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Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

BOLD ALLIANCE, CENTER FOR
BIOLOGICAL DIVERSITY,
FRIENDS OF THE EARTH,
NATURAL RESOURCES DEFENSE
COUNCIL, INC., and SIERRA CLUB,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE
INTERIOR; DAVID BERNHARDT,
in his official capacity as Secretary of
the Interior; U.S. BUREAU OF LAND
MANAGEMENT; and U.S. FISH
AND WILDLIFE SERVICE,

Defendants,

CV -20-59-GF-BMM-JTJ

**Complaint for Declaratory and
Injunctive Relief**

(National Environmental Policy
Act, 42 U.S.C. § 4321 *et seq.*;
Endangered Species Act,
16 U.S.C. § 1531 *et seq.*; Mineral
Leasing Act, 30 U.S.C. § 181
et seq.; Federal Land Policy and
Management Act, 43 U.S.C.
§ 1701 *et seq.*; Administrative
Procedure Act, 5 U.S.C. § 701
et seq.)

INTRODUCTION

1. This case involves the U.S. Bureau of Land Management’s (Bureau’s) unlawful grant of a right-of-way and temporary use permit for the proposed Keystone XL pipeline project. Keystone XL would move massive quantities of tar sands crude oil—one of the planet’s most environmentally destructive energy sources—from Canada to Steele City, Nebraska, threatening the wildlife, waterways, and communities along its path. The Bureau’s decision to dedicate public lands to this project, and the federal government’s underlying environmental review of it, violated a host of federal statutes.

2. Plaintiffs Bold Alliance, Center for Biological Diversity, Friends of the Earth, Natural Resources Defense Council, and Sierra Club previously prevailed in a challenge to federal approvals of the Keystone XL pipeline in the U.S. District Court for the District of Montana.¹ In late 2018, the court held that the U.S. Department of State’s (State Department’s) 2017 issuance of a cross-border permit and associated environmental reviews violated the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and Administrative Procedure Act (APA), and accordingly enjoined project construction and remanded to the State Department for further environmental analysis. Partial MSJ Order at 10-12,

¹ Five of the six plaintiff groups from that earlier suit are plaintiffs here. Given the overlap, this Complaint uses “Plaintiffs” when referring to both the previous and instant lawsuit.

N. Plains Res. Council v. Shannon, No. 17-cv-31-BMM (D. Mont. Aug. 15, 2018), ECF No. 202; Second MSJ Order at 50-54, *N. Plains Res. Council*, No. 17-cv-31-BMM (D. Mont. Nov. 8, 2018), ECF No. 211.² That case also included a claim against the Bureau, but because the Bureau had not yet acted, the court dismissed the claim without prejudice. Order at 2, *N. Plains Res. Council*, No. 17-cv-31-BMM (D. Mont. Nov. 15, 2018), ECF No. 212 (stating that “Plaintiffs remain free to re-file a new cause of action based upon the [Bureau] rights-of-way when those claims become ripe for review”).

3. The Bureau has now acted. It granted a right-of-way and temporary use permit for Keystone XL pursuant to the Mineral Leasing Act (MLA) on January 22, 2020, allowing the pipeline to cross approximately 44 miles of federal land in Montana administered by the Bureau.

4. That action is unlawful. The Bureau based its decision on revised versions of the environmental review documents that *still* violate NEPA, the ESA, and the APA because they make only a cursory attempt to rectify the problems identified by the court. For example, the new Environmental Impact Statement provides no support for its renewed conclusion that Keystone XL would have no

² The court’s decision was also based on NEPA, ESA, and APA claims raised by plaintiffs Indigenous Environmental Network and North Coast Rivers Alliance in a consolidated case, *Indigenous Env’tl. Network v. U.S. Dep’t of State*, No. 17-cv-29-BMM.

effect on tar sands development despite the precipitous drop in oil prices. And the revised documents continue to improperly minimize the likelihood of oil spills and the impacts of those spills on protected species.

5. The Bureau also violated the MLA and Federal Land Policy and Management Act (FLPMA) by arbitrarily concluding that the project was consistent with those Acts' land-management requirements and by failing to impose measures that would adequately protect public health and safety and the surrounding environment. Finally, the Bureau violated the MLA when it issued a Notice to Proceed for construction at Keystone XL's border crossing—even though the right-of-way grant clearly stipulated that the project must obtain all necessary permits before any construction can begin, and several such permits remain outstanding.

6. Plaintiffs therefore seek a declaration that the Bureau's issuance of a right-of-way, temporary use permit, and Notice to Proceed for Keystone XL violated NEPA, the ESA, the MLA, FLPMA, and the APA. Plaintiffs seek vacatur of Keystone XL's right-of-way, temporary use permit, and Notice to Proceed, and an injunction against any further construction of Keystone XL or issuance of federal approvals that rely on the inadequate environmental reviews described herein.

JURISDICTION AND VENUE

7. This case arises under NEPA, 42 U.S.C. § 4321 *et seq.*, the ESA, 16 U.S.C. § 1531 *et seq.*, the MLA, 30 U.S.C. § 181 *et seq.*, FLPMA, 43 U.S.C. § 1701 *et seq.*, and the APA, 5 U.S.C. § 701 *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (mandamus), 28 U.S.C. §§ 2201-2202 (declaratory judgment), 16 U.S.C. § 1540(c) & (g) (ESA), and 5 U.S.C. § 702 (APA).

8. Plaintiffs have provided the Department of the Interior, Secretary of Interior Bernhardt, the Bureau, and the U.S. Fish and Wildlife Service (Service) with at least 60 days' written notice of the ESA violation alleged in their Second Claim for Relief, in the form and manner required by the ESA, 16 U.S.C. § 1540(g)(2)(A)(i). A copy of Plaintiffs' February 13, 2020, notice letter is attached as Exhibit A to this Complaint.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claim occurred here. The proposed route for the Keystone XL pipeline enters the United States in Montana and runs for approximately 44 miles through lands under the jurisdiction of the Bureau in Montana. Plaintiffs challenge the Bureau's decision to grant a right-of-way for the pipeline to use those Bureau-administered lands.

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