

# Dirty Business

*How TransCanada Pipelines bullies farmers, manipulates oil markets, threatens fresh water and skimps on safety in the United States.*



## **Dirty Business:**

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April 2011

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Cover image: Oil on water.

For more information and to find this report online go to: [www.foe.org/dirty-business-transcanada](http://www.foe.org/dirty-business-transcanada).



# Dirty Business

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## Preface

This is the story of a corporation behaving badly. Not shocking, perhaps, except that it's angling to get the Obama administration's approval to build a controversial mega-pipeline stretching from Canada to Texas and crossing key rivers, farmland, and water resources upon which millions of Americans depend.

The story starts in the Boreal Forest of Northern Alberta. This is home to immense deposits of tar sands – a mix of sand, water, clay and a hydrocarbon called bitumen – which at great environmental cost can be processed into synthetic crude oil. Over the past several years, the tar sands oil industry has expanded rapidly and recklessly, and now produces some 1.5 million barrels a day of this dirty, highly climate polluting crude.<sup>1</sup>

The main customer for tar sands oil is the United States. With little public scrutiny, two new pipelines have been built since 2009 to carry increased quantities to the Midwest.<sup>2</sup> Now, a third pipeline is being proposed, and in the process the American public is finally getting a glimpse of the industry's dirty underbelly.

The impacts of tar sands oil production in Alberta are severe and irreversible. Pristine forests are clear cut and replaced with enormous scars in the earth; vast quantities of water are contaminated; bird, caribou

and other wildlife habitat is destroyed; and the health of indigenous people is threatened.<sup>3</sup> The tar sands oil industry's record in Alberta has become controversial not only in Canada, but also in Europe and the U.S. What has gotten far less attention is the character of the corporation that proposes to carry this dirty crude across the U.S. to refineries in Texas.

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**“TransCanada absolutely ignored us. They plowed on through.”**

**– Kent Moeckly,  
South Dakota farmer**

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This report reveals the tactics and motivations of TransCanada Pipelines, one of the continent's largest pipeline companies, regarding its proposed mega-project, the Keystone XL tar sands oil pipeline. Looking at this information as a whole, we see the character of this company emerge.

TransCanada told the Canadian government that the purpose of the pipeline is to raise prices for Canadian crude, but tells U.S. audiences that it will enhance

1 Energy Resources Conservation Board. Alberta's Energy Reserves 2009 and Supply/Demand Outlook 2010-2019. Figure 2.16.

2 In 2008, the U.S. Department of State approved TransCanada's Keystone 1 pipeline. In 2009, it approved Enbridge's Alberta Clipper pipeline.

3 Bruno, Kenny, et al. "Tar Sands Invasion: How Dirty and Expensive Oil from Canada Threatens America's New Energy Economy." Corporate Ethics International. 2010.

"While the full nature of the arrangements agreed upon by the Canadian shippers is unclear, there is clear indication that there is a coordinated strategy among Canadian suppliers to gain higher prices. According to TransCanada, the proposed Keystone XL pipeline can be used by Canadian oil shippers to add up to \$4 billion to U.S. fuel costs." <sup>4</sup>

- U.S. Senator Ron Wyden,  
April 6, 2011

American energy security. TransCanada applied for a safety waiver, formally called a "special permit," to pump the oil at higher than normal pressures, backing off only when U.S. politicians became alarmed. In the face of a well-documented report about the heightened safety risks of tar sands oil pipelines, TransCanada simply denied that there was any dif-

ference between piping more corrosive tar sands oil and conventional crude.

This is a company that bullies farmers and ranchers in America's heartland by threatening to take their land by eminent domain for the public good, while hiding its true motivation. This is a company that has stated that its goal is to manipulate American energy markets to reap billions in profits for Canadian oil companies. This is a company that sells its pipelines to local communities with exaggerated promises of jobs.

The people whose lands and water supplies are crossed and threatened by the pipeline deserve to know the track record of the company behind it. The media and regulatory agencies should scrutinize this corporation. And since this mega-project has serious implications for energy policy, all Americans deserve to know the true nature of TransCanada.

What they will find is a company that bullies land-owners, downplays legitimate safety concerns, and schemes to manipulate American oil markets for its own profit.

<sup>4</sup> "Wyden Calls for FTC Investigation into Secret Agreements to Drive Up Tar Sand Oil Prices." April 6, 2011. Available at: <http://wyden.senate.gov/newsroom/press/release/?id=158ffa9a-6380-4c2a-bbec-180c16839018>.

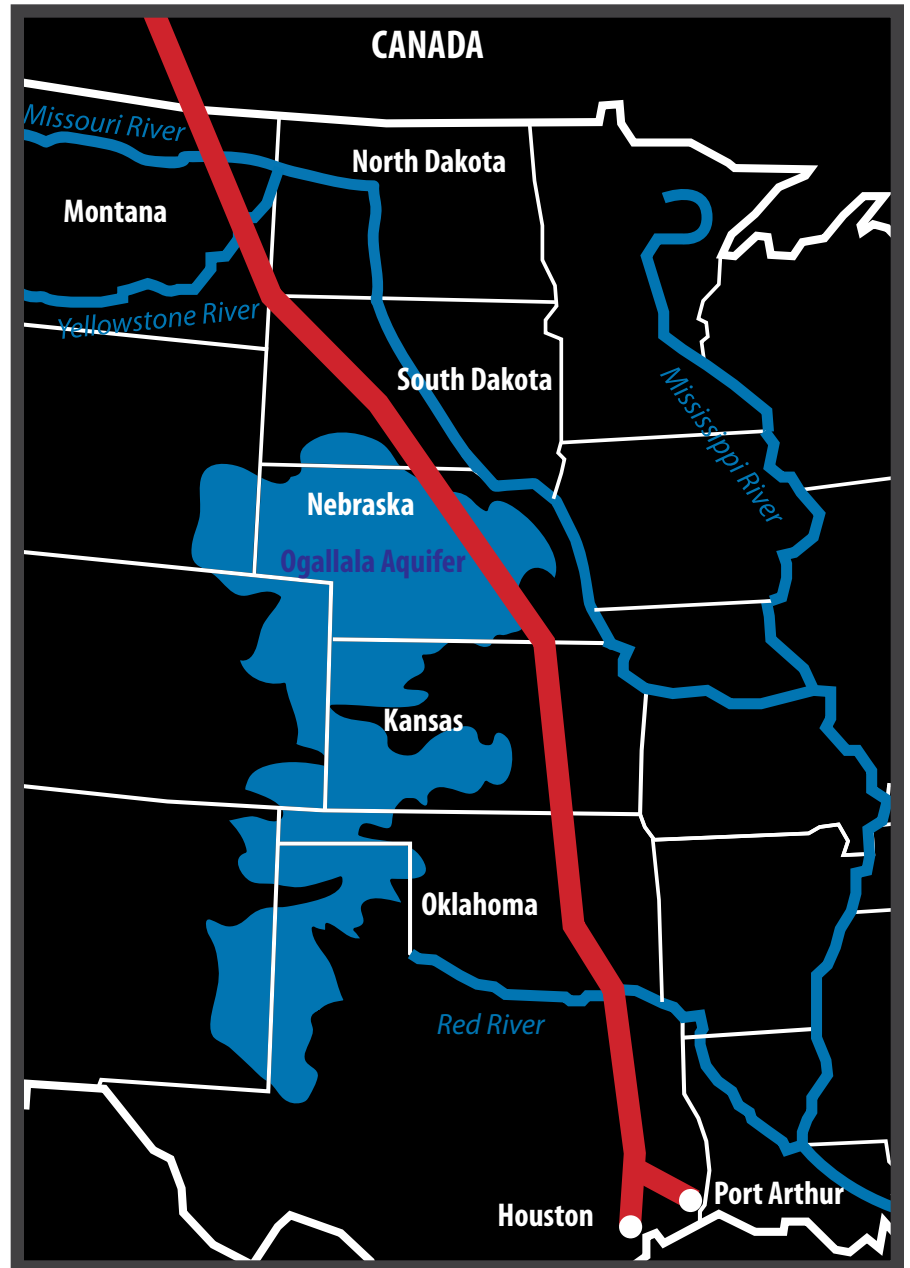


Keystone I pipeline under construction in South Dakota. Photo credit: Plains Justice.

## Introduction

The Canadian oil and gas company TransCanada is currently seeking approval to build a new transcontinental pipeline that would stretch across the U.S. from the tar sands of Alberta, Canada to the refineries of the Texas Gulf Coast. The pipeline, known as the Keystone XL, would transport up to 900,000 barrels a day of unrefined tar sands oil into the U.S. from Alberta's tar sands extraction project, one of the dirtiest and most environmentally destructive projects on the planet.<sup>5</sup> The unrefined tar sands oil that would be carried in the pipeline is particularly risky and difficult to transport. Yet the Keystone XL pipeline would haul it nearly 2,000 miles, across six U.S. states, numerous sensitive habitats and ecosystems, several major rivers such as the Missouri, Yellowstone, and Red Rivers, and the Ogallala Aquifer, a source of drinking water for two million people and of irrigation water for many of the nation's farms.<sup>6</sup>

## Keystone XL



*TransCanada's Keystone XL pipeline would travel across some of America's most precious farm land and waterways, in route to refineries along Texas' Gulf Coast.*

<sup>5</sup> TransCanada application for a Presidential Permit for the Keystone XL pipeline. Environmental Report, Section 1.1.

<sup>6</sup> "USGS: Ogallala aquifer water quality currently acceptable." The Lincoln Journal Star. July 19, 2009.

## Part 1 – TransCanada: The Bully

Meet David Daniel, a carpenter from the small East Texas town of Winsboro. Daniel first learned that his home was in the path of the pipeline when he discovered stakes that had been hammered into his land by a TransCanada survey team. No one from the company had asked his permission—or even notified him after the fact. When he denied the company further access to his land, their Houston law firm threatened to take his property through eminent domain. Daniel later learned that TransCanada did not even have all the permits it needed to build the pipeline.

When he eventually agreed to let them on his property if they gave him advance notice, company officials repeatedly violated that agreement. And when TransCanada decided to negotiate for an easement that would allow it to build through Daniel's land, the company tried to lowball him and avoid paying for the trees that they would cut down on his land. They have also refused to provide him with any information about the risks of the tar sands oil that would be carried across his land, or to explain how they would respond in the event of a spill.<sup>7</sup>

Kent Moeckly tells a similar story. Moeckly is a corn and wheat farmer from the South Dakota grasslands who owns land that is crossed by TransCanada's Keystone I pipeline, the company's main existing conduit for bringing tar sands oil to the United States. Moeckly reports that TransCanada used a similar array of unseemly tactics to secure the use of his land at the lowest possible cost. Under threat of an eminent domain lawsuit by TransCanada, he felt he had no choice but to allow the pipeline to be built across his farm. TransCanada received a safety waiver, formally called a "special permit," that would al-

low it to use thinner pipe and pump oil at higher pressures than regulations would otherwise allow outside of "high consequence" zones. Without even conducting a survey, TransCanada classified his land as outside these high consequence zones in order to waive safety standards. When he and his neighbors requested that thicker pipe be used to reduce the risks of a spill contaminating the local aquifer, "TransCanada absolutely ignored us. They plowed on through," Moeckly says.<sup>8</sup>

Doris Lynn of Bryan County, Oklahoma has also had similar experiences with TransCanada. Lynn and her siblings are fighting to keep TransCanada off the farm they inherited from their parents. "They came out here with an offer and we said no," Lynn said.



*David Daniel is fighting to save his home and community from TransCanada.*

<sup>7</sup> Interview with David Daniel. Friends of the Earth. Available at: <http://www.foe.org/interview-david-daniel>.

<sup>8</sup> DeRita, Gabriel and Tom Valtin. "Toxic Tar Sands; Profiles from the Front Lines," Sierra Club. 2010.

“This land was left to us kids. When somebody comes in and tells us they’re going to take our land, well they’re barking up the wrong tree.”<sup>9</sup> Their attorney, Harlan Hentges, observed, “The prospect of a foreign company using the U.S. law to take land from U.S. citizens, this is problematic.” He is realistic about the chances of fighting a major oil company. “I think we have a strong case but the deck is stacked against the individual and in favor of the fossil fuels industry,” continued Hentges, a lawyer since 1992. “That industry has invested a lot into making sure things are in their favor since the beginning of statehood.”<sup>10</sup>

At a public meeting in 2009, a TransCanada representative told Montana landowners that, “We have the power of eminent domain and we will use it if necessary.” Landowners have also been pressed to sign easements by TransCanada representatives, who falsely tell them that they are the “last to sign” and had better sign soon. In response to these heavy handed and deceptive tactics, Montana landowners organized the Northern Plains Pipeline Landowners Group to protect themselves from TransCanada.<sup>11</sup>

In Nebraska and South Dakota, TransCanada has played hardball with landowners who are reluctant to sign easements for the pipeline. TransCanada sent those landowners letters stating that they had 30 days, and in some cases seven days, to sign easements, or face legal action.<sup>12</sup> In response, Nebraska’s Republican Senator Mike Johanns urged TransCanada’s CEO not to “threaten landowners with the use of eminent domain while TransCanada’s permit application remains pending.”<sup>13</sup>

After backing off of the arbitrary, 30-day deadlines for Nebraska landowners to concede to the company’s demands, TransCanada focused its legal bullying tactics to South Dakota. In January, the company sued 13 landowners who had not signed easements

with the company, even though a government decision on a permit for the pipeline is not expected for months.<sup>14</sup>

### How TransCanada strong-arms farmers

Although the proposed route of the Keystone XL pipeline mostly avoids population centers, the pipeline would cut through numerous rural communities, and affect thousands of Americans whose homes, farms, ranches and small businesses stand in the way. In order to gain the right to use these lands, TransCanada attempts to negotiate an agreement with the landowner to secure the right-of-way for the pipeline. TransCanada believes it can use eminent domain authority to take property rights from landowners, thus forcing them to allow the pipeline to go through.<sup>15</sup>

TransCanada has begun to contact landowners through the use of land agents to try to secure rights-of-way for the pipeline. Many of the landowners who have dealt with TransCanada’s hired guns in this process have found them to be overbearing, misleading and even unethical in their dealings. Landowners have reported that TransCanada representatives have been disrespectful of their property rights, dismissive of their concerns about the risks the pipeline would pose to their livelihoods, and dishonest in how they characterize the rights of those who do not want TransCanada to use their property.

9 McGowan, Elizabeth. “Some Landowners Mount Legal Bid to Deny Right-of-Way to Keystone Pipeline.” SolveClimate News. February 28, 2011.

10 Id.

11 Interview with Northern Plains Resource Council. April 13, 2011.

12 Hovey, Art. “Keystone XL letters cause stir.” The Lincoln Journal Star. August 14, 2010. See letter on next page.

13 “Johanns Presses TransCanada To Negotiate Fairly With Nebraskans.” Available at: [http://johanns.senate.gov/public/?p=PressReleases&ContentRecord\\_id=5f3839e2-45c6-4ac9-8496-8c7b6c99d0b0](http://johanns.senate.gov/public/?p=PressReleases&ContentRecord_id=5f3839e2-45c6-4ac9-8496-8c7b6c99d0b0).

14 “TransCanada Sues to Condemn Land in West River.” The Associated Press. January 26, 2010.

15 Although eminent domain has traditionally been exercised by government entities, states have designated TransCanada as a “common carrier pipeline,” so the company now believes it has eminent domain authority.



June 18, 2010

James E. Moore  
James.Moore@woodsfuller.com  
Extension 613

Via Certified Mail

**If you reject or fail to respond to this offer within seven days... we have been instructed to take legal action to acquire the easements.**

Re: [REDACTED]

Dear Mr. and Mrs. [REDACTED]

We represent TransCanada Keystone Pipeline, L.P., a subsidiary of TransCanada, which has received a permit from the South Dakota Public Utilities Commission to construct a second or third pipeline of South Dakota known as the Keystone XL Pipeline. Pipeline construction in South Dakota will begin early in 2011.

As detailed below, this letter presents Keystone's final offer for the purchase of an easement across property you own or in which you have an interest (identified below) for the construction of the Keystone XL Pipeline. Keystone looks forward to your response and to the successful completion of negotiations for this easement. Two copies of the easement are enclosed.

Keystone has previously expressed to you its interest in acquiring this easement. The property ownership is listed as [REDACTED]. The easement is located on multiple tracts, as follows:

portions of Section 1, [REDACTED], South Dakota; [REDACTED]

portions of Section [REDACTED], South Dakota; [REDACTED]

LAWYERS • EST. 1887  
Street Address: 300 S. Phillips Avenue, Suite 300, Sioux Falls, SD 57104-6322  
Mailing Address: P.O. Box 3027, Sioux Falls, SD 57117-5027  
Phone: (605) 336-3190 • Fax: (605) 330-3357  
www.woodsfuller.com

Page one of an actual letter TransCanada sent to a farmer in South Dakota, threatening a lawsuit that would force the farmer to allow the Keystone XL through his farm. The addressee's personal information has been deleted for privacy.



# TransCanada Sues to Condemn Land in West River

The Associated Press  
January 26, 2011

TransCanada Corp. has filed lawsuits to condemn land in western South Dakota along the route of its proposed Keystone XL oil pipeline, though it hasn't received federal approval for the project.

TransCanada says the federal permitting process is separate from eminent domain disputes. A bill in the Legislature would require private companies to obtain all permits before filing an eminent domain lawsuit.

TransCanada's latest report to the Public Utilities Commission shows the company has reached easement agreements with 53 percent of the 313 landowners along the South Dakota portion of the pipeline route. TransCanada wants to condemn property owned by 13 landowners. The company says it does so only as a last resort.

withdrawn.

Sincerely,

Mike Johanns  
United States Senator

cc: Sean McMaster, Executive Vice-President Corporate and General Counsel  
Paul Elliott, Government Relations

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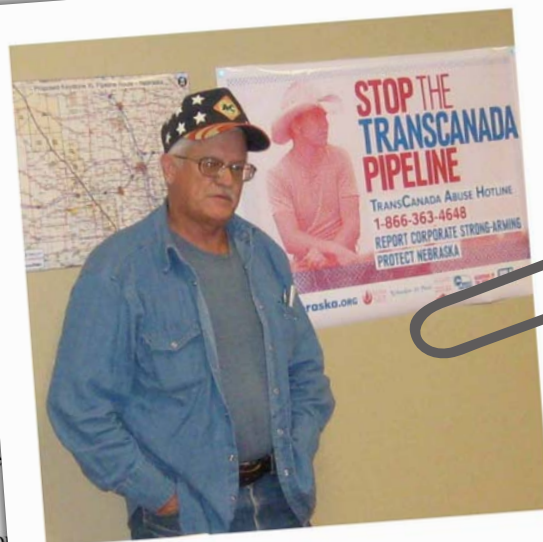
Senate

operation by the Department of State. As you may know, I do not have the authority to unilaterally suspend the pipeline to safeguard the Ogallala Aquifer, an irreplaceable natural resource. I have had multiple conversations with both TransCanada and federal agencies involved in the project.

transparency in the permitting process. I am currently working with the Department of State on the pipeline. I have had multiple conversations with TransCanada and federal agencies involved in the project. I have established hard deadlines for landowner negotiations, and I am told that the negotiations are progressing.

negotiations between private parties. However, Nebraska eminent domain authority will be triggered if they do not accept the offer. The establishment of such deadlines is especially important for the permit required for the project.

negotiations  
eminent domain  
negotiation  
I appreciate  
landowner  
I have notified



Ernie Fellows, Rancher, Nebraska

OMAHA OFFICE  
(402) 758-6032  
FAX: (308) 632-6295

## Part 2 – TransCanada: The Safety Scoundrel

TransCanada has consistently claimed that Keystone XL is the “safest pipeline ever built,”<sup>16</sup> yet the company has dodged the questions of landowners along the pipeline’s proposed route and sought a safety waiver for the pipeline. It has done all of this despite recent research that has shown tar sands oil pipelines are far more likely to break than conventional crude pipelines.

### *Unsafe Oil*

The Keystone XL pipeline would carry unrefined tar sands oil, not conventional crude oil. Unrefined tar sands oil, also known as bitumen, is a heavy, thick substance that is mixed with other petroleum-based diluents that thin it out so that it can be shipped by pipeline.<sup>17</sup> Diluted tar sands oil has a number of chemical and physical properties that make it much more difficult and risky to transport than ordinary crude. Compared to conventional crudes, it is as much as 20 times more acidic and contains as much as 10 times more sulfur, which can corrode the steel pipe and make it more brittle.<sup>18</sup> In addition, diluted tar sands oil carries large quantities of sand particles, which scour the inside of the pipe like a sandblaster and wear it down over time.<sup>19</sup>

These physical and chemical stresses are exacerbated by the higher temperatures and pressures that the pipeline system operates at in order to thin out the gooey tar sands oil so that it can flow through the pipe. While ordinary crude is shipped at the same temperature as the ground that the pipeline is buried in, diluted tar sands oil must be shipped at tempera-

tures as high as 158° F.<sup>20</sup> These higher temperatures accelerate the chemical reactions between the diluted tar sands oil and the pipe, and increase the rate at which the acids, sulfurs and other chemicals corrode it.<sup>21</sup>

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**When asked about the chemicals contained in tar sands oil, TransCanada responded evasively, “We’re not adding anything toxic to it ... We’re not adding *any additional chemicals.*”**

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Higher temperatures can also cause diluents to become unstable and switch from a liquid to a gaseous state. This creates bubbles within the pipeline, and these bubbles can cause pressure spikes that can damage pipelines over time, increasing the chances of a rupture. It can be difficult for operators to distinguish between these pressure fluctuations and a leak, which can make emergencies harder to detect and properly address.<sup>22</sup>

16 “Large turnout for Neb. pipeline regulation hearing.” The Associated Press. February 20, 2011.

17 Bruno, Kenny, et al. “Tar Sands Invasion: How Dirty and Expensive Oil from Canada Threatens America’s New Energy Economy.” Corporate Ethics International. 2010. p 9-10.

18 Swift, Anthony, et al. “Tar Sands Pipelines Safety Risks.” Natural Resources Defense Council. February 2011. p 6.

19 Id.

20 Id.

21 Id.

22 Id., at 6-7



*The sandy soil of the Nebraska Sandhills makes the region especially vulnerable to spills, which could seep through the porous ground and enter the Ogallala Aquifer. Photo credit: Dan Brooks.*

*Right: On July 6, 2010, a tar sands oil pipeline in Marshall, Michigan spilled about a million gallons of tar sands oil into the Kalamazoo River. Nearly a year later, the river is still closed to the public. Photo credit: AP Photo/Paul Sancya.*

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**TransCanada says that a worst-case spill from [the Keystone I pipeline] would release nearly one million gallons of oil into a major river.**

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### *Dodging Safety*

When landowners in the pipeline's proposed path have questioned TransCanada about the unique and risky characteristics of piping tar sands oil, TransCanada's answers have not been reassuring. When asked by a Texas reporter about the chemicals contained in tar sands oil, TransCanada's representative responded evasively, "We're not adding anything toxic to it ... We're not adding any additional chemicals."<sup>23</sup>

Farmers and others have also asked why TransCanada chose such a risky route for the Keystone XL pipeline. Not only would the pipeline cross many major rivers, like the Missouri and Yellowstone Rivers, but it would also cross the Ogallala Aquifer and the Nebraska Sandhills. The Ogallala is America's biggest aquifer, providing drinking water to 80 percent of Nebraskans and irrigating much of the state's farmland.<sup>24</sup> The Ogallala Aquifer comes close to ground level in many areas of the Sandhills, which contain porous, sandy soil that oil could easily leach through.<sup>25</sup> Because Keystone XL would be a buried pipeline, it would have to be buried within the aquifer itself while traveling through the Sandhills.<sup>26</sup>

Despite the apparent risks of tar sands oil pipelines, TransCanada sought a safety waiver to pump tar sands oil at pressures that exceeded government safety standards. As a result of public pressure, the company was forced to withdraw its application to gain a safety waiver (although they did not commit to forgo another application in the future).<sup>27</sup> Even with this victory for local communities, TransCanada still plans to use pipeline technology designed to transport conventional crude to carry its tar sands oil, despite the oil's riskier chemical and physical properties and the need to operate the pipeline at higher

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23 Sutton, Field. "Wood County Family Objects To Oil Pipeline Plans." November 23, 2010. TylerPaper.com. Available at: <http://tpstage.sx.atl.publicus.com/article/20101123/NEWS01/101129969/O/NEWS09>.

24 Schindler, LuAnn. "Protest held outside pipeline company's meeting." Norfolk Daily News. September 15, 2010.

25 Brown, J.P.S. "All in a Day's Work." American Cowboy. September-October 2002. p 61.

26 Hovey, Art. "Nebraska legislators get earful on Keystone XL." Lincoln Journal Star. December 1, 2010.

27 Restuccia, Andrew. "TransCanada to Withdraw Request for Safety Waiver on Keystone Pipeline." The Washington Independent. August 5, 2010.



*Following the tar sands oil pipeline spill in the Kalamazoo River, crews had to race to keep the oil from reaching Lake Michigan. Photo credit: Rebecca Cook/Greenpeace.*

temperatures and pressures than conventional crude oil pipelines.

The risk of a significant spill from the Keystone XL is very real. TransCanada's first Keystone pipeline has already leaked 11 times in its first year in operation.<sup>28</sup> Anomalies have also been found throughout that pipeline.<sup>29</sup>

Tar sands oil pipelines in Alberta appear to have experienced a far higher incidence of spills due to internal corrosion than conventional crude pipelines in the U.S. system.<sup>30</sup> And just last summer, a pipeline owned by another Canadian company, Enbridge, which was carrying tar sands oil, ruptured and spilled as much as a million gallons into the Kalamazoo River in Michigan.<sup>31</sup> The spill exposed residents to toxic

chemicals, coated wildlife and has caused long-term damage to the local economy and ecosystem.<sup>32</sup>

If a major spill were to occur, it appears that TransCanada would not be prepared to respond. A review of TransCanada's emergency response planning by Plains Justice, a legal organization focusing on clean energy in the Great Plains, found that the company underestimated the amount of equipment that would be needed to respond to a major spill in some of the rivers crossed by the company's recently completed Keystone I pipeline.<sup>33</sup> Even TransCanada says that a worst-case spill from that pipeline would release nearly one million gallons of oil into a major river.<sup>34</sup>

28 National Response Center Database: <http://www.nrc.uscg.mil/foia.html>. Incident numbers: 970232, 968357, 966126, 969483, 951480, 957685, 966497, 941193, 945213, 950516 and 963799.

29 Clark, Aaron. "TransCanada Conducts Maintenance on Keystone Pipeline." Bloomberg. December 8 2010.

30 Swift, Anthony, et al. "Tar Sands Pipelines Safety Risks." Natural Resources Defense Council. February 2011.

31 Coleman, Korva. "Michigan Oil Spill Worsens." National Public Radio. July 29, 2010.

32 Swift, Anthony, et al. "Tar Sands Pipelines Safety Risks." Natural Resources Defense Council. February 2011. p 6.

33 Blackburn, Paul. "The Northern Great Plains at Risk: Oil Spill Planning Deficiencies in Keystone Pipeline System." Plains Justice. November 2010. Page 2.

34 O'Connor, Phillip. "Concern mounts over oil pipeline safety." St. Louis Post-Dispatch. September 1, 2010. [http://www.stltoday.com/news/local/stcharles/article\\_b8b391f6-0b09-57a7-9b8c-ef008776a3d4.html](http://www.stltoday.com/news/local/stcharles/article_b8b391f6-0b09-57a7-9b8c-ef008776a3d4.html).

TransCanada Keystone Panel 1  
Continued examination by Mr. Davies

**MR. DAVIES:** And, to be clear, the strategy is that a producer who supplies a committed volume on XL would be prepared to take a financial hit on that volume in order to raise crude prices in [the American Midwest] and Ontario; right?

**MR. WISE:** Yes.

**MR. DAVIES:** So, first of all, this “strategy” as you call it, would be intended to raise the crude price not only in PADD II but also in Ontario; right?

**MR. WISE:** Yes, it would raise it in Ontario and in Western Canada.

**MR. DAVIES:** And, to be clear, the strategy is that a producer who supplies a committed volume on XL would be prepared to take a financial hit on that volume in order to raise crude prices in PADD II and Ontario; right?

**MR. WISE:** Yes.

This goes to the idea of a one price on a committed barrel -- call it “a term price” if you like -- versus a spot price.

**MR. DAVIES:** And is it your view, Mr. Wise, that a single producer could use this strategy to raise the crude prices in PADD II and Ontario or would it take a number of producers pursuing this strategy together to increase the PADD II and Ontario prices?

**MR. WISE:** I think it pertains to the committed barrels which total 380,000 barrels per day and represented by seven shippers.

So ---

**MR. DAVIES:** So seven ---

*In testimony to Canada’s National Energy Board, TransCanada said that it had developed a strategy to use the Keystone XL pipeline to manipulate oil markets and drive up prices in the American Midwest.*

## Part 3 – TransCanada: The Manipulator

TransCanada would like U.S. regulators and the American public to believe that the Keystone XL pipeline is needed to deliver Canadian crude oil to meet immediate U.S. demand. In fact, one of the main goals of the pipeline is to manipulate the price of oil. In a plan reminiscent of Enron's manipulation of electricity prices in California, TransCanada and seven oil companies want to use the Keystone XL pipeline to raise the price of oil and their profits.

How do we know this? TransCanada told Canadian regulators that the purpose of the Keystone XL pipeline was to *reroute* supply from the U.S. Midwest, where Canadian tar sands oil is plentiful and is sold at a discount, to the Gulf Coast, where they could fetch a higher price.<sup>35</sup> This shocking fact was glossed over in TransCanada's application to the U.S. State Department. TransCanada told Canadian regulators that the pipeline could be used to drive up oil prices by limiting supply to the Midwest and rerouting it to the Gulf Coast. A TransCanada representative admitted in testimony before the Canadian National Energy Board that this "strategy" would have oil companies pay more to ship their oil to the Gulf Coast, recognizing that they could offset these costs by charging more for their oil in the Midwest. TransCanada explained to Canadian regulators that eliminating the oversupply of Canadian crude in the Midwest would "increase the price of heavy crude ... The resultant increase in the price of heavy crude is estimated to provide an increase in annual revenue to the Cana-

dian producing industry in 2013 of **US \$2 billion to US \$3.9 billion.**" [emphasis added].<sup>36</sup>

Thus, according to TransCanada's own analysis, Canadian oil companies will reap billions in profits by manipulating the price of oil in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee and Wisconsin. Noted oil economist Philip Verleger called this scheme "highway robbery."<sup>37</sup>

TransCanada's plot has landed the company in hot water with U.S. Senator Ron Wyden of Oregon. On April 6, 2011, Senator Wyden wrote a letter to Jonathan Leibowitz, chairman of the Federal Trade Commission, calling for the FTC to "investigate whether anti-competitive practices violating U.S. antitrust laws have occurred in relation to the proposed pipeline project."<sup>38</sup>

While TransCanada's plan may have appealed to Canadian oil companies, it is no surprise that TransCanada has tried to keep it under wraps in the U.S.

35 Canadian National Energy Board, Hearing OH-1-2009, TransCanada Keystone Pipeline GP Ltd., Keystone XL Pipeline Project, Transcript Volume 3 (September 17, 2009). <https://www.neb-one.gc.ca/ll-eng/Livelink.exe/fetch/2000/90464/90552/418396/550305/570526/570650/A1L3V6 - Vol.3-ThuSep17.09?nodeid=570651&vernum=0&redirect=3>.

36 "Western Canadian Crude Supply Markets, Prepared for: TransCanada Keystone Pipeline GP Ltd." Prepared by Purvin and Gertz Inc for TransCanada. Section 3.4.3. available at: [https://www.neb-one.gc.ca/ll-eng/Livelink.exe/fetch/2000/90464/90552/418396/550305/556487/549220/B-1f - Supply and Markets %28Tab\\_3%29\\_incl\\_Appendix\\_3.1 - A119R7?nodeid=549324&vernum=0&redirect=3&redirect=4](https://www.neb-one.gc.ca/ll-eng/Livelink.exe/fetch/2000/90464/90552/418396/550305/556487/549220/B-1f - Supply and Markets %28Tab_3%29_incl_Appendix_3.1 - A119R7?nodeid=549324&vernum=0&redirect=3&redirect=4).

37 Verleger, Philip. "If gas prices go up further, blame Canada." *Minneapolis Star Tribune*. March 13, 2011.

38 "Wyden Calls for FTC Investigation into Secret Agreements to Drive Up Tar Sand Oil Prices." April 6, 2011. Available at: <http://wyden.senate.gov/newsroom/press/release/?id=158ffa9a-6380-4c2a-bbec-180c16839018>.

## Part 4 – TransCanada: The Insider

TransCanada has not been shy about throwing its weight around in Washington, D.C. and state capitols to gain approval for the Keystone XL pipeline.

Prior to the 2010 election, TransCanada made potentially illegal contributions to the campaigns of two Nebraska officials, whose support they were seeking for the Keystone XL pipeline. Federal election law forbids foreign companies from contributing to federal, state, or local elections, but TransCanada sent \$2,500 to the reelection campaigns of Nebraska Governor Dave Heineman and Attorney General Jon Bruning. Both candidates later returned the money after the donations became a scandal.<sup>39</sup>

Following the appointment of Hillary Clinton as Secretary of State in 2009, TransCanada hired Paul Elliott, a former deputy campaign director on Hillary Clinton's presidential campaign, to lead its Washington, D.C. lobbying efforts.<sup>40</sup> It is surely no coincidence that TransCanada wanted someone with ties to the Secretary of State to run its lobbying efforts: because the Keystone XL would cross the U.S. border with Canada, TransCanada must win approval from Hillary Clinton's Department of State to proceed with the project.



TransCanada's influence in the nation's capital has become more controversial in recent months. The State Department has stalled a Freedom of Information Act request from a group of watchdog organizations, including Friends of the Earth, which sought communications between Elliott and Clinton's State Department staff.<sup>41</sup> A reporter revealed that Elliott only registered as a lobbyist after his association with TransCanada was scrutinized by the press.<sup>42</sup>

39 Sheppard, Kate. "Greasing the Political Pipes, TransCanada-Style." MotherJones.com. October, 8, 2010.

40 McGowan, Elizabeth. "Clinton Ties to Pipeline Lobbyist Obscured by Questionable FOIA Denial." SolveClimateNews. January 17, 2011.

41 Id.

42 Schor, Elana. "State Department denies FOIA request on Keystone XL pipeline." E&E News. January 12, 2011.



## Part 5 – TransCanada: The Deceiver

To try to build broad public support for the project, TransCanada has used the same kinds of deceptive practices it uses on individual landowners with the public at large. It has resorted to deceptive advertising and exaggerated claims about the economic benefits that the pipeline would produce, including prime-time ads on some of America's most watched television networks.<sup>43</sup>

In these times of economic hardship, TransCanada is promoting exaggerated estimates of the jobs that would be created by the construction of the pipeline to garner public support. As part of its review of the project, the U.S. State Department conducted an analysis of the potential number of jobs that the Keystone project was likely to create over the three year construction period. The State Department found that the construction of the pipeline would create between 5,000 and 8,300 year-long employment opportunities, with only about 10-15 percent of those going to local workers in the states crossed by the pipeline.<sup>44</sup>

TransCanada, however, has been touting its own analysis that purports to show that job creation would be 13 times higher than State Department estimates, and more than 20 times higher than the State Department's *best case* estimates for Oklahoma and Texas. The company also makes the rather remarkable claim that almost 30,000 year-long positions would be created in states outside the pipeline's route.<sup>45</sup>



*TransCanada's TV ads claim the pipeline will create 20,000 American jobs, but State Department estimates don't match up.*

This would not be the first time that TransCanada's jobs did not live up to the company's promises. After promoting its first Keystone pipeline as an economic driver for South Dakota, the company only hired 11 percent of workers from local communities being put at risk by the pipeline.<sup>46</sup>

43 Between February 4 and February 17, 2011. TransCanada aired an ad on CNN, FOX News, MSNBC, ESPN, and Comedy Central that touted its high job creation estimates.

44 U.S. Department of State, Draft Environmental Impact Statement for the Keystone XL Pipeline Project, Chapter 3.10.2.3: <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open>.

45 The Perryman Group. "The Impact of Developing the Keystone XL Pipeline Project on Business Activity in the US." Available at: <http://>

[www.transcanada.com/docs/Key\\_Projects/TransCanada\\_US\\_Report\\_06-10-10.pdf](http://www.transcanada.com/docs/Key_Projects/TransCanada_US_Report_06-10-10.pdf).

46 "TransCanada Keystone Pipeline, LP's Objections and Responses to Dakota Rural Action's First Set of Interrogatories and Request for Documents." Page 18.

## Conclusion

When TransCanada first applied for the Keystone XL permit, its approval was almost a foregone conclusion. But that was because Americans barely knew of its existence. Now, the controversy over this mega-project is growing daily. President Obama recognized the controversy when he said “there are some environmental questions about how destructive they are, potentially, what are the dangers there, and we’ve got to examine all those questions.”<sup>47</sup>

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**Doubling reliance on the dirtiest and most expensive form of oil is a step backward for a nation wishing to move to a new energy future.**

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The destructive nature of tar sands oil is one cause of this growing concern. After all, doubling reliance on the dirtiest and most expensive form of oil is a step backward for a nation wishing to move to a new energy future. But TransCanada itself has helped stoke the controversy through its behavior. The company has developed the reputation of a bully and bamboozler, intimidating farmers with legal threats, selling its pipeline to the public with exaggerated claims of jobs,

and dodging questions about the safety of oil running through its pipeline.

Inadvertently, TransCanada has done the American public a favor by pulling back the curtain on the reality of the tar sands oil industry. While the rhetoric is about “American jobs” and “energy security,” the reality is that the Keystone XL pipeline is a project by, for and of Big Oil. The beneficiaries will be oil producers in Alberta, a few refineries in Texas, and TransCanada. The rest of us don’t need this project at all.

The Obama administration is acutely aware of the need to revamp energy policy, to get out from under the thumb of Big Oil, and to support new, clean energy sources. To do all that and also approve Keystone XL would be like trying to ride two horses going in opposite directions. To learn more and join the growing fight against TransCanada’s tar sands boondoggle, visit us at [foe.org/keystone-xl-pipeline](http://foe.org/keystone-xl-pipeline).

The Obama administration is expected to make a final decision about the fate of the Keystone XL later this year and should put the safety and health of Americans ahead of the profits of oil companies like TransCanada.

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<sup>47</sup> “Remarks by the President in a Town Hall Discussion on Energy” Gamesa Technology Corporation, Fairless Hills, Pennsylvania. April 6, 2011.



Nebraskans are fighting back against the Keystone XL pipeline. Photo credit: Mitch Paine/Bold Nebraska.

## **Dirty Business:**

How TransCanada Pipelines bullies farmers, manipulates oil markets, threatens fresh water and skimps on safety in the United States.

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