



Issue Alert

STATE DEPARTMENT'S FINAL ENVIRONMENTAL ANALYSIS FOR KEYSTONE XL PIPELINE PROJECT ELEVATES CLIMATE CHANGE ISSUES

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INTRODUCTION

On January 31, 2014, the U.S. Department of State (State Department) released its Final Supplemental Environmental Impact Statement (FSEIS) for the Keystone XL Pipeline Project (Project), an 875-mile pipeline that would transport up to 830,000 barrels per day (bpd) of crude oil from Morgan, Montana, at the U.S.-Canada border to Steele City, Nebraska (a history of the Project and prior environmental reviews is described in Chapter 1.1 of the FSEIS, available at <http://keystonepipeline-xl.state.gov/documents/organization/221144.pdf>).

The FSEIS includes arguably the most comprehensive National Environmental Policy Act (NEPA) analysis of climate change impacts associated with an infrastructure project ever undertaken by a federal agency, and could influence future agency NEPA analyses for large infrastructure projects. While the FSEIS concluded (like the Draft Supplemental EIS) that “the proposed Project is unlikely to significantly affect the rate of extraction in oil sands areas,” and therefore is not likely to have a material impact on greenhouse gas emissions (GHG) compared to alternatives, whether the Project will move forward remains unclear.

BACKGROUND

Because it crosses an international border of the United States, the Keystone XL Project requires a Presidential Permit from the State Department. The State Department is directed by Executive Order (EO) 13337 to decide whether the project serves the national interest before granting a Presidential Permit. EO 13337 directs the Secretary of State to consider many factors in making that national interest determination, including energy security; environmental, cultural, and economic impacts; foreign policy; and compliance with relevant state and federal regulations. Under NEPA, the State Department was required to complete an environmental impact statement (EIS) assessing the potential environmental impacts associated with the Project. This EIS will help inform the Department’s national interest determination.

ANALYSIS

Consistent with its 2011 Final EIS and March 2013 Draft Supplemental EIS, the State Department concludes in the FSEIS that that “the proposed Project is unlikely to significantly affect the rate of extraction in oil sands areas.” Based on this conclusion, the FSEIS also concludes that, despite the relatively higher level of greenhouse gas (GHG) emissions that are emitted in the development of oil sands resources, the approval of a Presidential Permit for the Project is not likely to have a significant impact on global climate change. To the extent that this analysis stands, this conclusion opens the door for approval of the Project consistent with President Obama’s statements in his June 2013 climate change speech that the Project should not “significantly exacerbate the problem of carbon pollution.”

Comprehensive Analysis of Climate Impacts

As required by NEPA, the FSEIS examines the environmental and economic impacts of the proposed Project, including impacts on wetlands, endangered species, jobs, cultural resources, and other elements of the environment. However, the sections that generated the largest amount of controversy in the Draft SEIS, and that the Department spent the most time expanding, are those addressing climate change.

The scope of the document's climate change analysis is comprehensive. It includes: (1) an assessment of emissions of GHGs associated with the construction and operation of the pipeline; (2) an assessment of the potential increase in indirect emissions associated with the lifecycle of Western Canadian Sedimentary Basin (WCSB) crude oil that would be moved by Project; (3) an assessment of how the proposed Project and lifecycle GHG emissions, along with other sources of GHGs, could cumulatively contribute to climate change; and (3) an assessment of the effects that future projected climate change (e.g., temperature and precipitation changes) could have in the proposed Project area and on the Project. The scope and extent of the FSEIS's multifaceted analysis of climate change impacts reflects arguably the most comprehensive analysis of climate change ever undertaken as part of a NEPA analysis.

The inclusion of analysis regarding emissions associated with the lifecycle of the crude oil that would be transported by the Project is particularly noteworthy. "Lifecycle analysis" refers to upstream (including extraction/mining and upgrading), and downstream (including refining intermediate products, transportation, end-product combustion and waste) emissions. The analysis compares the estimated incremental lifecycle GHG emissions associated with WCSB crude oils that would be transported by the proposed Project with reference crudes currently being distributed and refined in the United States that would likely be displaced. Specifically, the FSEIS concludes that WCSB crudes transported by the pipeline emit 17 percent more GHGs on a lifecycle basis than the average crude oil refined in the United States, attributable largely to increased emissions at extraction and mining. Assuming that the pipeline's entire capacity were to be used to transport WCSB crudes, and that this oil displaced existing oil at US refineries, the FSEIS finds that the pipeline would result in an additional 1.3 to 27.4 million metric tons of CO₂ annually, equivalent to installing less than 1 to almost 8 new coal plants. The large range of potential emissions reflects the many variables that impact that analysis.

The FEIS concludes that, because oil sands production is likely to continue at the same rate with or without approval of the Project, approval of the Project is unlikely to lead to a significant incremental increase in WCSB production and, correspondingly, would not materially impact overall GHG emissions.

Likelihood of Crude-by-Rail Diminishes Potential Incremental Impacts of Keystone XL Project

As part of the analysis of Project alternatives that NEPA requires, the FSEIS analyzes various alternative scenarios that are likely to occur if the Presidential Permit is not approved. Considering the potential for transportation of WCSB crude by a combination of rail and other means (tanker, pipeline, additional rail), the FSEIS concludes that, because sufficient cost-effective transportation alternatives to U.S. Gulf Coast refineries are likely to be available, U.S. demand for heavy crude oil will result in the development of oil sands in the WCSB and transportation of WCSB heavy crude to the Gulf Coast regardless of approval of the Project.

The FSEIS contains significantly more extensive analysis of the crude-by-rail issue than the previous 2011 Final EIS or 2013 Draft SEIS. It makes three important findings. First, given the expansion of crude-by-rail since 2011 and the continued financial investment plans, it finds that rail transportation capacity would not serve as a constraint to oil sands production over the medium to long-term.

Second, the FSEIS finds that, while transporting oil sands bitumen via rail would be more expensive than transporting it via the Keystone XL pipeline, the increase in transportation costs would not significantly curtail production so long as world oil prices remain above \$75 per barrel. In this case, if the Project is not approved, transportation demand for WCSB oils will be met by rail transport and therefore approval or

disapproval of the Project will not have significant impact on development of the oil sands or resulting GHG emissions. For oil prices below \$65 per barrel, the FSEIS finds that oil sands production in the WCSB would not be economic in any event and therefore approval or disapproval of the pipeline in this scenario would not have an impact on production or the resulting lifecycle GHG emissions. Therefore, only for world oil prices between \$65 and \$75 per barrel would disapproval of the Project have an impact on the development of WCSB oil sands and a resulting decrease in GHG emissions. The FSEIS finds that prices are unlikely to fall within this range over the medium to long term.

Finally, the FSEIS finds that crude-by-rail transportation presents a significantly higher risk of spills and resulting environmental damage, as well as up to a 40% increase in GHG emissions attributable to construction and operation, as compared to approval of the Keystone XL Project. Therefore, given the unlikely impact that approval of the Project will have on the development of oil sands extraction and associated lifecycle GHG emissions, the FSEIS finds that disapproval of the Presidential Permit is more likely to result in greater climate change impacts than approval.

IMPLICATIONS

- The comprehensiveness of the FSEIS's climate change analysis goes beyond what has historically been performed for federal actions under NEPA. For example, to-date, the Federal Energy Regulatory Commission's NEPA review of natural gas pipeline projects has not included an in-depth analysis of climate change impacts related to induced production. It is an open question – likely to be ultimately resolved through litigation – to what extent this analysis will serve as a model by which the sufficiency of other NEPA analyses for federal actions implicating climate change are judged.
- In February 2010, the Council on Environmental Quality (CEQ) released draft guidance on how federal agencies must consider GHG emissions in their environmental analyses. CEQ withdrew this guidance and is expected to issue a new draft. The comprehensiveness of climate change analysis in this FSEIS – and in particular the focus on life-cycle analysis – may serve as a model for future CEQ guidance.
- Largely consistent with prior analyses that show no significant climate or other environmental impact from approval of the Keystone XL Project, the analysis in the FSEIS provides ammunition for both advocates and detractors of the Keystone XL Project. The analysis supports the argument that climate impacts from the Project are not likely to be significant; however, the sensitivity of that analysis to future oil prices and rail transport costs has already been cited by detractors. It will ultimately be up to the Secretary of State and, potentially, the President, to determine whether this Project moves forward.

WHAT TO EXPECT NEXT

The FSEIS is open for public comment from February 5 through March 7, 2014.

In addition, EO 13337 provides for a 90-day comment period by at least 8 other federal agencies: the Department of Defense, the Department of Justice, the Department of the Interior, the Department of Commerce, the Department of Transportation, the Department of Energy, the Department of Homeland Security, the Environmental Protection Agency, and any other agency, State, tribe, or local government that the Secretary deems appropriate.

After receipt of comments, the Secretary of State is directed to make a national interest determination, prepare a permit or denial based on that determination, and notify the relevant agencies of that determination. EO 13337 places no explicit deadline on the Secretary's determination. Commenting agencies then have 15 days to object to the determination. If no agency objects, the Secretary's decision regarding the issuance or denial of the Presidential Permit stands. If a commenting agency objects to the Secretary's determination, the decision is escalated to the President. At that point, the President faces no particular time constraint for approval or rejection of the permit application.

Therefore, while the completion of the FSEIS is an important stage in the process of determining the fate of the Keystone XL pipeline, the outcome and timing of the ultimate decision remain uncertain.

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