

Keystone XL Pipeline: Development Issues

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Keystone XL Presidential Permit

On March 23, 2017, the U.S. State Department [issued a Presidential Permit](#) for the border facilities of the proposed Keystone XL Pipeline, having [determined](#) that issuing the permit "would serve the national interest." If constructed, the pipeline would transport [oil sands crude](#) from Canada as well as oil produced in North Dakota and Montana to a hub in Nebraska for further delivery to Gulf Coast refineries ([Figure 1](#)). The U.S. pipeline section would be 875 miles long with the capacity to deliver 830,000 barrels per day. Keystone XL [requires a Presidential Permit](#) because it would cross an international border.

The Keystone XL proposal is motivated by constrained oil pipeline capacity from Canada which has limited access to key U.S. markets and [depressed prices](#) realized by oil sands producers. Development of Keystone XL has been controversial, however. Pipeline proponents base their arguments primarily on increasing the supply of oil to the United States from an allied neighboring country and economic benefits, especially jobs. Opponents express concern about greenhouse gas emissions from the development of Canadian oil sands, continued U.S. dependency on fossil fuels, and the environmental risk of an oil release. There is also debate about how much Keystone XL crude oil, or petroleum products refined from it, would be exported overseas. Congress [has acted](#) on numerous occasions in the past to influence the approval of the pipeline and continues to be interested in its development.

TransCanada, the developer of Keystone XL, has applied for a Presidential Permit three times—initially in 2008 and again in 2012. Both of these applications were [denied](#) by the Obama Administration. However, on January 24, 2017, the Trump Administration [invited](#) TransCanada to resubmit its 2012 permit application for Keystone XL and directed federal agencies to expedite their review of the application if resubmitted. TransCanada [resubmitted](#) its application on January 26, 2017. Prior to issuing the Presidential Permit, the Trump Administration [exempted](#) Keystone XL from the scope of a [Presidential Memorandum](#) requiring the use of domestically-produced materials for new U.S. pipelines.

Figure 1. Proposed Keystone XL Pipeline Route



Source: U.S. Department of State, *Final Supplemental Environmental Impact Statement for the Keystone XL Project*, January 2014, p. 1.2-3, <http://keystonepipeline-xl.state.gov/documents/organization/221145.pdf>.

Development Issues

Construction of the Keystone XL Pipeline is not assured. It faces legal, regulatory, and market challenges related to federal approvals, Nebraska's permitting process, and the effects of low oil prices and competing pipeline proposals.

Federal Approvals

Although TransCanada has obtained a Presidential Permit from the State Department, the issuance of that Permit is the subject of a [legal challenge](#) on [National Environmental Policy Act](#) and [Administrative Procedure Act](#) grounds. Keystone XL also requires other federal agency consultations and approvals under various statutes for specific parts of the pipeline. These [approvals](#) include permits under the [Clean Water Act](#) from the U.S. Army Corps of Engineers (Corps) for construction at regulated water crossings and wetlands as well as rights-of-way granted to cross federal lands (often processed by the Bureau of Land Management (BLM)), among other approvals. In the case of the recently constructed [Dakota Access Pipeline](#), approval to cross Corps-managed land became the focus of litigation, [agency reconsideration](#), and a [presidential memorandum](#). BLM rights of way for Keystone XL are already being challenged preemptively in the litigation cited above regarding the Presidential Permit. If the Corps, BLM, or other federal approvals for Keystone XL face protracted legal challenges or regulatory review, the timing, cost, and route of the pipeline could be affected.

State Siting Permits

Because oil pipeline siting is not under federal jurisdiction, the Keystone XL Pipeline requires approval from state regulators for the pipeline route through the United States. TransCanada has existing siting approvals from Montana and South Dakota, but must obtain [new eminent domain authority from Nebraska](#) due to statutory and regulatory requirements particular to that state. The Nebraska regulatory [process](#)—which includes discovery, formal intervention by affected stakeholders, public input, and hearings—will be completed no sooner than September 14, 2017. Issues raised in these proceedings, or potential legal challenges to them, may create delays and uncertainty about Keystone XL's route through the state.

Low Crude Oil Prices

The Keystone XL Pipeline was initially proposed when U.S. [crude oil prices](#) exceeded \$100 per barrel. However, due to global oil market oversupply—including U.S. oil production growth—prices have fallen to around \$50 per barrel as of March 2017. This precipitous drop in oil prices has reduced the economic attractiveness of Canadian oil sands crude—which is costly to produce—and lowered its near-term projections for growth. These lowered projections, in turn, have caused some analysts to question the need for—and, therefore, the near-term economic viability of—the Keystone XL Pipeline. Canadian oil producers maintain that additional pipeline capacity [will still be needed](#) eventually. TransCanada also [has stated](#) that, although it is renegotiating shipper commitments, it expects "sufficient commercial support to underpin the project." Nonetheless, significant uncertainty remains about future crude oil prices and Keystone XL's ability to secure enough Canadian oil shipments to [justify its construction](#) to investors.

Competing Projects in Canada

Faced with the past obstacles to the Keystone XL Pipeline and growing U.S. crude production, Canadian developers have been pursuing two major pipelines entirely within Canada to export crude oil out of marine terminals on the Pacific and Atlantic coasts. The Trans Mountain Pipeline Expansion [was approved](#) by the Canadian federal government in November 2016, although it still requires additional provincial and First Nations approvals; it also faces legal challenges. TransCanada's Energy East pipeline would add crude oil export capacity via Canada's Atlantic Coast, although this project is still under Canadian federal review and faces significant development hurdles due to its route through Quebec and competition with the Trans Mountain expansion. If ultimately constructed, either of these projects could reduce the quantities of crude oil available for shipment on Keystone XL.