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Attorneys for Plaintiffs
INDIGENOUS ENVIRONMENTAL NETWORK
and NORTH COAST RIVERS ALLIANCE

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

INDIGENOUS ENVIRONMENTAL
NETWORK and NORTH COAST RIVERS
ALLIANCE,

Plaintiffs,

vs.

UNITED STATES BUREAU OF LAND
MANAGEMENT; DAVID BERNHARDT,
in his official capacity as U.S. Secretary of
the Interior; JOHN MEHLHOFF, in his
official capacity as Montana/Dakotas State
Director for the Bureau of Land

Civ. No.

**COMPLAINT FOR
DECLARATORY,
INJUNCTIVE, AND
MANDAMUS RELIEF**

Management; UNITED STATES ARMY CORPS OF ENGINEERS; LT. GENERAL TODD T. SEMONITE, Commanding General and Chief of Engineers; UNITED STATES DEPARTMENT OF STATE; MICHAEL R. POMPEO, in his official capacity as U.S. Secretary of State; UNITED STATES FISH AND WILDLIFE SERVICE, a federal agency; AURELIA SKIPWITH, in her official capacity as Director of the U.S. Fish and Wildlife Service; and DONALD J. TRUMP, in his official capacity as PRESIDENT OF THE UNITED STATES,

Defendants

Plaintiffs Indigenous Environmental Network (“IEN”) and North Coast Rivers Alliance (“NCRA”) bring this action to challenge, in chronological order:

(1) Defendant UNITED STATES ARMY CORPS OF ENGINEERS’ (“the CORPS”) adoption of a final Decision Document and Finding of No Significant Impact (“FONSI”) on January 6, 2017 approving reissuance of Nationwide Permit (“NWP”) 12 under section 404(e) of the Clean Water Act (33 U.S.C. section 1251 et seq. (“CWA”)), 33 U.S.C. section 1344(e), and allowing the Keystone XL Pipeline Project (“Keystone” or “Project”) proposed by TRANSCANADA KEYSTONE PIPELINE LP and TC ENERGY CORPORATION (collectively, “TRANSCANADA”), in violation of the National Environmental Policy Act, 42 U.S.C. section 4321 et seq. (“NEPA”) – alleged in the First (NEPA) Claim for

Relief;

(2) Defendant PRESIDENT DONALD J. TRUMP’s (“PRESIDENT TRUMP’s”) claim that issuance on April 10, 2019 of his Executive Order 13,867 retroactively saved his March 29, 2019 Presidential Permit (“2019 Permit”) from invalidation due to its conflict with Executive Order 13,337 – alleged in the Fifth (Declaratory Judgment) Claim for Relief.

(3) Defendant UNITED STATES DEPARTMENT OF STATE’s (“STATE’s”) issuance on December 20, 2019 of a deficient Final Supplemental Environmental Impact Statement (“2019 FSEIS”) for Keystone in violation of NEPA – alleged in the First (NEPA) Claim for Relief;

(4) Defendant UNITED STATES FISH AND WILDLIFE SERVICE’s (“FWS’s”) decision on December 23, 2019 to rely upon an inadequate Biological Assessment (“BA”) rather than to prepare a Biological Opinion (“BiOp”) as required to analyze the Project’s impacts on endangered and threatened species (other than the American burying beetle) in violation of the Endangered Species Act, 16 U.S.C. section 1531 et seq. (“ESA”) and the Administrative Procedure Act, 5 U.S.C. sections 701-707 (“APA”) – alleged in the Fourth (ESA and APA) Claim for Relief; and

(5) Defendant UNITED STATES BUREAU OF LAND MANAGEMENT’s (“BLM’s”) issuance on January 22, 2020 of a Record of Decision (“ROD”) approving a right-of-way (“ROW”) and temporary use permit (“TUP”) allowing construction and operation of the Project, based on State’s deficient 2019 FSEIS,

in violation of NEPA, the Mineral Leasing Act, 30 U.S.C. section 181 et seq. (“MLA”) and the Federal Land Policy Management Act, 43 U.S.C. section 1701 et seq. (“FLPMA”) – alleged in the First (NEPA), Second (MLA) and Third (FLPMA) Claims for Relief, respectively.

INTRODUCTION

1. Keystone is a proposed 1,209-mile long, 36-inch diameter crude oil pipeline that would be constructed within a 110-foot wide construction right-of-way across 327 miles in the Canadian provinces of Alberta and Saskatchewan and 882 miles in the states of Montana, South Dakota and Nebraska to transport up to 830,000 barrels per day of tar sands crude oil from Hardisty, Alberta and the Bakken shale formation in Montana to existing pipeline facilities near Steele City, Nebraska. U.S. Department of State, Final Supplemental Environmental Impact Statement for the Keystone XL Project (December 2019) (“2019 FSEIS”) at S-1; 84 Fed.Reg. 13101-13103 (Apr. 3, 2019). The Project would pose grave risks to the environment, including the climate, cultural resources, water resources, fish and wildlife, and human health and safety.

2. State’s issuance of the 2019 FSEIS on December 20, 2019, FWS’s reliance on BLM’s inadequate BA rather than preparing the required BiOp on December 23, 2019, and BLM’s issuance of a ROD granting rights-of-way and temporary use permits on January 22, 2020, are the latest in a series of unlawful actions by the Administration of President Donald J. Trump to implement his unlawful 2019 Permit. Plaintiffs challenged that permit in a separate action filed

April 5, 2019, *Indigenous Environmental Network v. Trump*, Case No. 19-CV-0028-GF-BMM (D. Mont.)), which remains pending.

3. Notwithstanding a thoroughly-documented determination on November 6, 2015 by former Secretary of State John Kerry that the Keystone Pipeline Project was not in the national interest, shortly after his inauguration in early 2017, President Trump requested TransCanada's reapplication for a Presidential Permit, which President Trump approved just two months later despite the fact that State's underlying Final Supplemental Environmental Impact Statement ("FSEIS") was unlawfully inadequate in several notable respects. *Indigenous Environmental Network v. United States Department of State*, 347 F.Supp.3d 561, 591 (D. Mont. Nov. 8, 2018) (ordering that the 2017 Permit be "VACATED" due to deficiencies in the 2014 FSEIS); 82 Fed.Reg. 16467 (April 4, 2017).

4. When this Court ruled the 2014 FSEIS invalid in August, 2018, because it failed to address the Project's new alignment through Nebraska, and again in November, 2018, because it ignored or understated several of the Project's significant impacts, President Trump refused to comply with this Court's Judgment. Instead, President Trump actively sought to sidestep – and unlawfully to alter – the law to fit his agenda. On March 29, 2019, he unilaterally and unconstitutionally approved a new Presidential Permit ("2019 Permit") for the Project (84 Fed.Reg. 13101-13103 (Mar. 29, 2019)), which, as noted, Plaintiffs have challenged in separate litigation. *Indigenous Environmental Network v.*

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