

April 8, 2013

The Honorable John Kerry  
Secretary of State  
U.S. State Department  
2201 C Street NW  
Washington, DC 20520

Harold Geisel  
Deputy Inspector General  
U.S. State Department  
Office of Inspector General  
HOTLINE  
P.O. Box 9778  
Arlington, Virginia 22219

Dear Mr. Secretary and Mr. Geisel:

We are calling for an investigation into the proposal process for the Keystone XL pipeline’s “Draft Supplemental Environmental Impact Statement (SEIS)” due to incomplete statements on the Organizational Conflict of Interest (OCI) questionnaire by Environmental Resources Management (ERM), and the determination by the State Department Contracting Officer that ERM did not have any conflicts of interest, despite clear evidence to the contrary.

The State Department’s SEIS for the Keystone XL pipeline, released on March 1, 2013, claimed that the pipeline would not have major impact on the environment.

However, Environmental Resources Management (ERM), the consulting firm hired to perform the SEIS, has had direct business relationships over the past three years with fossil fuel companies that have financial interest in the project. This conflict of interest was not accurately disclosed in ERM’s answers on a State Department’s OCI questionnaire.

In the OCI, the State Department asks<sup>1</sup> (page 42), “Within the past three years, have you (or your organization) had a direct or indirect relationship (financial, organizational, contractual or otherwise) with any business entity that could be affected in any way by the proposed work?” ERM’s Project Manager, Steve Koster, checked “No” but mislead on the Yes/No questionnaire by stating that, “ERM has no existing contract or working relationship with TransCanada.”

But, unredacted<sup>2</sup> versions of the ERM proposal show that three experts had done consulting work for companies with a stake in the Keystone XL pipeline’s approval. The consultants had worked for TransCanada and other oil companies within the past three

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<sup>1</sup> <http://keystonepipeline-xl.state.gov/documents/organization/205729.pdf>

<sup>2</sup> <http://www.motherjones.com/politics/2013/03/keystone-xl-contractor-ties-transcanada-state-department>

years, including an existing business relationship with ExxonMobil.

Andrew Bielakowski, ERM's Deputy Project Manager for the Keystone report, has worked on three previous pipelines for TransCanada, and consulted on projects for ExxonMobil, BP, and ConocoPhillips. Another ERM report contributor worked as an employee for Shell Oil<sup>3</sup>, and a third consulted for Koch Gateway Pipeline Company. These companies have a financial interest<sup>4</sup> in the Keystone XL Pipeline.

ERM had another odd statement in its proposal to the State Department. ERM answered "No" to the question, "Are you (or your organization) an 'energy concern'?" The definition of "energy concern" in part reads "Any person... significantly engaged in the business of conducting research," related to an activity such as "transporting by pipeline...minerals...for use as an energy source."

The State Department Contracting Officer should have flagged these inconsistencies on ERM's Organizational Conflict of Interest questionnaire, when he/she reviewed ERM's proposal.

Because this was not flagged, we are calling for the State Department Inspector General to pursue an investigation into how the Contracting Officer overlooked these discrepancies on ERM's documents, and given these incomplete statements, whether ERM is a "responsible party" under the Federal Acquisition Regulation.

The Federal Government has strict ethics rules to prevent Organizational Conflicts of Interest (OCIs) from impacting the impartiality of government contracts and to prevent hiring contractors who cannot provide independent and unbiased services to the government. Before the State Department could choose ERM as the contractor, the "Contracting Officer" had to make an "affirmative determination of responsibility." All government contractors (including ERM) must be deemed responsible, in part by meeting strict ethics guidelines, known as "collateral requirements."

According to current collateral requirements, contractors must be found "nonresponsible" when there are unavoidable and unmitigated OCIs. We believe that the Contracting Officer should have deemed ERM "nonresponsible" because the company serves as a contractor for major fossil fuel companies that have a stake in the Keystone XL pipeline.

The undersigned are calling for a State Department investigation into the matter. ERM's incomplete statements on their proposal and the determination by the Contracting Officer that ERM did not have any conflicts of interest, despite clear evidence to the contrary, are grounds for further investigation.

Sincerely,

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<sup>3</sup> [http://business.financialpost.com/2011/10/24/economic-benefits-will-likely-win-keystone-xl-approval-shell/?\\_lsa=6421-e085](http://business.financialpost.com/2011/10/24/economic-benefits-will-likely-win-keystone-xl-approval-shell/?_lsa=6421-e085)

<sup>4</sup> [http://www.cjr.org/the\\_observatory/the\\_kochs\\_and\\_keystone\\_xl.php?page=all](http://www.cjr.org/the_observatory/the_kochs_and_keystone_xl.php?page=all)

The Undersigned  
Craig Altemose  
Executive Director  
Better Future Project

Rose Braz  
Climate Campaign Director  
Center for Biological Diversity

Gabe Elsner  
Director  
Checks & Balances Project

Mike Tidwell  
Director  
Chesapeake Climate Action Network

Brendan DeMelle  
Executive Director  
DeSmogBlog

Daniel Souweine  
Campaign Director  
Forecast the Facts

Ross Hammond  
Senior Campaigner  
Friends of the Earth

Kyle Ash  
Senior Legislative Representative  
Greenpeace

Greg Laden, PhD.  
National Geographic Scienceblogs

Pete MacDowell  
Program Director  
NC WARN

Stephen Kretzmann  
Executive Director  
Oil Change International

Tyson Slocum  
Director  
Public Citizen Energy Program

Irene Keim  
Chair  
Unitarian Universalist Ministry for Earth