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FLOW (For Love of Water) * Friends of the Earth * Freshwater Future
Great Lakes Environmental Law Center * League of Conservation Voters * MN 350
Minnesota Environmental Partnership * Natural Resources Defense Council
Oil Change International * Sierra Club * Voices for Progress**

September 11, 2014

The Honorable John Kerry
Secretary of State
U.S. Department of State
2201 C Street N.W.
Washington, D.C. 20520

Dear Secretary Kerry,

The undersigned groups write to express our grave concern over the State Department's apparent approval of the Alberta Clipper tar sands pipeline expansion, and to request that the Department take immediate action to halt this illegal increase in tar sands crude oil imports until it completes its ongoing environmental review.

Tar sands oil is 17 percent more carbon intensive than regular oil on a life-cycle basis, and, like the Keystone XL pipeline, Alberta Clipper has a significant impact on carbon pollution. Consistent with the law and the Administration's commitment to addressing climate change, this and other impacts must be considered before any decision regarding an increase in the flow of tar sands oil takes place.

Last week, we were outraged to learn that while the critical environmental reviews of these projects are ongoing, a State Department official had already given the green light to a major expansion of the Alberta Clipper pipeline behind closed doors.

In a blatant attempt to avoid the legal and public permitting process, Enbridge notified the Department on June 16 of its proposal to temporarily divert the flow of tar sands crude oil on Alberta Clipper to its adjacent Line 3 pipeline just before it reaches the U.S.-Canada border; and then divert the oil back to Alberta Clipper once inside the United States. Line 3 is an aging pipeline designed and built in 1968 for the transportation of light crude oil. It never underwent any environmental review, and was approved prior to any substantial bitumen development and transportation by pipeline had occurred. Enbridge claims that Line 3 does not have any express capacity limitation, and has made absolutely clear that this scheme was designed solely for the purpose of avoiding the Department's permitting process.

Incredibly, the State Department's Patrick Dunn responded to Enbridge on July 24, 2014, agreeing that "Enbridge's intended changes to the operation of the pipeline outside of the border segment do not require authorization from the U.S. Department of State." However, the narrow view of the State Department's authority shared by Enbridge and Mr. Dunn are incorrect. Executive Order 13337 gives the State Department the authority to issue Presidential Permits for not just the construction, but the "connection, *operation*, or maintenance" of cross-border pipelines if it finds that a particular project "would serve the national interest." The clear purpose of the presidential permitting process is for the Department to control the amount and type of crude oil flowing into the United States. In 2009, the Department issued a Presidential Permit for Alberta Clipper that allowed it to import 450,000 bpd of crude oil into the U.S. The national interest determination was based on numerous factors, including the demand for crude oil among Midwest refineries, the economic crisis that prevailed at that time, and Canada's promises to reduce the carbon footprint of its energy extraction sector.

The national interest determination was also based on an EIS that evaluated the environmental impacts of the entire pipeline project, including the climate and air quality impacts associated with the "upstream" extraction and processing and the "downstream" refining of the heavy tar sands crude oil. This entire review process would be rendered meaningless if the State Department's authority was limited to only the facilities located at the actual U.S. border, as Enbridge suggests.

All of the Permit documents anticipate a capacity limitation of 450,000 bpd. As a result of this capacity limitation, when Enbridge proposed to increase the capacity of Line 67 from 450,000 bpd to 800,000 bpd last year, the Department correctly determined that Enbridge would need an amended Presidential Permit. It also announced that it would prepare a supplemental EIS "to evaluate the impacts associated with operating Line 67 at its full design capacity of 880,000 bpd." The undersigned groups have since been engaged in the EIS process.

Enbridge has now decided that it would rather not wait for the Department's permission before increasing the capacity of Alberta Clipper, and thus it intends to "borrow" the Line 3 Presidential Permit for use on Alberta Clipper. However, this type of operation was never anticipated for Line 3, either. President Johnson issued a permit for Line 3 on January 22, 1968, which preceded both the current presidential permitting process and the passage of the National Environmental Policy Act. To date, the Department has never reviewed the impacts of moving tar sands crude along Line 3 at any quantity, nor has it considered whether that would be in the national interest. Enbridge's plan would be a substantial change in the operation of both pipelines that requires amended Presidential Permits and comprehensive environmental review under NEPA. The Department has acquiesced to Enbridge's plan before that review has occurred.

Neither of the Presidential Permits issued for Alberta Clipper or Line 3 authorize the operational scheme that Enbridge now proposes. Even if they did, both permits expressly allow the Department to terminate, revoke, or amend the permits at any time based on the national interest. President Obama's commitment to ensuring tar sands pipelines do not exacerbate the problem of carbon pollution makes such expansions contrary to the national interest.

Enbridge does not have authority to manipulate its pipeline operations to escape the clear requirement that new or substantially changed energy transportation projects be subjected to a national interest determination and environmental review. The Department has both the authority and the obligation to prevent Enbridge's blatant attempt to circumvent the law. If it fails to do so, it would make a mockery of the presidential permitting process and undermine the administration's commitment to tackling climate change.

The undersigned groups hereby request that you immediately reverse the July 24, 2014 decision, make clear to Enbridge that its scheme is impermissible, and commit to following the on-going permitting and public review process before any additional expansion of Alberta Clipper or modification of Line 3 is allowed. We thank you for your long history of environmental leadership, and hope that by bringing this matter to your prompt attention we are able to demonstrate the far-reaching implications of this mistaken decision. We also request a meeting with the Department to discuss this matter at your earliest convenience.

Sincerely,

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Executive Director

Natural Resources Defense Council
Frances Beinecke
President

Center for Biological Diversity
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