

Testimony of Michael J. Linder
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Before the Subcommittee on Energy and Power
Committee on Energy and Commerce
US House of Representatives

American Jobs Now: A Legislative Hearing on H.R. 3548, the North
American Energy Access Act
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Mr. Chairman,

My name is Mike Linder. I am the Director of the Nebraska Department of Environmental Quality (NDEQ). The NDEQ is the agency in Nebraska which has the responsibility for most of the environmental programs in the state including those delegated to Nebraska from the U.S. Environmental Protection Agency.

With regard to the Keystone XL Pipeline, the NDEQ had only peripheral involvement prior to the passage of legislation by the Nebraska Legislature during a Special Session in November 2011. That Session was called by Governor Heineman for the purpose of dealing with concerns by Nebraska's citizens with the proposed route of the pipeline in the state and, in particular, with the portion of the route proposed to go through the Sandhills region of the state which overlies a portion of the vast Ogallala ground water aquifer. NDEQ's prior involvement was for fairly minor, construction-related permits but no permit for the project per se based on an environmental evaluation. Nebraska did not have a so-called "Little NEPA" or siting law.

The Special Session resulted in two legislative bills being signed by the Governor. One bill dealt with future siting of major oil pipelines. These would be projects that had not submitted an application to the U.S. Department of State pursuant to Executive Order 13337 prior to the effective date of the bill. The other bill, LB 4, dealt with any other

major oil pipeline. In effect, LB 4 deals with the Keystone XL Pipeline project only and it enables the NDEQ to conduct a Supplemental Environmental Impact Statement (SEIS) under NEPA.

Under LB 4, the NDEQ is able to conduct an environmental review of the Keystone XL project. The understanding was that the applicant would alter its proposed route to avoid the Sandhills region in Nebraska. To the extent the NDEQ would work with a federal agency in a NEPA review, we are to do so under the terms of a Memorandum of Understanding between NDEQ and the federal agency involved. This provision was added to LB 4 after negotiations between the State Department and the Nebraska Legislature as I understand it.

Upon enactment on November 22, 2011, NDEQ began implementing LB 4. On December 2, 2011, we hired a full service environmental consulting firm. An internal agency team and the consultant have been preparing for an expedited but thorough environmental evaluation of a proposed alternate route to be selected by the applicant.

On December 1, 2011, we contacted the Department of State to begin to explore the process for entering into a MOU between our two agencies which would outline responsibilities and define a schedule. We received a first draft of the agreement from

the State Department within the next two weeks and exchanged comments which led to what we considered to be an executable document which we submitted to the State Department in December 2011. No further progress has been made on that front.

Also under LB 4 we knew that one of the first actions that would need to be taken by the NDEQ would be to delineate the Sandhills area on a map so that the applicant would know what areas of the state to avoid in its proposed alternate route. We did that on December 29, 2011, by adopting an ecoregions map of Nebraska that identified the most extensive and comprehensive evaluation of all of the state's ecoregions including the Sandhills. This map was the result of a multi-agency effort led by the U.S. EPA in the early 2000's.

With the map available, we believed that we would see a proposed alternate route report filed with us in early to mid-January. Once we have that alternate route report filed with us, the plan is to review it and in short order take it out to the public for an opportunity to show the new proposal and answer questions. We will conduct multiple open houses in the affected area and give people a chance to react and learn.

Once that process is complete, we will give an initial reaction to the applicant on the proposed preferred new route and alternatives, if any. The applicant will then move

from its desktop review to more in-depth, on the ground investigation of the area proposed to be the new route. We estimated that that process would commence in the March 2012 time frame. Over the next couple months, the applicant would prepare its in-depth environmental report to submit to the NDEQ in the May or June 2012 time frame. It would then be our turn to examine the information and prepare a SEIS. Once complete, hopefully in the July 2012 time frame, we would take that document out for additional public comment.

Finally, we will take our report as modified by comment and finalize it for Nebraska's Governor along with a recommendation by September 1, 2012. Under LB 4, the Governor has 30 days to review the report and act on it by forwarding his decision to the relevant federal agency – in this case, the Department of State.

Obviously, this is an aggressive schedule, but there was a clear intent by our Legislature to complete the process of alternate route review expeditiously. An additional point that I want to make is that all costs of this environmental review by Nebraska will be paid by state funds.

The decision last week by the President has, of course, caused us to pause and see what impact it has on Nebraska's plan as I have described under LB 4. To the extent that we

continue to follow the LB 4 process, it seems prudent and, in fact, critical that we enter into a MOU with a federal agency in charge so that we know it is a bona fide process that we are participating in. We do not want to waste Nebraska taxpayer dollars.

Thank you for the invitation to appear as a witness today and I look forward to any questions you may have of me.