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

NORTHERN PLAINS RESOURCE
COUNCIL, et al.,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS,
et al.,

Defendants,

TC ENERGY CORPORATION, et al.,

Intervenor-Defendants,

STATE OF MONTANA,

Intervenor-Defendant,

AMERICAN GAS ASSOCIATION,
et al.,

Intervenor-Defendants.

CV 19-44-GF-BMM

**Plaintiffs' Motion for
Partial Summary Judgment**

Plaintiffs Northern Plains Resource Council, Bold Alliance, Center for Biological Diversity, Friends of the Earth, Natural Resources Defense Council, and Sierra Club (collectively, “Plaintiffs”) respectfully move for partial summary judgment against the U.S. Army Corps of Engineers (the “Corps”). Specifically, Plaintiffs move for summary judgment on their first, second, and fourth claims for relief. *See* First Am. Compl., ECF No. 36. Plaintiffs’ third and fifth claims for relief have been stayed by joint agreement of the parties. ECF No. 56.

As explained in their brief in support of this motion, Plaintiffs challenge the Corps’ improper reissuance of Nationwide Permit 12—a general permit that approves pipelines and other utility projects under the Clean Water Act—and the unlawful application of Nationwide Permit 12 to the Keystone XL pipeline. The Corps’ actions violated the law for three reasons.

First, the Corps failed to adequately evaluate the direct, indirect, and cumulative impacts associated with the numerous oil pipelines that are authorized under Nationwide Permit 12, like Keystone XL, in violation of the National Environmental Policy Act. Second, the Corps failed to conduct formal programmatic consultation on Nationwide Permit 12 with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, in violation of the Endangered Species Act. Finally, the Corps failed to ensure that Nationwide Permit 12 will not allow linear projects, like Keystone XL, to cause more than

minimal adverse environmental effects, in violation of the Clean Water Act.

In light of these violations, Plaintiffs respectfully request that the Court grant Plaintiffs' motion for partial summary judgment; declare Nationwide Permit 12—and its specific application to Keystone XL—in violation of the National Environmental Policy Act, Endangered Species Act, and Clean Water Act; remand Nationwide Permit 12 to the Corps for compliance with these statutes; and enjoin the use of Nationwide Permit 12 to authorize the construction of Keystone XL.

Consistent with the parties' joint case management plan, ECF Nos. 66, 68, and Local Rule 7.1(c)(1), the Corps and Defendant-Intervenor TC Energy will file oppositions to this motion and cross-motions for summary judgment. Defendant-Intervenors the State of Montana and the American Gas Association et al. will file briefs in support of the Corps' and TC Energy's cross-motions.

Dated: November 22, 2019

Respectfully submitted,

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