



# Keystone Pipeline Litigation: Indigenous Environmental Network v. US Department of State (D. Mont.)

## Originating Entity

**US District Court for the District of Montana**[6]

## Last Action

Federal government appealed decision to the U.S. Court of Appeals for the Ninth Circuit

## Date of Last Action

Feb 1 2019

## Date Introduced

Nov 8 2018

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Nov 13 2018

## Date Made Public

Nov 8 2018

## SciPol Summary

On November 8, 2018, U.S. District Judge Brian Morris of the federal district court for the District of Montana **ruled** [5] on multiple challenges from environmental groups of the Trump Administration's 2017 approval of the TransCanada Keystone XL Pipeline. This ruling has halted, once again, a controversial project that would transport oil extracted from oil sands deposits in Canada to refineries and distribution centers in the United States. The project had been halted in 2015 by the Obama Administration but given the green light by the Trump Administration.

In 2015, after various controversies and decision points, including a lengthy environmental impact assessment process as required by the National Environmental Protection Act (NEPA), the Obama State Department denied the pipeline a Presidential Permit to cross the Canada-United States border over concerns that approving the pipeline would undermine U.S. leadership on climate change. Four days after taking office, in January 2017, President Trump issued a memo signaling that a renewed application would be looked upon favorably, and stating that he was satisfied with a NEPA supplemental environmental impact statement (SEIS) issued in 2014. In March 2017, the Trump State Department issued a Presidential Permit for the project. The environmental plaintiffs in this case challenged the Presidential Permit, the 2014 SEIS, and other federal actions required for the project to

move forward.

In halting the project, the Montana district court held that the State Department failed to consider relevant facts in adopting the 2014 SEIS as current, and had violated the federal Administrative Procedure Act (APA) when it reversed course to issue the Presidential Permit. Construction of the pipeline is temporarily blocked.

The court found that the SEIS failed to meet NEPA's requirement that the agency take a "hard look" at the environmental consequences of its decision. The court ruled that the State Department must redo the SEIS in light of several material developments since the SEIS was completed four years ago, including falling oil prices (which mean that the development of this pipeline might encourage Canadian oil sands production that might otherwise be too costly), and other pipeline expansions that potentially alter Keystone XL's cumulative climate impact. It further ruled that the State Department must expand its analysis of the project's impact on cultural resources in its path, and failed to adequately consider the impact of potential leaks from the pipeline.

The court also found that the State Department failed to provide the reasoned explanation required by the APA for reversing the 2015 denial of the Presidential Permit. The court noted that under the APA, agencies must provide a detailed justification for reversing course and adopting a new policy based on findings of fact that contradict those underlying its previous policy. In 2015, the State Department denied the Presidential Permit based on a scientifically acknowledged need to keep global temperatures from rising more than two degrees celsius above historic levels, and stated that the US as the world's largest economy and second-largest emitter of greenhouse gases had a major role to play in any effort to do so. However, in its 2017 decision to issue the Presidential Permit, the Trump Administration concluded that the climate-related impacts of Keystone would be inconsequential without giving any factual basis for this conclusion. This, the court ruled, was not the "reasoned explanation" the APA required for such a major course reversal.

The court enjoined the Trump Administration and TransCanada from moving forward with the project until the State Department completes a supplement to the 2014 SEIS that complies with NEPA and the APA. President Trump has already **signaled his displeasure with the ruling** [7] and indicated that the Administration will file an appeal in the Ninth Circuit. (The deadline for any party to the case to file a notice indicating its intent to appeal with the Ninth Circuit is January 8, 2019.)

However, on December 3, 2018, the State Department **published a Notice of Intent in the Federal Register** [8] announcing that it will comply with the court ruling and prepare a Supplemental EIS to analyze the potential environmental impacts of the Keystone XL Pipeline. The State Department explained that:

*"On November 8, 2018, the Federal District Court for the District of Montana ordered the Department to supplement the analysis in the 2014 Supplemental Environmental Impact Statement for the Keystone XL Pipeline relating to greenhouse gas emissions, oil spills, cultural resources, and market analysis. In response to this ruling, the Department intends to issue the updated SEIS[.]"*

On January 14, 2019, attorneys for TransCanada appeared in the Montana federal district court to seek permission to resume pre-construction work on the pipeline while it waits for the State Department to prepare the updated SEIS. Apparently anticipating a rapid EIS-drafting process, TransCanada wants to be ready to resume full construction by August 1. If it is unable to resume pre-construction activities before March 15, it argued, it will not be ready to resume full construction this year, which would in turn cause it to lose hundreds of millions of dollars. The district court has not yet issued a ruling on this latest request.

On February 1, 2019, attorneys with the Department of Justice **appealed** [9] the Montana District Court's decision to the U.S. Court of Appeals for the Ninth Circuit.

SciPol Summary authored by

**Libba Rollins, MEM Candidate**, [10] **Sarah Rispin Sedlak, JD** [11]

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[5] <https://assets.documentcloud.org/documents/5031466/Keystone-XL-pipeline-order-issued-by-U-S.pdf>

[6] <https://scipol.org/source/us-district-court-district-montana>

[7] [https://billingsgazette.com/news/keystone-xl-developer-committed-to-pipeline-despite-court-ruling/article\\_350a2225-422b-5874-91bb-13985f9c76b5.html](https://billingsgazette.com/news/keystone-xl-developer-committed-to-pipeline-despite-court-ruling/article_350a2225-422b-5874-91bb-13985f9c76b5.html)

[8] <https://www.govinfo.gov/app/details/FR-2018-12-03/2018-26146>

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