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March 8, 2017

**VIA EMAIL**

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005

Katherine D. McManus  
Deputy Legal Adviser and Designated Agency Ethics Officer  
Office of the Legal Adviser, U.S. Department of State  
2201 C Street, NW, Room 6419  
Washington, DC 20520-6310

CC: David P. Huitema, Assistant Legal Advisor for Ethics and Financial Disclosure

**Re: Recusal of Secretary of State Tillerson from the decision regarding the decision to approve or reject the Presidential Permit for the Keystone XL pipeline**

Dear Director Shaub and Ms. McManus,

I am writing today on behalf of Greenpeace Inc. and our more than half a million supporters across the United States. Greenpeace is a global and independent organization committed to exposing environmental problems and promoting solutions essential to a thriving planet and the human race.

Secretary of State Rex Tillerson must recuse himself from any decisions to approve or reject TransCanada's application for a Presidential Permit for its proposed Keystone XL pipeline. To date, we have seen no evidence that he has done so and we are writing to ask the Office of Government Ethics (OGE) and the State Department Office of the Legal Adviser to publicly urge Secretary Tillerson to recuse himself. We also request that you make public any information relevant to this decision, including any information about recusals, waivers requested or sought, and further ethics disclosures.

In his Presidential Memorandum, dated January 24, 2017, President Trump directed the Secretary of State to "reach a final permitting determination" within 60 days of TransCanada's renewed application. A notice of TransCanada's new application for a Presidential Permit was published in the Federal Register on February 10.

Secretary Tillerson's recent employer, ExxonMobil, is heavily invested in producing crude oil from Canada's tar sands and would directly and predictably benefit from the approval of TransCanada's Presidential Permit. Canada's tar sands production is projected to grow in the coming years but that growth is currently limited by a lack of pipeline capacity. As a result of this pipeline "bottleneck" and competition with lighter U.S.-produced oil, Canadian tar sands oil trades at a discount compared to WTI crude oil. Approving the Keystone XL pipeline would lower this discount and raise the value of Canadian tar sands on the market. This would likely increase profits for tar sands producers, including ExxonMobil, and increase the value of these assets. Similarly, ExxonMobil could benefit from the approval of the pipeline if it has specific contracts or agreements with TransCanada either to transport their Canadian tar sands production, or to receive such shipments at their U.S. refineries.

For these reasons, it is imperative that Secretary Tillerson recuse himself from this pending decision. For further information and analysis regarding ExxonMobil's tar sands holdings and the Keystone XL pipeline, please see the attached Policy Brief.

In his letter to Katherine D. McManus dated January 3, 2017, Secretary Tillerson laid out a number of commitments in his effort to comply with federal ethics laws and Trump's Executive Order regarding Ethics Commitments By Executive Branch Appointees.

- Firstly, Secretary Tillerson acknowledged the sensitivities around ExxonMobil and the perception that his actions as Secretary of State could benefit his former employer. The letter states: "For a period of one year after my resignation from ExxonMobil, I will not participate personally and substantially in any particular matter involving specific parties in which I know that ExxonMobil is a party or represents a party, unless I am first authorized to participate."

In the case of the Keystone XL Presidential Permit, it is unclear whether ExxonMobil would be considered a "specific party" and whether this clause would therefore require Secretary Tillerson to recuse himself. The Office of Government Ethics and the State Department Ethics staff should make a public determination about this question.

- However, another clause in Tillerson's letter would also seem to require his recusal in this case. Tillerson states that he will recuse himself "on a case-by-case basis from participation in any particular matter involving specific parties in which I determine that a reasonable person with knowledge of the relevant facts would question my impartiality in the matter, unless I am first authorized to participate."

Given the clear and direct relationship between the profitability of ExxonMobil's tar sands production, the value of ExxonMobil's tar sands assets, and the Keystone XL approval, any reasonable person would in fact question Secretary Tillerson's impartiality in this matter.

A governmental decision that directly and predictably enriches a former employer is precisely the sort of situation that should warrant recusal. To ignore the close connection between ExxonMobil's tar sands operations and the Keystone XL pipeline would be a gross violation of the spirit of government ethics laws and would lend the strong appearance of impartiality. As such, recusal from this decision is the only course of action consistent with Tillerson's stated ethics commitments.

In the interest of transparency, the Office of Government Ethics and the State Department Ethics staff should make a public determination to this effect, and should take the proper steps to assist Secretary Tillerson in formally recusing himself from the decision on the Presidential Permit. The State Department should also make public the names of the officials who will be making the final decision on the Keystone XL pipeline in Secretary Tillerson's stead.

- A third issue regarding Tillerson's ethics commitments is one of timing. President Trump requested a final decision from the Secretary of State on the permits within 60 days of TransCanada resubmitting their application. However, Secretary Tillerson has only vowed to divest himself of his ExxonMobil stock within 90 days of his confirmation, at which time he promised to document compliance with his stated ethics commitments. This raises the possibility that the Keystone XL decision could be finalized before Secretary Tillerson is fully divested from ExxonMobil, and before he has disclosed those divestments to State Department ethics officials.

Secretary Tillerson further states: “I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of ExxonMobil until I have divested this stock, unless I first obtain a written waiver.” Again, the approval of the Keystone XL pipeline would directly and predictably profit ExxonMobil, and if Secretary Tillerson still holds a financial interest in his former employer, that adds yet another reason why he must recuse himself.

Given the rapid timeline for the Keystone XL decision, the public has no confidence that Secretary Tillerson will have divested his ExxonMobil stock without further disclosures. As such, we request that the Office of Government Ethics and the State Department Ethics staff should make a public confirmation of Secretary Tillerson’s compliance (or lack thereof) with his stated ethics commitments.

We are communicating with both the Office of Government Ethics and the State Department Office of the Legal Adviser because both entities have an important role to play in ensuring that federal ethics compliance is as strong and thorough as possible. The Office of Government Ethics has as its mission: “Provide overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest.” Given OGE’s focus on prevention and their past praise of Tillerson’s ethics commitments, the time is ripe for the Office to clarify exactly what those commitments mean in the context in one of their first real tests and first real decisions Secretary Tillerson may take relating to his former employer. As Director Shaub stated recently, “Our goal—our reason for existing—is to guard the executive branch against conflicts of interest.”

Similarly, the State Department ethics officers have important roles to play in communicating with the Secretary and giving advice on how to comply with his stated commitments, when to recuse himself and what guidelines there are for waivers. As always, we expect that these decisions and the reasoning behind them will be transparently communicated to the public.

We respect your thorough and thoughtful consideration of this issue and trust you will respond with the urgency required in this short timeline.

Sincerely,

Annie Leonard  
Executive Director  
Greenpeace USA