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The Honorable Gene Dodaro
Comptroller General
Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Dodaro,

As you know, the State Department recently released the Final Environmental Impact Statement (FEIS) for the proposed Keystone XL Pipeline. As you also know, the contractor that prepared the FEIS – Environmental Resources Management (ERM) – has faced credible conflict-of-interest allegations due to its work on behalf of TransCanada, the company seeking to develop Keystone. The State Department awarded ERM the Keystone assessment contract despite the fact that the company – as multiple news outlets have reported – misrepresented its previous work on behalf of TransCanada and other pipeline companies.

The recent history of ERM's conflicts of interest is not in dispute. On its original conflict of interest forms filed with the State Department, ERM failed to disclose that it has worked with TransCanada at least since 2011 on a separate Alaska pipeline project. It also claimed to have no relationship with any business affected by Keystone's construction, even though publicly available documents¹ show that the firm has business with more than a dozen companies with operating stakes in Alberta tar sands.

These are not honest differences of opinion about the nature of a business relationship. As Friends of the Earth reported on its blog on July 10, 2013:

[O]n May 14 the LinkedIn profile for Mark Jennings listed him as Socioeconomic Advisor for ERM. Among his roles for the company were since 2011, 'Consultant to ExxonMobil Development Company for the Alaska Pipeline Project,' for which Exxon and TransCanada are partners. But less than a month later, his LinkedIn profile made no mention of his work for ERM.

These and other irregularities have led to increased scrutiny of ERM's relationship with the pipeline and oil industries. As *Politico* reported Dec. 16²:

¹ See for instance Friends of the Earth, "State Department contractor on Keystone XL study lied about ties to TransCanada & oil industry" at <http://bit.ly/1jv29N9>

² "Keystone contractor's ties to energy groups draw new scrutiny" at <http://politi.co/1bGZAaB>

Websites or promotional material of the Western Energy Alliance, the American Fuel and Petrochemical Manufacturers and the Louisiana Mid-Continent Oil and Gas Association all list ERM as a member. In addition, two top ERM staffers are listed on the boards of the Western States Petroleum Association — another coalition of energy interests that supports the Keystone pipeline network. Greens had already seized on ERM's membership in the powerful American Petroleum Institute, another supporter of the pipeline. [. . .] All five of the trade associations and coalitions that ERM is part of have been vocal in their support for the pipeline, which would be part of a network carrying oil from Alberta's oil-sands region to the Texas Gulf Coast.

A 2012 State Department Office of Inspector General report³ on a previous Keystone EIS raised questions about how thoroughly the Department can execute its EIS responsibilities under the National Environmental Policy Act (NEPA), noting:

The Department's limited technical resources, expertise, and experience impacted the implementation of the NEPA process. The Department had an attorney involved in the process who had some prior experience and familiarity with NEPA. However, Department, other agency, and industry officials stated that the Department did not have a lot of technical resources or expertise for implementing the NEPA and EIS processes. The NEPA Coordinator position was filled by limited-term Foreign Service Officers who, at the time of their appointments, had little or no prior NEPA experience and had to seek training and learn quickly on the job as they tried to fulfill their responsibilities. As a result, the Department relied heavily on outside parties, such as its third-party contractor and other Federal agencies with expertise, to address issues related to alternatives and mitigation, pipeline safety, and environmental risks throughout the EIS process.

For example, had the Department had more expertise in NEPA and more knowledge of the information and analysis needed for an EIS, the Department may have been able to avoid the Environmental Protection Agency's poor rating of the draft EIS and the need for a supplemental EIS. [. . .]

In addition, during the OIG review, U.S. Fish and Wildlife Service officials stated that initially, as part of the environmental review process, their interactions were primarily and almost exclusively with Cardno Entrix for the required Section 714 consultations under the Endangered Species Act. These consultations are typically an agency-to-agency process and require involvement from the lead agency that makes the final decisions on issues raised under Section 7. However, Department officials involved in the EIS did not initially have the knowledge or scientific background to fully participate in the consultations.

This lack of scientific and legal expertise put the State Department in the position of relying on third parties not only to prepare an EIS, but to interpret the rules and regulations involved. This reliance on outside parties has justifiably raised concerns in the public and in Congress about the State Department's ability to execute its NEPA responsibilities in a way that protects taxpayers.

³ "Special Review of the Keystone XL Pipeline Permit Process," Report Number AUD/SI-12-28, February 2012

In order to address the significant public concern that has arisen over the past several months about the impartiality and quality of ERM's analysis, and about the State Department's ability to conduct a thorough and impartial assessment of environmentally sensitive projects, I respectfully request that GAO conduct an examination of the following issues:

- 1) What procedures does the State Department have in place for choosing EIS contractors?
- 2) What procedures does the Department have in place to evaluate a contractor-prepared EIS prior to its approval and to ensure that the Department vouches for its scope, content and scientific rigor?
- 3) What options exist for improving the Department's management of contractor-prepared EISs?
- 4) How can the State Department strengthen its conflict-of-interest regulations and ensure that this scenario is not repeated?

Please contact Adam Sarvana on my staff at (202) 225-2435 if you have any questions or would like to discuss the specifics of this request.

Very respectfully yours,


Rep. Raúl M. Grijalva
Member of Congress