Conflicts in the Licensing Process for

TransCanada's Keystone XL Pipeline

by

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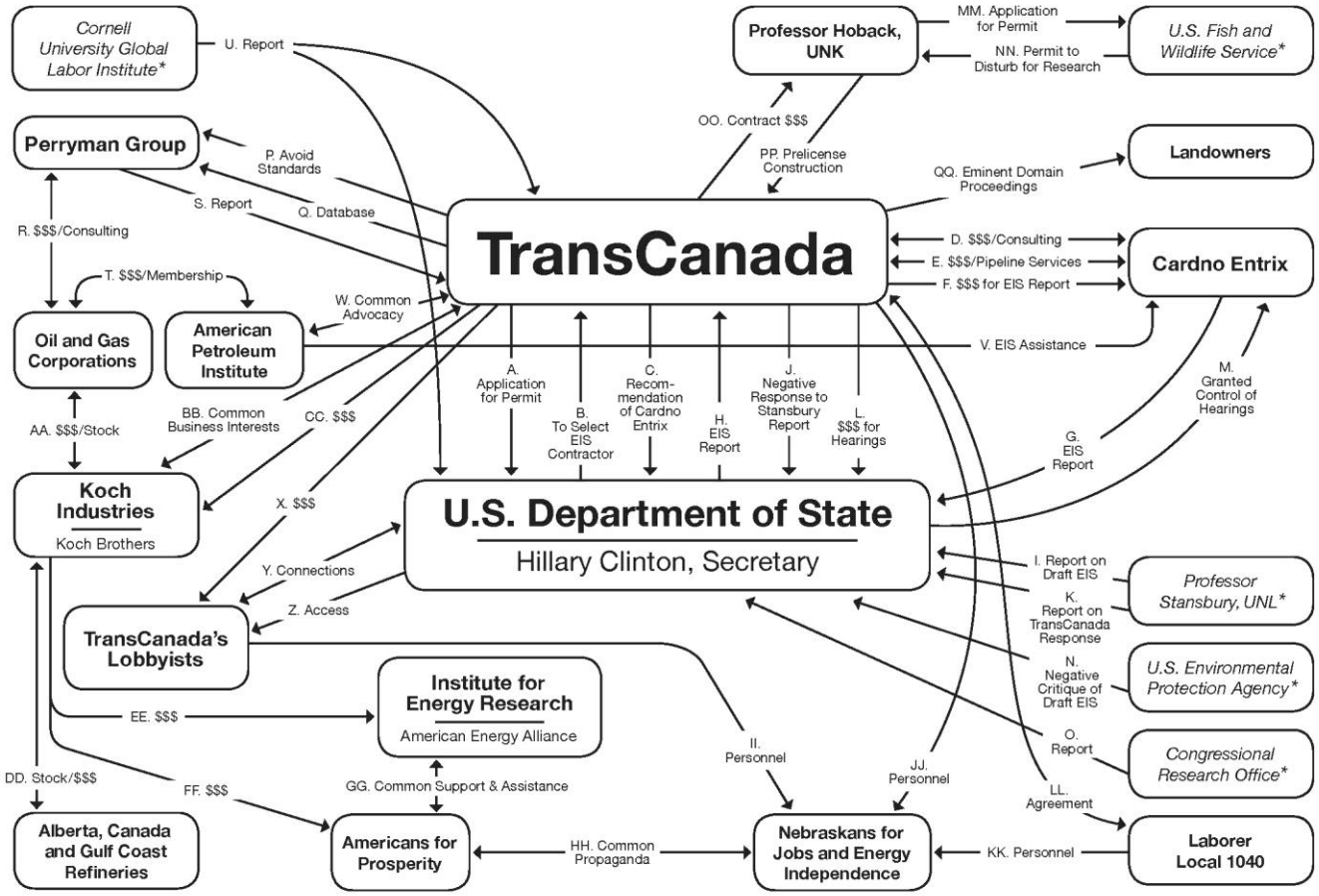
Figure 1. Diagram of Conflicts in the Keystone XL Licensing Process

*Italics designate those without a conflict.



Source: Hayden, *Conflicts in the Licensing Process for TransCanada Keystone XL Pipeline*, November 2011

Contents

The purpose of this report is to investigate and explain conflicts involved in the ongoing licensing process whereby TransCanada is attempting to obtain permission from the U.S. Department of State to build a pipeline (named Keystone XL) from the tar sand oil fields of Alberta, Canada to the Gulf Coast. The economic concepts important in guiding this investigation are: (1) rules are important, (2) moral hazard, and (3) corporate strategic misinformation[1].

Economists emphasize the importance of rules for structuring and determining the working of economic institutions and the social institutions that support, regulate, and enforce the economic institutions. The kind of economic structure that emerges from the proposed Keystone XL pipeline very much depends on which rules are followed. The term "rules" is used here to mean laws, norms, standards, criteria, and regulations. As Nobel Prize economist Elinor Ostrom and her co-author Xavier Basurto have recently emphasized, rules are the result of efforts to achieve order and predictability by defining actions that are required, permitted, or forbidden to be taken in particular situations "or face the likelihood of being monitored, and sanctioned in a predictable fashion" (2011, p. 322). "A major task for those studying a problem area is to identify the convergence of various rules, socioecological properties, and situations" (Hayden 2009, p. 111). The task here is to investigate particular situations of the Keystone XL pipeline licensing process and to identify and discuss whether there are conflicts with rules. If the pipeline is not constructed according to appropriate rules, the economic results it produces cannot be considered efficient.

A moral hazard is a perverse incentive that rewards one organization for exploiting another. Moral hazards are created by institutions—often government agencies. Moral hazards are generated when perverse incentives are provided that encourage an organization to act in a

way so that it hurts others in the economy. For example, if a government agency fails to enforce regulations to control adverse corporate behavior, the hazard is that more and more corporations will undertake the immoral behavior that is detrimental to society at large.

Corporate strategic misinformation is when corporations strategically misinform a government agency; for example, when a corporation provides an environmental protection agency with incorrect pollution data.

We see below that these three economic concepts are important for understanding conflicts in the Keystone XL pipeline licensing process.

Diagram of Conflicts in the Keystone XL Licensing Process

Figure 1 is a diagram to outline where conflicts do and do not exist. It is a way to present conflicts found with regard to interacting organizational institutions. The entities printed in italics in Figure 1 were not found to be involved in conflicts. Between the organizations and persons in Figure 1 are directed lines to indicate what is being delivered. Systems function through deliveries among the parts, so this report is organized around deliveries made among key players in the licensing process. Deliveries are designated by alphabetical letters in Figure 1, and the explanation of the directed lines is organized in the text by the same letters, as follows.

A. TransCanada's Delivery to the Department of State: Directed line A in Figure 1 indicates that TransCanada submitted a license application to the U.S. Department of State for permission to build a proposed pipeline for transporting heavy crude from Canada's tar-sand fields in Alberta to refineries along the Gulf Coast. The pipeline that is named Keystone XL must be approved by the Department of State instead of the U.S. Department of Environmental Protection (EPA) because the pipeline comes from a foreign country.

B. Department of State's Delivery to TransCanada: Directed line B in Figure 1 represents one of the first steps in the process of evaluating the license application. It was a misstep. This misstep was for Department of State to assign to TransCanada the task of soliciting and screening bids for contractors to complete the important environmental impact statement (EIS) of TransCanada's own license application. This misstep laid the groundwork for a series of further missteps outlined in Figure 1 that generated a process dominated by conflicts, especially financial conflicts of interest. A corporation should not be involved in the selection of a contractor to assess the corporation's own license application.

C. TransCanada's Delivery to Department of State: The second misstep, and major financial conflict of interest, is for TransCanada to recommend that its own longtime consultant, Cardno Entrix, be considered to be the consultant to the Department of State to review TransCanada's own application to build the Keystone XL. This is indicated by the directed line C in Figure 1. An assistant secretary of the Department of State stated that TransCanada managed the bidding process to find a contractor and recommended three candidates, with Cardno Entrix being placed at the top of the list (*The New York Times*, October 7, 2011).

In its own marketing material Cardno Entrix makes it clear that TransCanada is a major client, so its future income depends on how satisfied TransCanada is with its analysis of the license application. In addition to being a past consultant to TransCanada, there is potential for Cardno Entrix "to garner more work involving the pipeline" because Cardno Entrix "provides a wide range of pipeline services, including assisting in oil spill response" (*The New York Times*, October 7, 2011). This means the future could hold great profits for Cardno Entrix if TransCanada likes the work completed by Cardno Entrix and if TransCanada builds Keystone XL, because TransCanada will need service responses to inevitable pipeline leaks and breaks.

TransCanada's consultant-selection activity creates not only a financial conflict of interest, it also creates a conflict with federal law in a case where federal law requires an impartial environmental analysis for project licensing. It is a conflict with law because the National Environmental Policy Act (NEPA) requires that outside contractors be hired "solely by the lead agency" and that contractors should "execute a disclosure statement" that the contractors "have no financial or other interest in the outcome of the project" (40 C.F.R. Sec. 1506.5(c)). Cardno Entrix does have a financial interest in the project because of its long-term consulting relationship with TransCanada and because of the present value of future expected income from contracts with TransCanada. As stated by law professor Oliver A. Houck, who is an expert on NEPA, Cardno Entrix had a financial conflict of interest because it has a "'financial interest in the outcome of the project'"; thus, "'t]heir primary loyalty is getting this project through in the way the client wants'" (*The New York Times,*, October 8, 2011).

D. Bidirectional Delivery Between TransCanada and Cardno Entrix: Bidirectional line D represents the bidirectional exchange of money from TransCanada for consulting services from Cardno Entrix (see C above). An organization dependent on a corporation for consulting service income should not have been considered an appropriate organization to serve as a consultant to make an independent decision about that corporation.

E. Bidirectional Delivery Between TransCanada and Cardno Entrix: Bidirectional line E represents another aspect of what was explained above in C. Directed line E has arrows on both ends to indicate that Cardno Entrix will be in a position to provide pipeline services to TransCanada's Keystone XL, if it is constructed, in return for money provided to Cardno Entrix from TransCanada. To use the language of economists, there is a present value to future expected income. Cardno Entrix could not expect that income if they did anything to decrease

TransCanada's chances of getting the license application for Keystone XL approved. This establishes a major financial conflict of interest.

F. TransCanada's Delivery to Cardno Entrix: Directed line F indicates a further financial conflict of interest because the Department of State had TransCanada make direct payments to Cardno Entrix for the EIS report being prepared for Department of State. "TransCanada pays the consultant directly . . ." (*The New York Times,* October 7, 2011). Because Department of State did not maintain control over the payment to Cardno Entrix, it could not monitor what the money was being spent for or the quality of the analysis. As this arrangement decreased Department of State's oversight, it enhanced TransCanada's control over the consultant.

G. Cardno Entrix's Delivery to Department of State: Directed line G represents the delivery of the EIS Report from Cardno Entrix to the Department of State. This is the report that TransCanada recommended to Department of State that Cardno Entrix be considered to complete (see B and C). It is the EIS report that TransCanada paid Cardno Entrix to complete (see F).

H. Department of State's Delivery to TransCanada: Directed line H indicates Department of State's distribution of the EIS report completed by Cardno Entrix to TransCanada (see G).

I. Professor Stansbury's Delivery to Department of State: Directed line I indicates the delivery of the report from Professor Stansbury's analysis of the Draft EIS to the Department of State. Professor John S. Stansbury is a University of Nebraska-Lincoln engineering professor who specializes in water engineering and who has been a consultant teaching the U.S. Army Corps of Engineers how to do risk assessments. "His report is based on publicly available information TransCanada and federal regulators have disclosed about the project and past pipeline spills, and some of his colleagues reviewed the report" (*Bloomberg Businessweek,* July 11, 2011). Stansbury said neither TransCanada nor the regulators evaluating the proposed

Keystone XL pipeline have properly considered the risks and, additionally, that those risks have the potential to create serious damage. According to Stansbury, "'[t]hey presented what I thought was an unrealistically optimistic picture of the impacts from the pipeline'" (*Bloomberg Businessweek,* July 11, 2011). His analysis found that "the potential frequency and magnitude of oil spills from Keystone Xl were intentionally underestimated in the environmental impact statement" (*Omaha World Herald,* October 16, 2011). He completed the analysis for the report without direction to do so, without instruction or direction about how to complete the analysis, and without monetary compensation from any institutional organization. There are no lines of delivery directed to Professor Stansbury that indicate any financial conflict of interest for him.

J. TransCanada's Delivery to Department of State. Directed line J indicates TransCanada's negative response to the report that Professor Stansbury sent to the Department of State. Consistent with the Department of State's allowing TransCanada to exert influence over the selection of the contractor to complete the EIS (see B and C), the Department of State did not turn to an independent third party to analyze professor Stansbury's report. Instead, the Department of State requested that TransCanada provide a response to the Stansbury report, and accepted the response of TransCanada about the analysis of its contractor's EIS. This means TransCanada is offering comment where it has a financial conflict of interest. The State Department includes TransCanada's response verbatim in the Final EIS (Volume 8, Appendix V) without comment, as if it is the truth, thereby allowing the party with a financial conflict of interest to have the final word.

K. Professor Stansbury's Delivery to Department of State. Directed line J indicates that Professor Stansbury (see I) delivers a response to the response of TransCanada (see J). As

explained above, there is no indication of a financial conflict of interest with regard to Professor Stansbury.

L. TransCanada Delivers to Department of State: Compounding the financial conflict of interest, TransCanada has provided money to pay for hearings to take comments on its own EIS, as indicated by directed line L. This is like paying money to the Department of State, which should have used taxpayer money to sponsor the hearings so that TransCanada would not have been in a position to manipulate the hearing process. This is another misstep similar to the granting of power by Department of State to Cardno Entrix for control over the hearings (see M).

M. Department of State's Delivery to Cardno Entrix. Directed line M indicates that Department of State granted control of the hearings to Cardno Entrix regarding the EIS that was completed by Cardno Entrix's EIS. "The U.S. Department of State public hearings . . . are under the purview of Cardno Entrix . . . (*ThinkProgress,* September 28, 2011; see also Department of State's Final EIS). This is an obvious conflict of interest, and it was expressed as Cardno Entrix controlled the structure and mechanics of the hearings, access in the buildings, where the hearings were held, and so forth.

N. U.S. Environmental Protection Agency's Delivery to Department of State: Directed line N indicates that the EPA has delivered negative critiques of Department of State's two Draft EISs completed prior to the final EIS. The EPA found the EISs prepared by Cardno Entrix about the Keystone XL to be inadequate and providing insufficient information (*The New York Times,* October 7, 2011). No line is directed toward EPA; thus, there is no financial conflict of interest expressed.

O. Congressional Research Service's Delivery to Department of State: Directed line O indicates that the Congressional Research Service (CRS) provided a memorandum to

Department of State regarding oil pipeline siting authority. The memorandum clarifies that: "The federal government does not have siting authority for oil pipelines even interstate pipelines. No . . . statutory language requires oil pipeline owners and operators to obtain certification from FERC or any other federal agency. In the absence of federal government siting authority, state laws establish the primary siting authority for oil pipelines, including interstate oil pipelines." (CRS September 20, 2010, p. 5). No financial or other conflict of interest was found for CRS.

P. TransCanada's Delivery to The Perryman Group: TransCanada contracted with The Perryman Group of Waco, Texas to complete an analysis of the costs and benefits that would be forthcoming from Keystone XL[2]. Perryman Group has numerous kinds of conflicts involved in its report for TransCanada. Directed line P indicates that TransCanada allowed Perryman Group to avoid all kinds of normal standards that would be expected in a study dealing with the analysis of costs and benefits of a major project like Keystone XL (see S and T below.)

The first conflict involved is that the staff of professionals presented on the Perryman Group website does not have the capacity to adequately complete such a study. The only economist is M. Ray Perryman. No one else listed, according to Perryman's website, performs the kind of research activities needed to complete a study on economic costs and benefits. One economist is not sufficient to do the job. TransCanada had to be aware of the insufficient size and capacity of the staff.

A second conflict is the large number of research projects completed by the Perryman Group in recent years. It is not possible to adequately complete so many projects with a small staff and only one economist, especially when that economist is the company's CEO and spends time making numerous speeches. The many Perryman Group reports perused have only one name as the sole author—that of M. Ray Perryman. It is completely in conflict with reality to

expect one person to do quality work on so many reports. Again, TransCanada should have been aware of Perryman's track record.

Third, the Perryman report for TransCanada is in conflict with most of the criteria for analysis that have been established by the Office of Management and Budget (OMB) and the Government Accountability Office (GAO), as well as standards in the economics profession.

It is well understood that estimates need to include environmental costs and benefits for a project's life from cradle-to-grave. Cradle-to-grave means from resource extraction to use to disposal. This was not done with the Perryman report. Standards emphasized by OMB are found in "Circular A-94: Guidelines and Discount Rates for Benefit-Cost Analyses of Federal Programs." Standards that Perryman ignored from OMB's recommendations include the following.

- The standard criterion for deciding whether a program can be qualified on economic principles is net present value (p. 3).
- *"Quantifying* benefits and costs is worthwhile, even when it is not feasible to assign monetary values; *physical measurements* may be possible and useful" (p. 3).
- Analysis should include the evaluation of alternatives, to include doing nothing (p. 4).
- "Both intangible and tangible benefits and costs should be recognized." The relevant concept is broader than private-sector production (p. 5).
- Because uncertainty is basic to analysis, its effects should be analyzed and reported. "Useful information in such a report would include the key sources of uncertainty; expected value estimates of outcomes; the sensitivity of results to important sources of uncertainty; and, where possible, the probability distributions of benefits, costs, and net benefits" (p. 10).

GAO's Cost Guide (2009) emphasizes the use of "established methods and valid data" (p. i) for making estimates. The "twelve steps of a high-quality cost estimating process" that are explained in the document are outlined in its Table 2 (pp. 9-11). The Perryman report is in conflict with most of the estimating standards mentioned. Some of the standards with which the Perryman report is in conflict are as follows:

- Document the model.
- Define technology implications. "Determine technology refresh cycles, technology assumptions, and new technology to be developed." (p. 9).
- Define security needs and risk items.
- Clearly define what the estimate excludes.
- Specify the equipment and other resources the government is to furnish.
- Document all pertinent information, including an assessment of data reliability and accuracy.
- Compare estimates against independent estimates.
- "Conduct risk and uncertainty analysis." (p. 10).
- Document all steps used to develop the estimate.
- "Describe in detail the estimating methodology and rationale used …" (p. 11).

The Perryman report is in conflict with all these normally accepted standards for making economic estimates. In the report, Perryman states that his firm "was asked to conduct a comprehensive economic impact analysis of the proposed Keystone XL Pipeline" (Perryman 2010, p. 2). It would be necessary to meet the standards suggested by EPA and GAO, as well as by the economics profession, before such an analysis could be considered comprehensive[3].

Beyond the conflicts due to staff inadequacy and failure to apply normally accepted standards for analysis, the Perryman Group is involved with a number of different kinds of conflicts of interest.

First, the money and contract for the study came directly from TransCanada, which has a financial interest in the outcomes of the study. That is a slippery slope. Such an arrangement generates a moral-hazard situation that can lead to the presentation of strategic misinformation, as has been documented here.

Second, the data used in the study came directly from TransCanada, which has a financial interest in presenting data consistent with that financial interest (see Q). The Perryman Group should have insisted on developing the database, or refused to take the contract in order to avoid the obvious financial conflict of interest.

Third, the Perryman Group completes studies for large corporations involved in the petroleum industry (see R). The petroleum industry as a whole is very much in support of the Keystone XL pipeline, as is clear from the active advocacy efforts (see W) and EIS assistance (see V) by the American Petroleum Institute. It is to Perryman's financial interest to complete the study for TransCanada in a manner consistent with the wishes of the petroleum industry in order to assist Perryman in getting future contracts with that industry.

Q. TransCanada's Delivery to The Perryman Group: Directed line Q indicates that the database for the study that TransCanada paid the Perryman Group to complete for TransCanada came directly from TransCanada (Perryman 2010, pp. 22 and 37). As stated above (see P), this creates a financial conflict of interest. In addition, it is in conflict with valid scientific work because there was no explanation in the Perryman Group report about the methodology or standards used by TransCanada to generate the data.

R. Bidirectional Delivery Between Oil and Gas Corporations and The Perryman Group: Directed line R indicates dollars paid to Perryman Group by major petroleum corporations to pay for consulting completed by the Perryman Group for the petroleum corporations. According to the Perryman Group's website, there have been consulting contracts and payments from Browning-Ferris Industries, Atlantic Richfield, Chevron, Exxon-Mobil, and Occidental Petroleum Company. This creates a financial conflict of interest on the part of Perryman Group with regard to the TransCanada study (see P). The case of Chevron is an example. Chevron reported in its lobbying disclosure report to the federal government that it had focused federal lobbying in support of the Keystone XL pipeline (*Omaha World Herald,* September 18, 2011).

S. The Perryman Group's Delivery to TransCanada: Directed line S indicates that Perryman's report was delivered to TransCanada.

U. Cornell University Global Labor Institute's Delivery to TransCanada and Department of State: Directed lines U are the delivery by Cornell University Global Labor Institute to TransCanada and the Department of State of a report completed by the former that is a critique of the Perryman report. The Global Labor Institute's report, *Pipe Dreams? Jobs Gained, Jobs Lost by the Construction of Keystone XL* (September 2011), methodically explains the many flaws of the Perryman report—exaggerated job creation, exaggerated manufacturing in the U.S., failure to properly define overall cost and project-related spending, lack of transparency (2011). The Global Labor Institute's report is well documented, well written, and readily available, so there is no reason to repeat its findings here, especially since the concern here is with conflicts. The Global Labor Institute study clarifies that the Perryman report suffered from its conflicts of interest and conflicts with methodological standards explained in P, Q and R. The Cornell University Global Labor Institute is not involved in a financial conflict of interest situation with

any of the other organizations involved with the Keystone XL licensing process, indicated by the absence of lines directed to it in Figure 1.

T. Bidirectional Delivery Between Oil and Gas Corporations and American Petroleum Institute. Bidirectional line T indicates oil and gas corporations' delivery of money to the American Petroleum Institute in return for membership. Due to the petroleum industry's expectation of profit from Keystone XL, its members have demonstrated strong support for the pipeline. Consequently, American Petroleum Institute has mounted a strong lobbying effort to promote the pipeline.

V. American Petroleum Institute Delivery to Cardno Entrix: Directional line V specifies the assistance provided by the American Petroleum Institute to Cardno Entrix for completion of the EIS. John Kerekes, American Petroleum Institute's regional manager in the Midwest, said, with regard to Keystone XL, "'We've been engaged from the beginning. We worked on the draft and supplemental and final environmental impact statement'" (*OpenSecrets.org*, September 28, 2011).

W. Bidirectional Delivery Between American Petroleum Institute and TransCanada: Bidirectional line W indicates the common advocacy and lobbying activities of American Petroleum Institute and TransCanada in support of Keystone XL, to include officials of both organizations holding media conferences together.

X. TransCanada's Delivery to TransCanada's Lobbyists: Lobbying for a corporate client has an inherent financial conflict of interest in that lobbyists have a financial interest to continue to get paid by their client. Such a conflict establishes a moral hazard situation that can encourage the lobbyist to distribute corporate strategic misinformation. Directed line X indicates the

payments made by TransCanada to its lobbyists. For example, it has spent about $800,000 on federal lobbying through the first half of 2011 (Omaha World Herald, September 18, 2011).

Y and Z. Bidirectional Delivery Between TransCanada Lobbyists and Department of State: Directed lines Y and Z indicate the long-term connections between TransCanada's lobbyists and Department of State personnel and the access Department of State personnel gave to the lobbyists. The long-term connections between the two sets of personnel have led to a conflict on the part of Department of State to maintain an objective evaluation of TransCanada's permit application. The personal relationships overrode a requirement to base decisions on valid methodologies and databases, and to ignore excellent studies that indicated weaknesses in Keystone XL's permit application. The personal relationships are a result of Hillary Clinton's position as Secretary of the Department of State. The connections came about because TransCanada's three lobbying firms at the federal level hired high-echelon personnel from Hillary Clinton's campaign for president, President Bill Clinton's Administration, and President Barack Obama's campaign for president. This gave them great ability to reach people—to include Secretary Hillary Clinton—in the Department of State. Furthermore, the lobbying firms themselves were major fundraisers for Hillary Clinton's campaign. These relationships led to the following conduct.

- Cozy and collaborative relationships existed between government employees and lobbyists.
- Department of State officials coached TransCanada officials.
- Department of State officials provided insider information to TransCanada.

- Cheerleading email and memos were sent by Department of State personnel to TransCanada's lobbyists when the latter accomplished some goal on TransCanada's behalf.
- Department of State created a lack of transparency regarding contacts with TransCanada's lobbyists.
- Department of State failed to comply with Freedom of Information Act requirements—requests for documents were not produced until numerous requests were filed.

The details, people, and lobbying firms involved in this conduct have been explained in *The New York Times* (October 7, 2011), *The Washington Post* (September 22, 2011), and *DeSmogBlog* October 5, 2011).

The nexus of the conflicts of the TransCanada lobbyists and Department of State employees is probably the most important determinant of all the problems encountered with the Keystone XL decision process. The TransCanada lobbyists were overtaken by financial conflicts of interest, and the Department of State employees were overtaken by personal and political connections, which caused the employees to act in conflict with expected standards of care, competence, and prudence. Thus, Department of State did not select or heed unbiased third-party contractors and analysts.

AA. Bidirectional Delivery Between Koch Industries, Inc./Koch Brothers and Oil andGas Corporations: Bidirectional line AA indicates that Koch Industries/Koch Brothers owns stock in and receives income from numerous oil and gas corporations. Given the extensive multi-industry ownership holdings of Koch Industries, it is difficult to find areas where that conglomerate does not have a financial conflict of interest.

BB. Bidirectional Delivery Between Koch Industries, Inc./Koch Brothers and TransCanada: Beyond Koch Industries' monetary earnings gained because of TransCanada's pipeline activities (see CC), the two also have other common business interests. This is represented by bidirectional line BB. Koch Industries is part owner in corporations that are mining the tar sand, and those corporations want the pipeline in order to be able to transport what has been mined and to be able to mine more of it. Koch Industries also owns a crude oil terminal and refinery that does initial refining to prepare the tar sand for pipeline transportation (*Reuters*, February 10, 2011). Koch Industries and TransCanada have common business interests in building the pipeline, and, thus, both have an inherent financial conflict of interest when creating and distributing information about the pipeline.

CC. TransCanada's Delivery to Koch Industries, Inc./Koch Brothers: Directional line CC indicates monetary earnings will be gained by Koch Industries because of TransCanada's Keystone XL pipeline. This gain comes through Flint Hills Resources, which is a subsidiary of Koch Industries. In a form submitted to the Canadian Energy Board, Flint Hills indicates that it has a substantial interest in the Keystone XL pipeline. "In 2009, Flint Hills Resources Canada LP, an Alberta-based subsidiary of Koch Industries, applied for—and won—'intervenor status' in the National Energy Board hearings that led to Canada's 2010 approval of its 327-mile portion of the pipeline. . . . In the form it submitted to the Energy Board, Flint Hills wrote that it 'is among Canada's largest crude oil purchasers, shippers and exporters. [. . .] Consequently, Flint Hills has a direct and substantial interest in the application for the pipeline under consideration. To be approved as an intervenor, Flint Hills had to have some degree of "business interest" in Keystone XL" (*The Guardian*, October 5, 2011).

In addition, Koch Industries, Inc. and Flint Hills Resources have interlocking directorships, with the President and Chief Operating Officer of Koch Industries serving on the board of directors of both corporations. Furthermore, Flint Hills Resources has an interlocking directorship with Georgia-Pacific, which is also owned by Koch Industries. There are five directors and officers from Koch Industries on the board of Georgia-Pacific (*Bloomberg Businessweek,* Business Exchange, July 15, 2011). Thus, Flint Hills Resources is well integrated into decision making at Koch Industries. Given its financial interest through Flint Hills, Koch Industries is in a conflict of interest situation regarding any activity it undertakes in support of the Keystone XL pipeline.

DD. Koch Industries, Inc./Koch Brothers Delivery to Alberta Canada and Gulf Coast Refineries: Bidirectional line DD indicates that Koch Industries owns stock in refineries in Alberta, Canada and the Gulf Coast—at both ends of the proposed Keystone XL Pipeline. The refinery activity in Canada is to prepare the tar sand for pipeline transport and in the Gulf Coast to complete the final product. As a stockholder, Koch Industries receives profit from the refineries. Such a financial interest leads to a conflict of interest when Koch engages in activities related to Keystone XL.

EE. Koch Industries, Inc./Koch Brothers Delivery to Institute for Energy Research/American Energy Alliance. The organization Nebraskans for Jobs and Energy Independence exhibits numerous financial conflicts of interest with respect to the dissemination of information. We begin to outline those conflicts with directed line EE that indicates Koch Industries provided funding to the Institute for Energy Research for many years (until 2007). According to the American Energy Alliance's website, it was started in 1989 and is the advocacy arm of The Institute for Energy Research. The president of American Energy Alliance joined

Institute for Energy Research and American Energy Alliance after working as a lobbyist for Koch Industries.

FF. Koch Industries, Inc./Koch Brothers Delivery to Americans for Prosperity: Directed line FF indicates the funds sent to Americans for Prosperity. David H. Koch was a founder of Americans for Prosperity and continues to support it. Americans for Prosperity does not attempt to overcome its financial conflict of interest situation from receiving money from Koch while distributing information and supporting other groups consistent with Koch's interest and ideology about the Keystone XL.

GG. Bidirectional Delivery Between Americans for Prosperity and American Energy Alliance: Bidirectional line GG indicates that the two Koch-related organizations, Americans for Prosperity and American Energy Alliance, form alliances with each other to provide each other with support and assistance to support the Koch agenda for the Keystone XL pipeline (*Lincoln Journal Star*, October 18, 2011). They do not try to overcome the conflict of interest situation generated by the money they receive from Koch; instead, they embrace it.

HH. Bidirectional Delivery Between Americans for Prosperity and Nebraskans for Jobs and Energy Independence: Bidirectional line HH demonstrates that Americans for Prosperity and Nebraskans for Jobs and Energy Independence undertake common activities and distribute similar propaganda that support and reinforce each others' message about TransCanada's proposed Keystone XL pipeline.

II. TransCanada's Lobbyists Delivery to Nebraskans for Jobs and Energy Independence: Directional line II indicates that TransCanada lobbyist Kissel/E&S of Lincoln, Nebraska delivers Joseph D. Kohout (Kissel/E&S website) to Nebraskans for Jobs and Energy Independence. According to a transcript of the Nebraska Unicameral's Natural Resources Committee, Kohout is

"registered lobbyist for TransCanada and its affiliated pipelines here in Nebraska" (February 17, 2011, p. 39). Kohout is an officer (Secretary/Treasurer) and a member of the three-member board of directors of Nebraskans for Jobs and Energy Independence, which is a nonprofit corporation (Nonprofit Corporation Biennial Report, State of Nebraska, No. 10140228 Filed April 2, 2011).

JJ. TransCanada Delivery to Nebraskans for Jobs and Energy Independence: The directional line JJ indicates that TransCanada delivers an employee of TransCanada, Beth Jensen, to serve on the three-member board of directors of Nebraskans for Jobs and Energy Independence, which is a nonprofit corporation (Nonprofit Corporation Biennial Report, State of Nebraska, No. 10140228 Filed April 2, 2011). Jensen is Director, Government Relations for TransCanada (MonDak Energy Alliance Agenda Update, February 23, 2011, Document Transcript).

LL. Bidirectional Delivery Between TransCanada and Laborers Local 1140 Delivery: The bidirectional line LL indicates a labor agreement between TransCanada and Laborers Local 1140. According to Ron Kaminski (business manager for the union), the agreement between the two is for workers for the pipeline (*Omaha World Herald*, February 2, 2011).

KK. Laborers Local 1140 Delivers to Nebraskans for Jobs and Energy Independence: Directional line KK indicates that Laborers Local 1140 delivers Ron Kaminski (business manager of the union) to Nebraskans for Jobs and Energy Independence, where Kaminski serves as president and member of the three-member board of directors (Nonprofit Corporation Biennial Report, State of Nebraska, No. 10140228 Filed April 2, 2011). Nebraskans for Jobs and Energy Independence serves as an active advocacy organization in support of Keystone XL's being built through the Sand Hills of Nebraska. The financial interest in TransCanada of Kohout, Jensen,

and Kaminski's labor union creates a financial conflict of interest situation for Nebraskans for Jobs and Energy Independence in terms of distributing fair and objective information about Keystone XL's ability to provide jobs and energy independence.

MM. Professor Hoback's Delivery to U.S. Fish and Wildlife Service: Directed line MM indicates that Professor Wyatt Hoback of the University of Nebraska-Kearney delivered an application for a permit to disturb the habitat of the endangered burying beetle for the purpose of research. Neither party has a conflict because of this action, considered by itself.

NN. U.S. Fish and Wildlife Service Delivery to Professor Hoback: Directed line NN indicates that the U.S. Fish and Wildlife Service delivered a permit to Professor Hoback to allow him to disturb the habitat of the endangered burying beetle for the purpose of research. There is no conflict indicated in this action by the U.S. Fish and Wildlife Service.

OO. TransCanada Delivery to Professor Hoback: Directional line OO indicates TransCanada's delivery of a contract and payment to Professor Hoback for him to utilize his permit from the U.S. Fish and Wildlife Service to hire a crew to move the burying beetle, mow its habitat, and clean its habitat of its food source along the path of the proposed Keystone XL pipeline. The conflict is that the permit Hoback received was for research, but TransCanada paid for it to be used to further its goal of clearing a path for pipeline construction (see PP).

PP. Professor Hoback's Delivery to TransCanada: Directed line PP represents consequences of Professor Hoback's delivery of activities explained above (see OO). Hoback was paid by TransCanada to supervise a crew to complete the beetle removal operation. "The Fish and Wildlife Service did not give TransCanada a permit to remove the beetles. Instead, the company is working under the supervision of Wyatt Hoback, an entomologist from the University of Nebraska Kearney, who has a research permit to study the insects" (*Reuters News*, October 7,

2011). Some groups consider this to be prelicense construction, which is in conflict with the law because the removal of the beetle is preparing the construction path before TransCanada received a permit to build. Given the conflict, groups have filed a complaint against TransCanada in Federal Court (Complaint for Declarative and Injunctive Relief, October 5, 2011). This will allow the court, as a disinterested third party, to resolve the conflict.

QQ. TransCanada's Delivery to Landowners: Directed line QQ indicates TransCanada's use of eminent domain against landowners to acquire the easement to grant pipeline access. The company has brought eminent domain actions against landowners in Texas and South Dakota but not in Nebraska. "TransCanada Inc. has been threatening to confiscate private land from South Dakota to the Gulf of Mexico and is already suing many who have refused to allow the Keystone XL pipeline on their property, even though the controversial project has yet to receive federal approval" (*Omaha World Herald/The New York Times,* October 27, 2011). TransCanada is not creating this conflict because of Department of State approval for the action. "A senior State Department official . . . said TransCanada had not sought federal approval to invoke eminent domain. He said the department had no authority on the issue and that it was up to state law and the courts to determine appropriate use of eminent domain laws" (*Omaha World Herald/The New York Times,* October 27, 2011). That does not make it a simple matter for TransCanada. "David A. Domina, a Nebraska trial lawyer whose firm studied the Keystone proposal, says it is hard to imagine local judges and juries in eminent domain cases—both in initial stages and on appeal—siding with a Canadian company against their neighbors" (*Bloomberg Businessweek*, September 5-11, 2011). It is understandable that landowners are concerned about their financial interest with regard to easement payments, so both parties have a financial conflict of interest involved.

Conclusion

Reviewing the deliveries of Figure 1 one-by-one (letter-by-letter) as was done above should not lead us to fail to keep our attention on the system as a whole. By studying Figure 1, we can see that when conflicts of interest are allowed to rule behavior in one part of the system, it places pressure on other parts to act in conflict with rules and standards; that is, to surrender to the moral hazard. By studying Figure 1, we see that correction of misinformation leads others in the system either to act to consider the corrected information or to generate more strategic misinformation. Which way others react very much depends on the decisions and actions of government agencies. It is an ongoing system that is constantly responding to others' decisions. The more the parties are allowed to act to advance their interests at the expense of the public, the more others will join in that behavior. The only way to reverse the escalation of such a system is for responsible government agencies to not surrender to such a system. When government agencies fail do their job, the moral hazard situation continues to spread, and more private organizations will fail to stand for the morality that generates reliable data instead of misinformation in the decision making process. This makes it very important for Department of State to enforce rules, laws, and standards; to appoint disinterested parties to be consultants; and to be cautious of information from those with a financial conflict of interest.

Notes

1. There are numerous additional economic issues that need to be analyzed in the decision making regarding the Keystone XL pipeline. Examples are as follows: (1) How much will Keystone XL increase monopoly power over pipeline capacity? (2) What impact will the pipeline have on gas and oil prices? TransCanada has reported

that Keystone XL will increase prices in the Midwest, but no analysis is provided. Others have stated that it will lower prices. It is difficult to believe decisions are being made on a project without knowing the impact on prices. (3) What is the impact of the new infrastructure on jobs? A spokesperson for the American Petroleum Institute stated that, "There is no way the building of infrastructure is a job loser." But, of course, history clarifies that new infrastructure usually leads to the loss of jobs. (4) What is the impact on costs? It has been stated that additional capital investment in the pipeline will increase costs, but what has been understood, at least since Adam Smith, is that increased capitalization increases productivity and thereby decreases cost.

2. The text of the Perryman Group report is 34 pages (with large margins) of repetitive statements followed by attached appendixes with numbers that are unexplained and undocumented. Much of the repetitive language is unsubstantiated statements about unstable supplies of petroleum from unstable regions of the world, although neither M. Ray Perryman nor members of his staff have expertise and/or experience in political science or diplomacy. Nor does the report present the results of any statistical studies from the scientific literature or from the Perryman Group's own statistical analyses to document the relationship between unstable geographic regions and erratic global petroleum supplies. Unsubstantiated statements were all that was offered.
3. There was no concern about costs in the Perryman report. Information is available about the standard level of industrial disease associated with the industry, yet none of that information was consulted. What additional health care costs would be

incurred? What are the monetary costs to businesses and communities from pipeline leaks and breaks? These are real-world concerns that are not pursued in the report. In fact, Perryman has an unorthodox economic approach that counts all costs as benefits. All cost expenditures in the report are counted as benefits.

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