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7 *Counsel for Plaintiffs Friends of the Earth, The Center for International Environmental Law, and*
8 *Corporate Ethics International*

9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

11 FRIENDS OF THE EARTH,)
12 THE CENTER FOR INTERNATIONAL)
13 ENVIRONMENTAL LAW, and CORPORATE)
14 ETHICS INTERNATIONAL,)

15 Plaintiffs,)

16 v.)

17 UNITED STATES DEPARTMENT OF STATE,)
18 and HILLARY CLINTON, in her official capacity)
19 as Secretary of State,)

20 Defendants.)

C11-02419 EDL

Civ. No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

(Freedom of Information Act, 5 U.S.C.
§ 552)

21 **INTRODUCTION**

22 1. This action is brought under the Freedom of Information Act, as amended, 5 U.S.C. §
23 552 ("FOIA"), seeking an expeditious determination from the United States Department of State
24 ("State Department" or "Defendant") as to whether it has documents responsive to a FOIA request,
25 dated December 13, 2010, (the "FOIA Request") from Friends of the Earth, the Center for
26 International Environmental Law, and Corporate Ethics International (collectively, "Plaintiffs"); and
27 if so, for release of those documents to Plaintiffs. As detailed below, these documents relate to
28 communications between the State Department and Paul Elliott, presently a lobbyist for

COMPLAINT

1 TransCanada Pipelines Limited (“TransCanada”) and formerly the national deputy director of
2 Secretary Clinton’s presidential campaign. The information Plaintiffs seek directly relates to
3 whether the relationship between Mr. Elliott and Secretary Clinton raises the possibility of bias that
4 might influence the State Department’s decision to grant or deny TransCanada a Presidential Permit
5 for the Keystone XL pipeline.

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7 2. Plaintiffs seek declaratory and injunctive relief for the State Department’s violations
8 of FOIA. These violations result from the State Department’s failure to (i) comply with FOIA’s 20-
9 day time limit to process a request, 5 U.S.C. § 552(a)(6)(A)(i); (ii) make responsive, non-exempt
10 documents promptly available, 5 U.S.C. § 552(a)(3)(A); (iii) comply with the 10-day time limit to
11 make a final determination on an appeal of denial of expedited processing, 5 U.S.C. §
12 552(a)(6)(E)(ii); 22 C.F.R. §171.50(b); and (iv) expedite processing of the request, 5 U.S.C. §
13 552(a)(6)(E)(iii); 22 C.F.R. § 171.12(b).

14 15 **JURISDICTION**

16 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (action
17 arising under the laws of the United States) and 5 U.S.C. §§ 552(a)(4)(B) and (a)(6)(E)(iii) (FOIA
18 citizen suit provisions).

19 20 **VENUE AND INTRADISTRICT ASSIGNMENT**

21 4. Venue lies in this judicial district under 28 U.S.C. § 1391(e) and 5 U.S.C. §
22 552(a)(4)(B) because Plaintiffs Corporate Ethics International and Friends of the Earth reside in this
23 district.

24 5. Assignment to the San Francisco Division of this judicial district is proper under Civil
25 Local Rule 3-2 (c)-(d) because Plaintiffs Corporate Ethics International and Friends of the Earth
26 reside in this judicial district.

1 **PARTIES**

2 6. Plaintiff FRIENDS OF THE EARTH:

3 a. Plaintiff Friends of the Earth, Inc. ("FoE") is a national, non-profit
4 environmental advocacy organization founded in 1969 and incorporated in the District of Columbia,
5 with its headquarters in Washington, D.C. and an office in San Francisco, California. FoE's mission
6 is to defend the environment and champion a healthy and just world. FoE "seeks to change the
7 perception of the public, media and policy makers – and effect policy change – with hard-hitting,
8 well-reasoned policy analysis and advocacy campaigns that describe what needs to be done, rather
9 than what is seen as politically feasible or politically correct."¹ FoE is the U.S. voice of the world's
10 largest network of environmental groups – Friends of the Earth International – a federation of
11 grassroots groups working in 76 countries on today's most urgent environmental and social issues.

12 b. FoE disseminates information to educate the public on current environmental
13 policy issues. Almost all of FoE's staff members are engaged in disseminating information to the
14 public. In addition to press releases, they disseminate information through press briefings, radio
15 interviews, and television interviews. They have a regularly updated website that disseminates
16 information about key environmental issues. They respond to questions from the public about
17 environmental issues and disseminate their expertise. They distribute emails with information on
18 environmental issues several times per week and letter mailings multiple times per year, release a
19 quarterly "Newsmagazine," distribute information through multiple social networking sites and
20 pages, and table at public events.

21 c. The information FoE seeks from the State Department through the FOIA
22 request will further FoE's mission as a non-profit environmental advocacy organization. Such
23 information is likely to contribute significantly to the public's understanding of the State
24 Department's activities in the Keystone XL permitting process, and will not be used for commercial
25 purposes.
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28 ¹ Friends of the Earth, Who We Are - Our Strategy, <http://foe.org/who-we-are> (last visited May 17, 2011).

1 7. Plaintiff THE CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW:

2 a. Plaintiff the Center for International Environmental Law (“CIEL”) is a non-
3 profit organization founded in 1989 and incorporated in Washington, D.C. CIEL works to
4 strengthen and use international law and institutions to protect the environment, promote human
5 health, and ensure a just and sustainable society. With offices in Washington, D.C. and Geneva,
6 Switzerland, CIEL’s attorneys provide legal counsel, policy research, analysis, education, training,
7 and capacity building on international environmental issues, including climate change, chemicals,
8 biodiversity, and human rights. As part of this work CIEL is active in efforts to negotiate new
9 international agreements on climate change, to reduce reliance on environmentally damaging energy
10 sources, and to promote public access to information and transparent democratic processes with
11 respect to decisions affecting the environment. The role of the United States both with respect to
12 domestic energy policy and democratic decision-making is highly relevant to CIEL’s work.

13 b. CIEL communicates information to non-governmental organizations,
14 decision-makers and the public through a variety of mechanisms, including analytical reports, social
15 media, press releases, direct communications with journalists, and the CIEL website. In addition,
16 CIEL works with diverse coalitions of non-governmental organizations and other stakeholders with
17 whom CIEL anticipates sharing the information related to this request. CIEL participates in a
18 variety of email- and web-based lists and affinity groups that are active on issues related to North
19 American energy policy. CIEL will not use any information that results from this request for any
20 commercial purpose. It will be used to further CIEL’s efforts to help build a coherent and
21 sustainable global energy policy based on open, transparent government processes.

22 8. Plaintiff CORPORATE ETHICS INTERNATIONAL:

23 a. Plaintiff Corporate Ethics International (“CEI”) is a non-profit organization
24 founded and incorporated in 2003 in California, with its headquarters in San Francisco. CEI’s
25 mission is to bring corporations back in service to, and under the control of, the citizenry. A central
26 focus of CEI’s work is the Tar Sands Oil Campaign, a multi-million dollar, multi-year effort aimed
27
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1 at stopping the expansion of what CEI believes is “the most destructive energy project on
2 earth.” CEI joined with a number of other organizations in the United States and Canada to launch
3 the international Tar Sands Oil Campaign in 2008. CEI staff works closely with nearly 100 different
4 organizations in Canada, Europe and the United States to coordinate strategy and run advocacy
5 campaigns aimed at ending oil dependency.

6 b. CEI disseminates reports, online resources and recent articles related to
7 corporate ethics issues, particularly in relation to energy and climate change. CEI runs the “Rethink
8 Alberta” campaign, including the RethinkAlberta.com and dirtyoilsands.org websites. CEI produces
9 original reports such as “Tar Sands Invasion” and reports analyzing oil markets and energy use. CEI
10 also manages the tar sands campaign listserv for approximately 275 tar sands activists in the United
11 States and Canada.

12 c. The information CEI seeks from the State Department through the FOIA
13 request will further CEI’s mission as an organization dedicated to regaining citizens’ control of
14 corporations by promoting transparency in corporations’ interactions with the US government. Such
15 information is likely to contribute significantly to the public’s understanding of the State
16 Department’s activities in the Keystone XL permitting process, and will not be used for commercial
17 purposes.

18 9. Defendant UNITED STATES DEPARTMENT OF STATE is a federal agency within
19 the meaning of FOIA. The State Department processes requests for agency records under FOIA and,
20 in carrying out its responsibilities, must comply with applicable requirements of FOIA.

21 10. Defendant HILLARY CLINTON is head of the State Department and is sued in her
22 official capacity as the Secretary of State.
23
24

25 BACKGROUND

26 The State Department, TransCanada, and the Keystone XL Project

27 11. Plaintiffs seek disclosure of documents and information regarding State Department
28 communications involving Paul Elliott, a registered lobbyist for TransCanada. TransCanada

1 Pipelines is seeking to build a transboundary oil pipeline, the Keystone XL pipeline, to transport tar
2 sands crude oil from the Western Canadian Sedimentary Basin in Alberta, Canada to refineries in the
3 Texas Gulf Coast area.

4
5 12. Because the Keystone XL pipeline would involve construction on the US-Canada
6 border, TransCanada must obtain a Presidential Permit from the State Department. Exec. Order No.
7 13,337, 69 Fed. Reg. 25,299 (Apr. 30, 2004). Defendants are currently conducting the
8 environmental review of the project under the National Environmental Policy Act (NEPA) and
9 expect to decide whether to grant TransCanada a Presidential Permit before the end of 2011.

10 13. Prior to lobbying for TransCanada, Mr. Elliott served as the Hillary Clinton for
11 President campaign committee's national deputy director and chief of staff for delegate selection.

12 14. On October 15, Secretary of State Clinton made a public statement that she was
13 "inclined to approve" the Keystone XL project.² Secretary Clinton made this statement before the
14 State Department had completed its environmental review of the pipeline and despite the fact that
15 the Environmental Protection Agency had communicated to the State Department that its draft
16 environmental impact statement on the pipeline was inadequate. Several members of Congress and
17 the public wrote letters to Secretary Clinton expressing concern that the State Department had
18 "prejudge[d] the outcome" of the Keystone XL project based on her statement that the State
19 Department is "inclined to approve" the project.

20 15. The information Plaintiffs seek directly relates to whether the relationship between
21 Mr. Elliott and Secretary Clinton might inappropriately influence the State Department's decision to
22 grant or deny TransCanada a Presidential Permit for the Keystone XL pipeline. Plaintiffs seek this
23 information to enable them to (i) meaningfully participate in the NEPA process for the Keystone XL
24 project; (ii) educate the public and other agencies that must approve the State Department's
25 Presidential Permit about potential irregularities in the State Department's permitting decision; and
26

27 ² See "Remarks on Innovation and American Leadership to the Commonwealth Club," Secretary of
28 State Hillary Rodham Clinton, Oct. 15, 2010, *available at*
<http://www.state.gov/secretary/rm/2010/10/149542.htm>.

1 (iii) influence the decision whether to grant the Presidential Permit for the Keystone XL pipeline
2 before the final permitting decision is made. Plaintiffs have a compelling need for this information
3 because the 45-day public comment period for the Supplemental Draft Environmental Impact
4 Statement ends on June 6, 2011, and the State Department plans to decide whether to issue the
5 Keystone XL permit before the end of 2011.

6 **History of Plaintiffs' FOIA Request**

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8 16. On December 13, 2010, Plaintiffs submitted a FOIA request seeking copies of
9 documents and information regarding all State Department communications involving the State
10 Department and Paul Elliott and asking that the agency respond to their request "as soon as
11 possible."

12 17. On January 5, 2011, the State Department responded to Plaintiffs, denying processing
13 of their FOIA request. The State Department deemed the request "invalid" because Plaintiffs did not
14 specify a time frame for the request and because it interpreted Plaintiffs' request for a fee waiver as a
15 refusal to pay fees. Consequently, the State Department informed requestors that "the case ha[d]
16 been closed."

17 18. On January 31, 2011, Plaintiffs appealed the State Department's denial of their FOIA
18 request and denial of a fee waiver and provided additional information "to expedite the Department's
19 search for the records" sought.

20 19. In a letter dated February 1, 2011, the State Department informed Plaintiffs that on
21 the basis of Plaintiffs' appeal letter, the agency would "open a new request for the records" instead
22 of opening an appeal.

23 20. On March 11, 2011, the State Department sent Plaintiffs a letter stating that "in
24 response to [their] request dated 1/31/11," the agency would begin processing the request but
25 denying expedited processing. The State Department noted that "unusual circumstances ... may arise
26 that would require additional time to process [the] request" and that it would notify them "as soon as
27 responsive material is retrieved and reviewed."
28

1 21. On April 11, 2011, Plaintiffs appealed the denial of their request for expedition.

2 22. As of the date of this filing, the State Department has not responded to that appeal
3 and has provided no further response to the FOIA request itself.
4

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

7 **Violation of FOIA: Failure to Respond within Twenty Days with**
8 **Determination Whether Agency Has Responsive Documents**

9 23. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as if
10 fully set forth herein.

11 24. Upon receiving a FOIA request, an agency must determine within twenty court days
12 of the date of receipt “whether to comply with such request” and must “immediately notify the
13 person making such request of such determination and the reasons therefor, and of the right of such
14 person to appeal to the head of the agency any adverse determination.” 5 U.S.C. § 552(a)(6)(A)(i);
15 22 C.F.R. § 171.12(d).

16 25. The State Department’s failure to determine within twenty days whether it has
17 documents responsive to Plaintiffs’ request, and failure to immediately notify Plaintiffs whether it
18 intends to release such documents, violates section 552(a)(6)(A)(i) of FOIA and section 171.12(d) of
19 the State Department’s implementing regulations.
20

21 **SECOND CLAIM FOR RELIEF**

22 **Violation of FOIA: Failure to Make Responsive,**
23 **Non-Exempt Documents Promptly Available**

24 26. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as if
25 fully set forth herein.
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1 **FOURTH CLAIM FOR RELIEF**

2 **Violation of FOIA: Failure to Expedite Processing of FOIA Request**
3 **Despite Plaintiffs' Compelling Need for the Records Requested**

4 33. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as if
5 fully set forth herein.

6 34. FOIA requires that agencies expedite processing of requests for records when the
7 requestor "demonstrates a compelling need." 5 U.S.C. § 552(a)(6)(E)(i)(I). "With respect to a
8 request made by a person primarily engaged in disseminating information," FOIA defines
9 "compelling need" as "urgency to inform the public concerning actual or alleged Federal
10 Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). FOIA requires agencies to "process as soon
11 as practicable any [such] request." 5 U.S.C. § 552(a)(6)(E)(iii); *see also* 22 C.F.R. § 171.12(b).

12 35. Plaintiffs have a compelling need for the information described in their FOIA request
13 because they seek to (i) meaningfully participate in the NEPA process, which includes a 45-day
14 public comment period for the Supplemental Draft Environmental Impact Statement, ending on June
15 6, 2011; (ii) educate the public and other agencies that must approve the State Department's permit
16 about the agency's basis for its permitting decision, which it plans to make before the end of 2011;
17 and (iii) influence the permitting decision before the final decision is made.

18 36. The State Department's failure to expedite processing of Plaintiffs' FOIA request
19 violates section 552(a)(6)(E)(iii) of FOIA and section 171.12(b) of the State Department's
20 implementing regulations.
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22 **PRAYER FOR RELIEF**

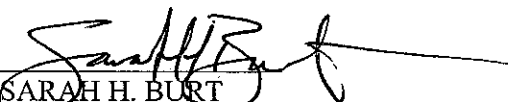
23 WHEREFORE, Plaintiffs respectfully request that this Court:

- 24 A. Declare that the State Department's failure to respond to Plaintiffs' FOIA request
25 within the twenty-day period with a determination as to whether it has responsive
26 documents, and failure to immediately notify Plaintiffs whether it intends to release
27 such documents, violates FOIA.
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- B. Order the State Department pursuant to 5 U.S.C. § 552(a)(4)(B) to determine whether it has documents responsive to Plaintiffs' request and to produce, without charge and within 10 days from the date of such order, all such responsive documents;
 - C. Declare that the State Department's failure to respond within the ten-day period with a final determination on Plaintiffs' appeal of the State Department's denial of expedited processing of their FOIA request and failure to expedite their FOIA request violates FOIA and the State Department's implementing regulations.
 - D. Order the State Department pursuant to 5 U.S.C. § 552(a)(6)(E) to expedite processing of this request;
 - E. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees; and
 - F. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted,

Dated: May 18, 2011


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