

Disposal and Taxation of Public Lands Act

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2
3 **WHEREAS**, in 1780, the United States Congress resolved that “the unappropriated lands
4 that may be ceded or relinquished to the United States, by any particular states, pursuant
5 to the recommendation of Congress of the 6 day of September last, shall be granted and
6 disposed of for the common benefit of all the United States that shall be members of the
7 federal union, and be settled and formed into distinct republican states, which shall
8 become members of the federal union, and have the same rights of sovereignty, freedom
9 and independence, as the other states: . . . and that upon such cession being made by any
10 State and approved and accepted by Congress, the United States shall guaranty the
11 remaining territory of the said States respectively. . . . That the said lands shall be granted
12 and settled at such times and under such regulations as shall hereafter be agreed on by the
13 United States in Congress assembled, or any nine or more of them”; and
14

15 **WHEREAS**, under these express terms of trust, the land claiming states, over time,
16 ceded their western land to their confederated Union and retained their claims that the
17 confederated government dispose of such lands to create new states “and for no other use
18 or purpose whatsoever” and use the proceeds of any sales of such lands only for the
19 purpose of paying down the public debt; and
20

21 **WHEREAS**, by resolution in 1790, the United States Congress declared “That the
22 proceeds of sales which shall be made of lands in the Western territory, now belonging or
23 that may hereafter belong to the United States, shall be, and are hereby appropriated
24 towards sinking or discharging the debts for the payment whereof the United States now
25 are, or by virtue of this act may be holden, and shall be applied solely to that use, until the
26 said debt shall be fully satisfied”; and
27

28 **WHEREAS**, in 1833, referring to these land cession compacts which arose from the
29 original 1780 congressional resolution, President Andrew Jackson stated, “These solemn
30 compacts, invited by Congress in a resolution declaring the purposes to which the
31 proceeds of these lands should be applied, originating before the constitution, and
32 forming the basis on which it was made, bound the United States to a particular course of
33 policy in relation to them by ties as strong as can be invented to secure the faith of
34 nations”; and
35

36 **WHEREAS**, with respect to the disposition of the federal territorial lands, the
37 Northwest Ordinance of July 13, 1787 provides, “The legislatures of those districts or
38 new States, shall never interfere with the primary disposal of the soil by the United States
39 in Congress assembled, nor with any regulations Congress may find necessary for
40 securing the title in such soil to the bona fide purchasers”; and
41

42 **WHEREAS**, the United States Supreme Court, in *Downes v. Bidwell*, 182 U.S. 244,
43 1901, stated, “The question of territories was dismissed with a single clause, apparently
44 applicable only to the territories then existing, giving Congress the power to govern and
45 dispose of them”; and
46

47 **WHEREAS**, the territorial and public lands of the United States are dealt with in
48 Article IV, section 3, clause 2 of the United States Constitution, referred to as the
49 Property Clause, which states, “The Congress shall have power to dispose of and make
50 all needful rules and regulations respecting the territory or other property belonging to the
51 United States.” And

52
53 **WHEREAS**, with this clause, the Constitutional Convention agreed that the
54 Constitution would maintain the “status quo” that had been established with respect to the
55 federal territorial lands being disposed of only to create new states with the same rights of
56 sovereignty, freedom, and independence as the original states; and

57
58 **WHEREAS**, in 1828, United States Supreme Court Chief Justice John Marshall, in
59 American Ins. Co. v. 356 Bales of Cotton, 26 U.S. 511, 1828 said, “At the time the
60 Constitution was formed, the limits of the territory over which it was to operate were
61 generally defined and recognised (sic). These limits consisted in part, of organized states,
62 and in part of territories, the absolute property and dependencies of the United States.
63 These states, this territory, and future states to be admitted into the Union, are the sole
64 objects of the Constitution; there is no express provision whatever made in the
65 Constitution for the acquisition or government of territories beyond those Limits;” and

66
67 **WHEREAS**, in Shively v. Bowlby, 152 U.S. 1, 1894, the U.S. Supreme Court confirmed
68 that all federal territories, regardless of how acquired, are held in trust to create new
69 states on an equal footing with the original states when it stated, “Upon the acquisition of
70 a territory by the United States, whether by cession from one of the states, or by treaty
71 with a foreign country, or by discovery and settlement, the same title and dominion
72 passed to the United States, for the benefit of the whole people, and in trust for the
73 several states to be ultimately created out of the territory;” and

74
75 **WHEREAS**, the Enabling Act of {insert state} states, in part, that until the title to the
76 unappropriated public lands lying within the state's boundaries, and to all land owned or
77 held by any Indian or Indian tribes “shall have been extinguished by the United States,
78 the same shall be and remain subject to the disposition of the United States, and said
79 Indian lands shall remain under the absolute jurisdiction and control of the Congress of
80 the United States; that no taxes shall be imposed by the State on lands or property therein
81 belonging to or which may hereafter be purchased by the United States or reserved for its
82 use”; and

83
84 **WHEREAS**, the Enabling Act states further “That five per centum of the proceeds of the
85 sales of public lands lying within said State, which shall be sold by the United States
86 subsequent to the admission of said State into the Union, after deducting all the expenses
87 incident to the same, shall be paid to the said State, to be used as a permanent fund, the
88 interest of which only shall be expended for the support of the common schools within
89 said State”; and

90
91 **WHEREAS**, at the time of the Enabling Act the course and practice of the United

92 States Congress with all prior states admitted to the Union had been to fully dispose,
93 within a reasonable time, all lands within the boundaries of such states, except for those
94 Indian lands, or otherwise expressly reserved to the exclusive jurisdiction of the United
95 States; and

96
97 **WHEREAS**, the state of {insert state} did not, and could not have, contemplated or
98 bargained for the United States failing or refusing to dispose of all lands within its
99 defined boundaries within a reasonable time such that the State of {insert state} and its
100 Permanent Fund for its Common Schools could never realize the bargained-for benefit of
101 the deployment, taxation, and economic benefit of all the lands within its defined
102 boundaries; and

103
104 **WHEREAS**, the 1934 Taylor Grazing Act declared that “In order to promote the highest
105 use of the public lands pending its final disposal, the Secretary of the Interior is
106 authorized, in his discretion, by order to establish grazing districts or additions thereto
107 and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands
108 from any part of the public domain of the United States (exclusive of Alaska [and other
109 territorial exclusions]) . . . Nothing in this subchapter shall be construed . . . as limiting or
110 restricting the power or authority of any State as to matters within its jurisdiction”; and
111

112 **WHEREAS**, in 1976, after nearly 200 years of trusting history regarding the obligation
113 of Congress to dispose of western lands to create new states and use the proceeds to
114 discharge its public debts, the United States Congress stated in the Federal Land Policy
115 Management Act, “By this Act, Congress declares that it is the policy of the United
116 States that the public lands be retained in Federal ownership, unless ... it is determined
117 that disposal of a particular parcel will serve the national interest”; and
118

119 **WHEREAS**, in a unanimous 2009 decision, the United States Supreme Court, in
120 *Hawaii v. Office of Hawaiian Affairs*, stated, “. . . [a subsequent act of Congress] would
121 raise grave constitutional concerns if it purported to ‘cloud’ Hawaii’s title to its sovereign
122 lands more than three decades after the State’s admission to the Union. We have
123 emphasized that ‘Congress cannot, after statehood, reserve or convey submerged lands
124 that have already been bestowed upon a State.’ . . . [T]he consequences of admission are
125 instantaneous, and it ignores the uniquely sovereign character of that event . . . to suggest
126 that subsequent events somehow can diminish what has already been bestowed’. And that
127 proposition applies a fortiori [with even greater force] where virtually all of the State’s
128 public lands . . . are at stake;” and
129

130 **WHEREAS**, from 1780 forward it is unmistakable that the federal government only held
131 bare legal title to the western public lands as a trustee in trust to dispose of them to create
132 new states and to use the proceeds to pay the public debt; and
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134 **WHEREAS**, the Federal Government abided by these express trust obligations to the
135 eastern edge of Colorado and then with Hawaii; and
136

137 **WHEREAS**, the Federal Government has failed to abide by the terms of its preexisting
138 obligations from the eastern edge of Colorado to the west coast and Alaska; and

139
140 **WHEREAS**, {insert state} has been damaged by more than 115 years of federal
141 entanglements to its lands; and

142
143 **WHEREAS**, {insert state} should have had control over its lands from 1896, plus a
144 reasonable time for disposition; and

145
146 **WHEREAS**, {insert state} has been substantially damaged in its ability to provide
147 funding for education because the federal government has unduly retained control of
148 nearly 70 percent of land within its borders; and

149
150 **WHEREAS**, {insert state} has been damaged in lost property tax revenues to which the
151 state was entitled; and

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153 **WHEREAS**, {insert state} has been damaged in mineral lease revenues and severance
154 taxes, which the Federal Government usurped without authority and in breach of its
155 express trust obligations; and

156
157 **WHEREAS**, {insert state} has been damaged by the uncertainty regarding the sovereign
158 control of its land and damaged by the loss of the economic multiplier effect over the use
159 of its lands; and

160
161 **WHEREAS**, in light of these circumstances, the United States Congress disposed of
162 lands within the boundaries of Hawaii directly to the state of Hawaii pursuant to its
163 enabling act; and

164
165 **WHEREAS**, because of these entanglements and the breach of the Enabling Act and the
166 damage resulting from it, the United States Congress should engage in good faith
167 communication, cooperation, coordination, and consultation with the state of {insert
168 state} to dispose directly to the state certain public lands where the public has developed
169 a reasonable expectation of multiple use; and

170
171 **WHEREAS**, in the past, the Federal Government disposed of lands to persons with a
172 logical nexus to the lands, including homestead claims, mining, timber, and grazing
173 claims, the state of {insert state} expects that the United States Congress will do the same
174 with respect to any lands not ceded directly to the state; and

175
176 **WHEREAS**, the Federal Government has an obligation, to present and all future
177 generations, to pay the public debt, yet has demonstrated an inability to reduce the
178 growing national debt even as it continues to worsen at an exponential rate.

179
180 **NOW, THEREFORE, BE IT RESOLVED** that the Legislature of the state of {insert
181 state} strongly urges the Federal Government to use proceeds from the sale of lands not
182 disposed directly to the state only to pay the public debt pursuant to the Congressional

183 Resolutions of 1780 and 1790 and the language of the Andrew Jackson veto of the lands
184 bill that sought to use proceeds for some other purpose than this solemn compact
185 obligation over the western public lands.

186
187 **BE IT FURTHER RESOLVED** that the Legislature of the state of {insert state} urges
188 the United States Congress in the most strenuous terms to engage in good faith
189 communication, cooperation, coordination, and consultation with the state of {insert
190 state} regarding those lands wherein the public has developed a reasonable expectation of
191 multiple use that must be disposed of directly to the state.

192
193 **BE IT FURTHER RESOLVED** that the United States Congress should only dispose of
194 lands not ceded to the state to persons with a logical nexus to the lands, including
195 homestead claims, mining, timber, and grazing claims.

196
197 **BE IT FURTHER RESOLVED** that a copy of this resolution be sent to the United
198 States Department of the Interior, the Majority Leader of the United States Senate, the
199 Speaker of the United States House of Representatives, the members of the congressional
200 delegation of {insert state}, and the Governors, Senate Presidents, and Speakers of the
201 House of the 49 other states.

202

203 **BE IT ENACTED:**

204

205 Section 1. Definitions. As used in this chapter:

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207 (A) "Net proceeds" means the proceeds from the sale of public lands, after
208 subtracting expenses incident to the sale of the public lands.

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210 (B) "Public lands" means lands within the exterior boundaries of this state except:

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212 (1) lands to which title is held by a person who is not a governmental

213

214 entity;

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216 (2) lands owned or held in trust by this state, a political subdivision of this

217

218 state, or an independent

219

220 (3) lands reserved for use by the state system of public education

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222 (4) school and institutional trust lands

223

224 (5) national parks

225

226 (6) lands ceded to the United States

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228 (7) lands, including water rights, belonging to an Indian or Indian tribe,

band, or community that is held in trust by the United States or is subject to a
restriction against alienation imposed by the United States

Section 2. Disposal and taxation of public lands.

(A) On or before December 31, 2014, the United States shall sell public lands.

(B) The United States shall pay to this state 5 percent of the net proceeds of the sale of public lands.

229

230 (C) The amounts described in Subsection (B) shall be deposited into the permanent State
231 School Fund.

232

233 (D) Beginning on January 1, 2015, public lands that the United States has not sold as of
234 December 31, 2014, are subject to property taxation.

235

236 Section 3. Federalism Subcommittee study.

237

238 (A) the legislature creates a Federalism Subcommittee to study:

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(1) procedures and requirements for subjecting public lands that the
240 United States has not sold as of December 31, 2014, to property taxation,
241 including the creation of a lien and the seizure and sale of the public lands;

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241

242

2) the definition of "public lands", including whether to address as part of
243 the definition interests, rights, or uses related to:

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(a) easements;

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(b) geothermal resources;

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(c) grazing;

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(d) mining;

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(e) recreation;

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(f) rights of entry;

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(g) special uses;

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(h) timber;

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(i) water; or

253

(j) other natural resources;

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(3) the determination of what constitutes expenses incident to the sale of
255 public lands; and

255

256

(4) issues related to [National Parks, National Monuments, National
257 Recreation Areas, etc].

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259

(B) The Federalism Subcommittee may study any other issue related to the
260 disposal and taxation of public lands as determined by the subcommittee.

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262

(C) The Federalism Subcommittee shall report its findings and recommendations

1 **Resolution Requesting the Obama Administration Confer and Consult**
2 **with the States on Management of Public Lands and Energy Resources**

3 **Whereas**, Management of public lands and energy resources has a direct fiscal impact on
4 state economies and state budgets; and

5 **Whereas**, Public lands should be managed to encourage environmentally responsible
6 energy development and further restrictions to energy development on public lands are
7 not only unnecessary, but also increase the United States' reliance on foreign energy
8 sources; and

9 **Whereas**, State governments and regulatory agencies are best positioned to address the
10 unique management needs of local resources; and

11 **Whereas**, Cost-benefit and job-impact analyses are required in many states before new
12 state rules or regulations are adopted; and

13 **Whereas**, Regulations and federal mandates are stifling the economy, resulting in lost
14 opportunities to create jobs; and

15 **Whereas**, Court settlements between the Obama Administration and environmental
16 groups are severely limiting the ability for states to manage lands and resources within
17 their borders; and

18 **Whereas**, Seventeen Governors have voiced their concerns to President Obama about the
19 over-reaching nature of proposed rules and draft guidance that erodes traditional state
20 authority;

21 **Therefore be it resolved:** The American Legislative Exchange Council requests
22 Congress and the Administration to acknowledge and respect the role of states in a
23 federal constitutional republic.

24 The United States Congress, which represents the interests of the states individually and
25 collectively, is the appropriate public body to determine management of resources within
26 a state's borders.

27 ALEC further calls on Congress and the Administration to commit to greater consultation
28 with the states and to recognize cost-benefit and job-impact analyses must be addressed
29 in order to understand how federal regulations impact states and their respective citizens.

30

1 **A Resolution in Support of Federal Efforts to Address Rogue Internet Sites**
2 **that Sell Counterfeit Products and Facilitate Digital Theft**

3
4 WHEREAS, industries that create intellectual property are essential to the economic
5 competitiveness of the United States and represent the only economic sector in which the United
6 States has a trade surplus with every nation in the world; and

7
8 WHEREAS, the United States and all countries share the challenge of combating counterfeiting
9 and piracy of intellectual property, including illicit trade in pharmaceutical drugs, cutting edge
10 technologies, film, music, books, and inventions that affect the quality of life; and

11
12 WHEREAS, counterfeiting and piracy have a significant impact on economies around the world,
13 which translate into lost jobs, lost earnings, and lost tax revenues, and threaten public health and
14 safety; and

15
16 WHEREAS, the sale of counterfeit products– such as fake pharmaceuticals, medical devices,
17 auto and electrical parts, and many others – on rogue websites not only poses a real danger to
18 consumer health and safety but also undermines sectors of our national and state economies that
19 have historically provided secure, well-paying jobs; and

20
21 WHEREAS, increasingly, consumers are lured to sophisticated websites that appear legitimate
22 but are in fact devoted almost exclusively to offering or linking to unauthorized downloads or
23 streaming of copyrighted material – including the latest movies and music hits – or to trafficking
24 in counterfeit products, from pharmaceutical drugs to luxury goods; and

25
26 WHEREAS, rogue websites that offer counterfeit and pirated goods attract millions of visitors,
27 have accumulated billions of dollars of revenues and also threaten legitimate online sources; and

28
29 WHEREAS, many rogue websites that offer counterfeit and pirated goods are hosted overseas,
30 which makes it difficult for U.S.-based intellectual property rights holders and U.S. law
31 enforcement to take effective action against them.

32
33 NOW, THEREFORE LET IT BE RESOLVED, that the State of [insert state] recognizes the
34 importance of intellectual property and the evolving challenges and serious threats to its
35 protection, which affect prospects for future growth of the United States economy; and

36
37 BE IT FURTHER RESOLVED, that the State of [insert state] supports robust and ongoing
38 efforts to protect the health and well-being of citizens in the United States from illegal
39 counterfeiting and piracy; and

40 BE IT FURTHER RESOLVED, that the State of [insert state] supports efforts to enact
41 legislation addressing enforcement by state and federal authorities to protect intellectual property
42 rights to combat rogue websites that traffic in pirated music, movies and counterfeit goods and
43 make it more difficult for rogue websites to operate; and,

44 BE IT FURTHER RESOLVED, that the Secretary of State, or equivalent, of [insert state]
45 forward this resolution to Members of Congress, the Administration, and the relevant federal
46 agencies.



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1 **Resolution in Support of the Keystone XL Pipeline**

2

3 **BE IT RESOLVED BY THE [INSERT LEGISLATIVE BODY] OF THE STATE OF**
4 **[INSERT STATE]:**

5 WHEREAS, The United States relies – and will continue to rely for many years – on gasoline, diesel and jet fuel despite the recent focus on renewable and alternative sources of energy. In order to fuel our economy, the United States will need more oil and natural gas while also requiring additional alternative energy sources such as ethanol and other renewable energy sources; and

6 WHEREAS, The United States currently depends on foreign imports for more than half of our petroleum usage. As the largest consumer of petroleum in the world, our dependence on overseas oil has created difficult geopolitical relationships with damaging consequences for our national security; and

7 WHEREAS, oil shale deposits in the Bakken Reserves in Montana and North Dakota and South Dakota are an increasingly important crude oil resource, with an estimated 11 billion barrels of recoverable crude oil, and there is not enough pipeline capacity for crude oil supplies from Montana, North Dakota, South Dakota, Oklahoma and Texas to American refineries; and

8 WHEREAS, Canadian oil reserves contain an estimated 173 billion barrels of recoverable oil. Canada is the single largest supplier of oil to the United States at 2.62 million barrels per day and has the capacity to significantly increase that rate; and

9 WHEREAS, the Keystone XL pipeline will, when completed, carry 700,000 barrels of North American oil to American refineries in the Gulf Coast region and construction of the project will create 120,000 jobs nationwide, create \$20 billion in economic growth and generate millions of dollars worth of government receipts; and

10 WHEREAS, A recent study by the U.S. Department of Energy found that increasing delivery to American refineries from Montana, North Dakota, South Dakota and Alberta, as well as Texas and Oklahoma to American refineries has the potential to substantially reduce our country's dependency on sources outside of North America; and

11 WHEREAS, Canada sends more than 99% of its oil exports to the United States, the bulk of which goes to Midwestern refineries. Oil companies are investing huge sums to expand and upgrade refineries in the Midwest and elsewhere to make gasoline and other refined products from Canadian oil derived from oil sands. The expansion and upgrade projects will create many new construction jobs over the next five years and, in [INSERT STATE], substantially add to our state's gross state product; and

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WHEREAS, The same money used to buy North American oil will likely later be spent directly on U.S. goods and services in contrast with the money sent to hostile oil-producing governments that is later used to further anti-democratic agendas. Supporting the continued shift towards reliable and secure sources of North American oil is of vital interest to the United States and the state of [INSERT STATE].

13

NOW THEREFORE BE IT RESOLVED, That we, the members of the [INSERT LEGISLATIVE BODY] of the state of [INSERT STATE], support continued and increased development and delivery of oil derived from North American oil reserves to American refineries, urge Congress to support that continued and increased development and delivery, and urge Congress to ask the U.S. Secretary of State to approve the Keystone XL pipeline project that has been awaiting a presidential permit since 2008 to reduce dependence on unstable governments, improve our national security, and strengthen ties with an important ally; and

14

BE IT FURTHER RESOLVED, That the Clerk of the [INSERT STATE LEGISLATIVE BODY] transmit duly authenticated copies of this resolution to the Speaker and Clerk of the United States House of Representatives, to the President Pro Tempore and Secretary of the United States Senate, to the members of the [INSERT STATE] Congressional delegation, and to the news media of [INSERT STATE].

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Keystone XL – A Critical Project for America

By: Michael Whatley, Executive Vice President of the Consumer Energy Alliance

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The US Department of State is currently deciding whether to grant a permit to allow TransCanada to build the Keystone XL pipeline that will carry oil from Alberta, Canada to Gulf Coast refineries in Texas on a route that will traverse Montana, the Dakotas and Oklahoma, among other states. The project has gained a lot of attention both because of those who support it (unions, the business community and energy consumers) and those who oppose it (environmental activists and a bevy of actors and actresses including Danny Glover and Daryl Hannah). And in the case of its supporters, Keystone XL has managed to forge an unlikely coalition of interests from across the political spectrum!

The Consumer Energy Alliance (CEA) is strongly in favor of the Keystone XL pipeline because, in addition to being the safest pipeline ever built, it will create thousands of jobs, strengthen the American economy and lower prices at the pump.

After studying the proposed pipeline for over three years, the State Department has concluded that it will be the safest pipeline ever constructed. State's extensive environmental review of Keystone affirms that it will "have a degree of safety over any other typically constructed oil pipeline under current code and a degree of safety along the entire length of the pipeline system similar to that which is required in High Consequence Areas (HCAs)." The State Department also studied over a dozen routes for the pipeline and found that the current one is the safest and that the alternatives would "disturb more land and cross more bodies of water than the proposed route." Despite the heated controversy surrounding the pipeline's course over the Ogallala Aquifer, the State Department concluded that there was no scenario in which the aquifer would be at risk. In its report, State noted that 25,000 miles of pipeline already cross the Ogallala and that pipelines are the safest, most efficient way to transport oil. Further, Keystone XL will be built with state-of-the-art technology reducing the risk to a negligible level.

Keystone XL will produce a wide range of economic benefits to the United States. The pipeline will create more than 120,000 jobs across the country (including 20,000 in manufacturing construction), will generate hundreds of millions in federal, state and local taxes and will create \$20 billion in economic growth nationwide. These are revenues that can go to improving our public schools, roads and hospitals.

The Keystone XL Pipeline project also has energy security benefits. The 700,000 barrels of oil per day that this pipeline will bring to Gulf Coast refineries will be coming from Canada – our neighbor, closest ally and largest trading partner. This oil supply will not be affected by violent revolutions like those that took place in Egypt and Libya and will not be used as a political weapon as we have seen happen with Russian energy. It is significantly less expensive than oil from the Persian Gulf and will help drive down fuel prices for both military and civilian consumers.

In order to grant the permit that will allow the pipeline to cross between Alberta and Montana, the State Department must determine whether the project is "in the national interest" and anticipates doing this before the end of the year. At a time when the unemployment rate remains stubbornly high and the economy remains

stubbornly weak, CEA strongly believes that granting a permit which will create tens of thousands of jobs, give a shot in the arm to the American economy and significantly reduce our pain at the pump – all while protecting the environment by incorporating the strongest safety measures ever built into a pipeline – is certainly in the national interest.



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