessarily crosses more land. It comes as no surprise then that the alternatives considered in the DEIS are rejected. As the DEIS explains, longer pipeline length generally corresponds to greater environmental impact. The Express-Platte Alternative, for example, is rejected, it appears, principally because it is longer than the proposed route:

"...(T)he greater length of the Express-Platte Alternative, and the associated greater area of impacts and the likely requirement for construction along a new ROW...indicate that this alternative would not be environmentally preferable to the proposed route."

Understanding the primary role that distance plays in the consideration of pipeline alternative routes, I was disturbed by the fact that the DEIS contains no substantial discussion of a route that would run parallel to the existing Keystone pipeline route from Steele City, Nebraska, north to the U.S. border in Cavalier County, North Dakota. This route would be far shorter than the proposed route, and shorter than every alternative considered in the DEIS. And if - as the DEIS has argued - shorter distance generally coincides

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with a less severe environmental impact, then one could conclude that such a route would be better for the environment. In addition, such a route would avoid running directly through the sandy soils in the Sandhills region of Nebraska. Finally, it would seem to me that such a route could serve the purpose and need of the pipeline: delivering crude oil from important sources in Canada to refining facilities in the United States. To your knowledge, has the Department of State or any other federal agency reviewed this route as an additional alternative to those considered in the DEIS? If the Department of State has not, I ask that such an alternative route be explored.

Moreover, the DEIS appears to ignore entirely the possibility of border crossings other than those that cross at or near Morgan, Montana. I am not aware of any language in the Presidential Order establishing the Department of State as the lead agency for this permit application that would preclude consideration of an alternative border crossing that might allow for a shorter route. Has the Department of State or any other federal agency involved in the permit process considered alternative routes that would include border crossings other than at or near Morgan, Montana? If the Department of State has not, I ask that the scope of the DEIS be broadened to include alternate border crossings.

It would be of considerable concern to me if U.S. consideration of the potential routes within our country for a proposed pipeline has been limited by the terms of a permit previously issued by another country. What impact, if any, does the applicant's acquisition of required permits in Canada have on the consideration of border crossings other than at or near Morgan, Montana?

Review of the DEIS discussion of alternative routes reveals no substantial discussion of the avoidance of the Sandhills region of Nebraska. As you know, two of the alternatives considered in that section do not substantially cross the Sandhills. This is noteworthy because this region contains soils that are dramatically different from those in other regions of Nebraska. The character of these soils might be environmentally significant in the context of the DEIS. The document acknowledges, for example, that crude oil adheres differently to sandy soils and may penetrate them faster than it would other soil types. Has the Department of State or any other federal agency considered or otherwise explored whether there is environmental benefit to a route that avoids the Sandhills region? If so, I would ask that you share that analysis with me. If neither you nor another federal agency involved in the permitting process has conducted such an analysis, I would ask that you broaden the scope of the DEIS to include such an analysis.

Thank you for your attention to this important matter. I am acutely aware of our country's need for oil. I believe it is in our national interest to obtain oil from allies instead of from those who may not share our values. The appropriate construction and use of oil pipelines can directly meet this national interest. However, U.S. law assigns to the Department of State the responsibility of ensuring the impacts and alternatives to this proposed pipeline have been thoroughly examined and assessed. At this time – and until my questions are answered – I am concerned that the contents of the DEIS do not sufficiently meet this responsibility. I look forward to your prompt reply.

Sincerely,



Mike Johanns
United States Senator