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# The State Department Releases Its Final EIS for the Keystone XL Pipeline. What's Next?

## Overview

On January 31, 2014, the U.S. Department of State released the Final Environmental Impact Statement (EIS) for the Keystone XL Pipeline Project. Pursuant to the National Environmental Policy Act (NEPA), the State Department was required to prepare the EIS to assess the potential impacts to the human and natural environment associated with its decision to approve or deny TransCanada's application for a Presidential Permit.

The Keystone XL Pipeline Project would transport crude oil across the U.S.-Canada border. In accordance with Executive Order (E.O.) 13337, the construction, operation, and maintenance of a pipeline that would transport crude oil across the U.S. border requires a Presidential Permit from the State Department. A number of such permits have been issued in the past.

In accordance with E.O. 13337, a decision to issue a permit is predicated on the department's determination that the proposal would "serve the national interest." With the issuance of the Final EIS, the State Department said it will now focus on making that determination.

The Final EIS builds on a Draft EIS released in March 2013. These EISs were prepared for the Presidential Permit application submitted by TransCanada in 2012. The 2013 Draft EIS builds on a 2011 Final EIS for the Keystone XL Pipeline Project that was first proposed by TransCanada in a 2008 Presidential Permit application. That 2008 application was subsequently denied in 2012. Milestones in the permitting process for both the 2008 and 2012 proposals are illustrated in **Figure 1**. (Also see CRS Report R41668, *Keystone XL Pipeline Project: Key Issues*.)

The release of the Final EIS represents one step in the State Department's process of deciding whether to issue a Presidential Permit for the Keystone XL Pipeline Project. The Final EIS is a technical assessment of the proposal's impacts. It will be used to inform the national interest determination, but does not make a recommendation to approve or deny the permit.

## FAQs Regarding the Final EIS

Various stakeholders have expressed interest in the analysis included in the Final EIS and how its findings will affect the State Department's decision on TransCanada's Presidential Permit application. Following are some of the questions that have been raised.

**Figure 1. State Department Actions Evaluating the Proposed Keystone XL Pipeline Project TPP**

2008 Presidential Permit Application	<input checked="" type="checkbox"/>	NEPA Process Complete
	<input checked="" type="checkbox"/>	Permit Denied During National Interest Determination
2012 Presidential Permit Application	<input checked="" type="checkbox"/>	Public Scoping Process
	<input checked="" type="checkbox"/>	Analysis of Environmental Impacts
	<input checked="" type="checkbox"/>	Draft EIS Released
	<input checked="" type="checkbox"/>	Public and Agency Comments Received & Processed
	<input checked="" type="checkbox"/>	Final EIS Released
	<input type="checkbox"/>	Public and Agency Comment on the Project
	<input type="checkbox"/>	National Interest Determination/ Final Agency Decision

Source: Congressional Research Service.

**Does the Final EIS reflect a final decision on the proposed pipeline?** No. Analysis in an EIS is intended to inform the federal decision-making process, not document a final decision. The NEPA process concludes when a federal agency issues a final Record of Decision (ROD). A ROD cannot be issued until the Final EIS is complete. Generally, a State Department decision on a Presidential Permit application is issued in a single document that combines a ROD and the National Interest Determination.

**When will the State Department make a final decision?** The State Department has not committed to a time frame to issue a final Record of Decision and National Interest Determination. When asked about the potential timeline in which Secretary Kerry may make a final decision, a State Department representative stated that the only timeline given in E.O. 13337 pertains to a 90-day limit within which outside agencies must provide comments on the proposal to the State Department (discussed below). The E.O. specifies no timeline for *reaching* its determination.

**What project impacts were evaluated in the EIS?** Among other details, an EIS must assess the potential environmental impact of a proposed action. Since an EIS cannot simply document a decision that has already been made, NEPA also requires federal agencies to identify reasonable alternatives to the proposed action, including a "no action" alternative. The Draft EIS, issued in March 2013, analyzed impacts associated with the proposed Keystone XL Pipeline Project and its alternatives with respect to their potential

- climate change impacts, including a life-cycle assessment of greenhouse gas (GHG) emissions associated with the development, refining, and consumption of oil that would be transported;
- impacts to groundwater or surface water from oil spills or releases;
- socioeconomic impacts, including job and revenue benefits, impacts to private property owners, and environmental justice issues; and
- effects on cultural, natural, or biological resources (e.g., wetlands, wildlife, threatened or endangered species and their habitat) from pipeline construction and operation.

Changes in the Final EIS identified by the State Department as “notable” include expanded analysis of impacts

- from potential oil spills or releases;
- related to climate change; and
- associated with expanded rail transport (e.g., safety issues and GHG emissions), if no action is taken.

The Final EIS also includes an updated oil Market Analysis that incorporates new economic modeling.

#### **Will the State Department deny the Presidential Permit based on the proposal’s adverse environmental impacts?**

Possibly, but not necessarily. The Final EIS identifies mitigation measures that would have to be implemented to eliminate or minimize certain adverse environmental effects of the proposed project (e.g., safety measures that must be implemented to avoid an accidental release). All adverse impacts cannot be avoided or mitigated. As long as they are adequately evaluated, however, the State Department is not constrained by NEPA from deciding that other benefits outweigh the environmental costs of the action.

Under E.O. 13337, a Presidential Permit may be issued if the State Department finds that the project would serve the national interest. The State Department could determine that a project does not serve the national interest if the project’s benefits would not outweigh certain adverse environmental impacts. For example, with regard to the Keystone XL Pipeline Project, President Obama stated that the national interest will be served “only if this project does not significantly exacerbate the problem of carbon pollution. The net effects of the pipeline’s impact on our climate will be absolutely critical to determining whether this project is allowed to go forward.”<sup>1</sup>

#### **What factors will the State Department consider when it determines whether the Keystone XL Pipeline Project will serve the national interest?**

E.O. 13337 does not define terms relevant to the “national interest” or direct the State Department to evaluate specific issues. In the past, the department has asserted that, consistent with the President’s broad discretion in the conduct of foreign affairs, it has

significant discretion in deciding the factors it will examine when making a national interest determination. With the release of the Final EIS, the department stated that it will consider many factors, including the proposal’s potential effect on energy security; environmental and cultural resources; the economy; and foreign policy.

E.O. 13337 does, however, explicitly require the State Department to request input from certain federal agencies. The E.O. requires that once all information needed to process a permit has been received, the department must request input from the Departments of Defense, Justice, the Interior, Commerce, Transportation, Energy, and Homeland Security, and the Environmental Protection Agency. With the release of the Final EIS, the State Department noted that it will seek input from at least those eight agencies.

The E.O. specifies that the State Department may consult with state, tribal, and local government officials and foreign governments, as the department deems appropriate. Any agency consulted by the State Department is required to provide its views on the project within 90 days.

The E.O. does not explicitly require the State Department to seek public comments on a proposal. However, given the level of interest expressed by various stakeholders in support of and opposition to the proposed Keystone XL Pipeline Project, the State Department announced a 30-day public comment period that will end on March 7, 2014.

Once all public and agency input is received, the State Department must consider that input, and any relevant analysis (e.g., data provided in the Final EIS), to determine whether the project would serve the national interest.

***If a Presidential Permit is issued, could construction of the Keystone XL Pipeline begin?*** Not immediately. Once a final project alternative is selected, any applicable local, state, tribal, or federal regulatory requirements (identified in the Final EIS) would have to be met. Also, given the opposition from various environmental groups and stakeholders along the pipeline route, legal challenges to a final State Department decision are a possibility. (For more information, see CRS Report R41668, *Keystone XL Pipeline Project: Key Issues*.)

For additional information about environmental issues related to the Keystone XL Pipeline Proposal, see CRS Report R43180, *Keystone XL: Assessing the Proposed Pipeline’s Impacts on Greenhouse Gas Emissions*, by Richard K. Lattanzio; and CRS Report R42611, *Oil Sands and the Keystone XL Pipeline: Background and Selected Environmental Issues*, coordinated by Jonathan L. Ramseur.

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**Linda Luther**, lluther@crs.loc.gov, 7-6852

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<sup>1</sup> White House, Office of the Press Secretary “Remarks by the President on Climate Change,” Georgetown University, Washington, DC, June 2013, <http://www.whitehouse.gov/the-press-office/2013/06/25/remarks-president-climate-change>.