

Keystone XL Pipeline: The End of the Road?

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On January 20, 2021, President Biden signed an [executive order](#) revoking the Presidential Permit for the cross-border segment of the Keystone XL Pipeline between Canada and Montana. The order asserts that the pipeline “disserves the national interest” and that leaving the permit in place “would not be consistent” with the Administration’s “economic and climate imperatives.” The border crossing had been authorized under a 2019 [Presidential Permit](#) issued directly by President Trump, superseding a prior Presidential Permit issued by the U.S. State Department in 2017 under delegated presidential authority. President Biden was able to revoke the permit as the 2019 permit stated that it “may be terminated, revoked, or amended at any time at the sole discretion of the President.” In anticipation of the president’s action, the pipeline’s developer, TC Energy (previously named TransCanada) [announced](#) that the project would be “suspended.” Although TC Energy said it would “review the decision ... and consider its options,” it appears that the Keystone XL Pipeline project will not be completed.

Keystone XL Pipeline Project

Keystone XL was intended to transport oil sands crude from western Canada, and shale oil from North Dakota and Montana, to a hub in Nebraska for further delivery to Gulf Coast refineries (**Figure 1**). The project was motivated by historically constrained oil pipeline capacity for Canadian exports, which depressed [Western Canadian oil prices](#). Development of Keystone XL had been controversial. Pipeline proponents argued for increasing U.S. oil supplies from a stable ally, which they argued offers economic benefits, especially jobs. Opponents expressed concern about greenhouse gas emissions, continued U.S. dependency on fossil fuels, and the environmental risk of an oil release.

Figure I. Proposed Keystone XL Pipeline Route

Source: CRS, adapted from U.S. Department of State, *Final Supplemental Environmental Impact Statement for the Keystone XL Project*, January 2014, p. 1.2-3; and *Draft Supplemental Environmental Impact Statement Keystone XL Mainline Alternative Route*, September 2018, p. S-2.

Past Litigation

A series of decisions by the U.S. District Court for the District of Montana in 2018 and early 2019 vacated the 2017 Presidential Permit on the grounds that its environmental review under the [National Environmental Policy Act \(NEPA\)](#) was inadequate, among other reasons. A November 2018 [decision](#) identified a number of shortcomings in the State Department’s NEPA compliance efforts and enjoined the government “from engaging in any activity in furtherance of the construction or operation of Keystone and associated facilities” until it addressed those shortcomings. However, in June 2019 the U.S. Court of Appeals for the 9th Circuit [lifted the injunction](#), agreeing with the assertions by the developer and the federal government that the President’s issuance of a new Presidential Permit, and concurrent revocation of the 2017 Permit, mooted the legal dispute over that earlier Permit. Under the authority of the 2019 Presidential Permit, TC Energy [was able to construct](#) the 1.4-mile border crossing segment in 2020.

In addition to a Presidential Permit, the Keystone XL project required other federal agency consultations and approvals under various statutes for specific parts of the pipeline. These [approvals](#) included Corps permits under the [Clean Water Act](#) for construction at regulated water crossings and wetlands as well as rights-of-way granted to cross federal lands from the Bureau of Land Management (BLM). The 2020 decision—also by the U.S. District Court of Montana—vacated the Corps’ [Nationwide Permit 12 \(NWP-12\)](#) to cross U.S. waterways and wetlands due to insufficient consultation under the [Endangered Species](#)

Act (ESA). The court required the Corps to complete the ESA consultation process prior to reissuing NWP-12 and prohibited the Corps from authorizing dredge or fill activities under NWP-12 in the meantime. On July 6, 2020, the U.S. Supreme Court **granted a stay** of the NWP-12 vacatur, *except* as it applied to Keystone XL, pending disposition of an appeal in the 9th Circuit Court of Appeals. The appeal had not yet been ruled upon when President Biden revoked the Presidential Permit.

In addition to the NWP-12 litigation, project opponents had initiated **litigation** challenging the approval of the Keystone XL rights-of-way on BLM lands and on Corps-managed lands in Montana around Fort Peck Dam. Among other things, the litigation challenged the agencies' NEPA compliance. The Trump Administration asserted that the 2019 Presidential Permit, itself, was not subject to NEPA because the President's action was not an agency action and, thus, not subject to the statute. Nonetheless, State Department officials later completed a **Final Supplemental Environmental Impact Statement (FSEIS)** for Keystone XL. BLM and the Corps subsequently adopted the State Department's FSEIS as sufficient to satisfy their own NEPA obligations in approving their respective rights-of-way, a decision objected to by project opponents.

Project Economics

The Keystone XL Pipeline initially was proposed when U.S. **crude oil prices** exceeded \$100 per barrel. However, due to global oil market oversupply—including U.S. oil production growth and reduced demand due to COVID-19—prices had fallen below \$50 per barrel through the end of 2020. This drop in prices reduced the economic attractiveness of Canadian oil sands crude—which is costly to produce—and, consequently, caused analysts to question the need for the Keystone XL Pipeline to move it. The pipeline also faced potential competition from the **Trans Mountain Pipeline Expansion**, intended to increase oil sands shipment capacity to Canada's west coast, and the **Enbridge Line 3 replacement**, which would increase existing capacity to the U.S. Midwest. Notwithstanding these setbacks, TC Energy expected to eventually receive all necessary approvals and **intended to construct** the entire pipeline by 2023. To help ensure Keystone XL's construction, the Alberta government had **announced** a C\$1.5 billion equity investment in the pipeline to be followed by a C\$6 billion loan guarantee in 2021. In its announcement of the project's suspension, TC Energy stated that it would stop capitalizing the costs of the project and would "evaluate the carrying value of its investment in the pipeline." What additional actions the company might take to terminate the project and recoup any of its investments remain to be seen.

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