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DOMINALAW Group pc llc

Additional Detail

What is the status of the pipeline project now?

The U.S. State Department's most recent pronouncement on the pipeline was a "Notice of Availability of the Supplemental Draft Environmental Impact Statement (SDEIS) for the Proposed TransCanada Keystone XL Pipeline Project" (76 Fed Reg April 22, 2011).

What is the Keystone XL Pipeline Project?

On Friday, April 22, 2011, a 60-Day Notice of Proposed Information Collection, including a Notice of Request for Public Comments, was issued by the U.S. State Department. The U.S. State Department seeks Office of Management and Budget (OMB) approval for information collection for approximately 200 respondents and an estimated total burden of about 100 to deal with public comments on the pipeline. Comments will be accepted if submitted on or before June 21, 2011. *See:*

www.keystonepipelinexl.state.gov/clientsite/keystonexl.nsf/76fr22744.pdf?OpenFileResource.

At the same time, the U.S. State Department published notice that a SDEIS was issued. It notes that:

The public comment period for the draft EIS officially closed on July 2, 2010. DOS accepted written comments and verbal comments presented at over 20 public meetings held along the proposed pipeline route in Montana, South Dakota, Nebraska, Oklahoma and Texas, as well as Washington, D.C. As a result, over 8,000 separate comments were received and reviewed.

After the Department of State conducted an adequacy assessment, it determined that no new issues of substance emerged from the comments received. Nonetheless, DOS decided "that decision-makers and the public would benefit from additional public review of, and comment on, both information that was not available at the time the draft EIS was issued and portions of the EIS that were revised to address the new information and comments on the new draft EIS."

The SDEIS is not online on the State Department website. Instead, it is available at "Federal, state and local agencies", and has been mailed to "public interest groups; individuals and affected landowners who requested a copy."

Comment Procedures

Comment on the Supplemental Draft Environmental Impact Statement is very important. These are the comment procedures followed by the State Department:

1. Comments will be accepted from any person.
2. DOS requests that comments be limited to the subject matter in the SDEIS and DOS will respond only to comments that directly address information in it.
3. DOS will consider only comments received by the end of the comment period during preparation of the final EIS.
4. **Comments are requested no later than June 6, 2011 to ensure consideration. This is 45 days after publication of the notice.**

Comments may be submitted to: keystonexl@cardno.com or faxed to 206-269-0098.

DOMINALAW Group pc llo's Impressions

"It seems clear to us that stopping the pipeline must be focused on the Department of State level, and federal decision-making about both the desirability of the pipeline, and the route it might take," Dave Domina said. "We are keenly aware that litigation over the pipeline must be based on the administrative record, i.e., the comments submitted for State Department consideration. These form the basis for challenging the pipeline's feasibility, safety, desirability, risks, and route, at a future date," Domina said.

What kinds of comments are most urgently needed?

First, this is not the time to study the impact of an oil line across the aquifer. And, this is not the time to explain that oil in the aquifer would be harmful to people and damaging to the economies of Nebraska, Kansas, South Dakota, Wyoming, Colorado, and other states dependent on the Ogallala Aquifer. Instead, focus must be on the issues raised in the new SDEIS. It analyzed new and additional information that became available after the original EIS was issued.¹ The SDEIS focused on consideration of several matters required to meet the 57 project-specific special conditions recommended by the U.S. Department of Transportation, Pipeline and Hazardous Material Safety Administration (PHMSA) that would apply for the lifetime of the Project. These include lower maximum throughput, lower operating pressure, revised pipe wall thickness, change to the distance between mainland valves, and changes to construction procedures addressed by certain special conditions.

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¹ The SDEIS may be reviewed at www.keystonepipeline-xl.state.gov/clientsite/keystonexl.msf/04_kxl_sdeis.pdf?OpenFileResource.

In addition, the revisions include:

Relocation of a tank from Steele City, Neb. to Cushing, Okla.²

Revisions of operations and maintenance information due to incorporation of the 57 project-specific PHMSA special conditions.

Two additional nonfederal connected actions, the Bakken Marketlink Project and the Cushing Marketlink Project. These were developed after the EIS. Potential impact of implementation of the projects based on currently available information is speculative, and the SD is considered speculative, and the SDEIS did not deal with it.

Additional information on groundwater, skill potential impacts, alternatives, and environmental justice considerations.

Much of the dispute about the Nebraska route through the Sand Hills is focused on groundwater, potential spill impacts, and alternatives to the proposed project. These subjects are expressly studied in the SDEIS. The SDEIS notes:

Additional information on potential impacts to groundwater from unintentional release of crude oil from the project needs to be studied.

Assessment of additional potential alternatives, including alternative routes, needs to be studied.

Information must be expanded on environmental justice issues.

These comments strongly suggest that the SDEIS is a fundamentally important document to Nebraskans. Comment on it by all engineers, hydrologists, geologists, and others with academic and professional credentials making it fit and appropriate that they speak to the subject matter, is extremely important.

“There is not time to coordinate the gathering of this information and its distillation. The fundraising project process does not give time. Groups interested in the subject must move now,” Domina concluded.

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² *Id.*