

Jeffery J. Oven
Jeffrey M. Roth
CROWLEY FLECK PLLP
490 North 31st Street, Ste. 500
Billings, MT 59103-2529
Telephone: 406-252-3441
Email: joven@crowleyfleck.com
jroth@jcrowleyfleck.com

Peter R. Steenland, Jr.
Peter C. Whitfield
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
Telephone: 202-736-8000
Email: psteenland@sidley.com
pwhitfield@sidley.com

Counsel for TransCanada Keystone Pipeline, LP and TC Energy Corporation

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

ROSEBUD SIOUX TRIBE, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF STATE, *et al.*,

Defendants,

and

TC ENERGY CORPORATION, *et al.*

Defendant-Intervenors.

CV 18-118-GF-BMM

**STATEMENT OF UNDISPUTED
FACTS OF TRANSCANADA
KEYSTONE PIPELINE, LP AND
TC ENERGY CORPORATION**

The Parties

1. Plaintiff Rosebud Sioux Tribe of the Rosebud Reservation in South Dakota is an Indian tribe recognized by the United States Bureau of Indian Affairs (“BIA”). 84 Fed Reg. 1200, 1203 (Feb. 1, 2019); First Amended Complaint, ¶ 27 (Dkt. 58).
2. Plaintiff Fort Belknap Indian Community of the Fort Belknap Reservation of Montana is a tribe recognized by BIA. 84 Fed Reg. at 1201; First Amended Complaint ¶ 28.
3. Defendant TC Energy Corporation (formerly TransCanada Corporation) is a Canadian public company organized under the laws of Canada. Amended Corporate Disclosure Statement, Dkt. 59; First Amended Complaint ¶ 37.
4. Defendant TransCanada Keystone Pipeline, LP (“Keystone”) is a limited partnership, organized under the laws of the State of Delaware and owned by affiliates of TC Energy Corporation. Dkt. 59; Amended Complaint ¶ 36.

Keystone XL Project

5. Keystone has plans to construct and operate an international oil pipeline called the Keystone XL Project (“Keystone XL”). TransCanada Keystone Pipeline, L.P. Application for Presidential Permit for the Keystone XL

Pipeline Project (Jan. 26, 2017) at 1 (“Presidential Permit Application”) (attached as Exhibit 1).

6. Keystone XL will extend from an oil supply hub near Hardisty, Alberta, Canada to the northernmost point of the existing Keystone Pipeline Cushing Extension at Steele City, Nebraska. Presidential Permit Application at 8.
7. In total, Keystone XL will consist of approximately 1,209 miles of new, 36-inch-diameter pipeline, with approximately 327 miles of pipeline in Canada and approximately 882 miles in the United States. U.S. Department of State, Final Supplemental Impact Statement for the Keystone XL Project, at 1-1 (Dec. 2019) (2019 Final SEIS) (attached as Exhibit 2).
8. Keystone XL will cross the international border between Saskatchewan, Canada, and the United States near Morgan, in Phillips County, Montana. Presidential Permit Application at 6; 2019 Final SEIS at 1-1.
9. In the United States, Keystone XL will cross land in the States of Montana, South Dakota, and Nebraska as shown on Figure 1-2 of the 2019 Final SEIS. 2019 Final SEIS, at 1-7.
10. In order to construct Keystone XL, TC Energy has been acquiring property interests. Declaration of Denisha Cummings ¶ 3 (attached as Exhibit 3).
11. TC Energy has acquired a fee simple interest in land for the Keystone XL pumping stations. Cummings Decl. ¶ 3.

12. TC Energy has acquired easements for the Keystone XL pipeline. The easements confer a permanent easement and right of entry over the area where the pipeline will be installed and a temporary easement and right of entry over additional area for use as temporary work spaces during construction. Cummings Decl. ¶ 3.
13. Although there is some variation in the size of easements, they generally convey a 110-foot-wide temporary construction right-of-way that is reduced to a 50-foot-wide permanent right-of-way following construction. 2019 Final SEIS at 1-1; Figure 2.1-2.1 from Dep't of State, *Final Supplemental Environmental Impact Statement for Keystone XL Project* ("2014 FEIS") at 2.1-19 (Jan. 2014) (attached as Exhibit 4).
14. In Montana, TC Energy has entered a commercial lease agreement with the State of Montana to allow the construction of one pump station on land owned by the State. Cummings Decl. ¶ 5.
15. TC Energy also has acquired the land for the other pump stations and the easements for the pipeline and temporary work spaces to construct all segments of the Keystone XL Project in Montana with three exceptions: (1) 44.4 miles on federal lands managed by the Bureau of Land Management ("BLM"), for which TC Energy has requested a grant of right-of-way from BLM under the Mineral Leasing Act; (2) a 1.88 mile segment of federal land

administered by the Army Corps of Engineers (“Army Corps”), for which TC Energy has also requested a right-of-way from BLM; and (3) a parcel of land held by a private landowner that is currently in condemnation proceedings in Montana state court. Cummings Decl. ¶ 5.

16. Neither the land leased from the State of Montana nor any of TC Energy’s land or easements is within the boundaries of the Fort Belknap Reservation. Cummings Decl. ¶ 5.
17. With the exception of the segments of the Keystone XL Project that will be built on federal land managed by the BLM or the Army Corps, all of TC Energy’s land and easements are on property that was owned by private landowners or the State at the time TC Energy acquired them. Cummings Decl. ¶ 5.
18. In South Dakota, TC Energy has acquired the land for the pump stations and the easements for the pipeline and temporary work spaces to construct all segments of Keystone XL. Cummings Decl. ¶ 4.
19. None of TC Energy’s land or easements is within the boundaries of the Rosebud Sioux Indian Reservation. Cummings Decl. ¶ 4; Declaration of Amy Hofer ¶ 11 (attached as Exhibit 5); Complaint for Declaratory and Injunctive Relief, Dkt. 1 at ¶ 35. Pub. Util. Comm’n of S.D., *In the Matter of the Petition of TransCanada Keystone Pipeline, LP for Order Accepting*

Certification of Permit Issued in Docket HP09-001 to Construct the Keystone XL Pipeline, No. HP14-001, Final Decision and Order Finding Certification Valid And Accepting Certification, at 19 (Jan. 21, 2016) (“2016 PUC Order”), <https://puc.sd.gov/commission/orders/hydrocarbon/pipeline/2016/hp14-001final.pdf>.

20. All of TC Energy’s land and easements in South Dakota are on property that was owned by private landowners or by the State of South Dakota at the time TC Energy acquired them. Cummings Decl. ¶ 4.
21. TC Energy also has entered standalone agreements with private landowners or with a state for temporary access roads or additional temporary work spaces for construction of the Keystone XL Project. Cummings Decl. ¶ 6.
22. None of TC Energy’s standalone agreements are on land within the boundaries of the Rosebud Sioux Reservation or the Fort Belknap Reservation. Cummings Decl. ¶ 6.
23. There are 148 tracts of real property in Tripp County, South Dakota encumbered by an easement for Keystone XL. Hofer Decl. ¶ 6.
24. The Keystone XL easements are not on property in Tripp County, South Dakota owned by the Rosebud Sioux Tribe. Hofer Decl. ¶ 7.

25. The Keystone XL easements are not on property in Tripp County, South Dakota owned by the United States in trust for the Rosebud Sioux Tribe. Hofer Decl. ¶ 7.
26. The Keystone XL easements are not on property in Tripp County, South Dakota owned by the United States in trust for an Indian allottee. Hofer Decl. ¶ 7.
27. Three of the Keystone XL easements are on tracts of property in Tripp County, South Dakota in which the United States reserved a mineral interest in trust for an Indian allottee at the time the properties were patented. Hofer Decl. ¶ 8. These properties are:
 - Lots 5 and 6, Section 21, Township 103 North, Range 78 West of the 5th Principal Meridian, Tripp County, South Dakota, patent issued October 3, 1961, mineral reservation for Richard Fool Bull and his heirs and assigns. Hofer Decl. ¶ 8.A & Ex. 1.
 - Northwest Quarter (NW ¼) and North One-half of the Southeast Quarter (N ½ SE ¼), Section 28, Township 103 North, Range 78 West of the 5th Principal Meridian, Tripp County, South Dakota, patent issued October 3, 1961, mineral reservation for Richard Fool Bull and his heirs and assigns. Hofer Decl. ¶ 8.B & Ex. 2.
 - Northeast Quarter (NE ¼), Section 32, Township 100 North, Range 77 West of the 5th Principal Meridian, Tripp County, South Dakota, patent issued August 18, 1969, mineral reservation for Rosie Everesta Bone Shirt and her heirs and assigns. Hofer Decl. ¶ 8.C & Ex. 3.
28. The Keystone XL easement in the South Half of the Southwest Quarter of Section 28, the Northwest Quarter and North Half of the Southwest Quarter

of Section 33, Township 103 North, Range 78 West of the 5th Principal Meridian, Tripp County, South Dakota does not cross or encroach upon any surface estate owned by the Rosebud Sioux Tribe or owned by the United States in trust for the Rosebud Sioux Tribe or for an Indian allottee.

Declaration of Brian Fowlds ¶¶ 4a, 11 & Ex. A (attached as Exhibit 6).

29. The Keystone XL easement in Section 13, Township 102 North, Range 78 West of the 5th Principal Meridian, Tripp County, South Dakota does not cross or encroach upon any surface estate owned by the Rosebud Sioux Tribe or owned by the United States in trust for the Rosebud Sioux Tribe or for an Indian allottee. Fowlds Decl. ¶¶ 4b, 11 & Ex. A
30. The Keystone XL easement in the Northeast Quarter of Section 34, Township 101 North, Range 77 West of the 5th Principal Meridian, Tripp County, South Dakota does not cross or encroach upon any surface estate owned by the Rosebud Sioux Tribe or owned by the United States in trust for the Rosebud Sioux Tribe or for an Indian allottee. Fowlds Decl. ¶¶ 4c, 11 & Ex. A.

Presidential Permit for Keystone XL

31. Following the procedure specified in Executive Order 13,337, Keystone submitted an application to the Secretary of State on September 19, 2008 requesting authorization to construct, operate and maintain the Keystone XL

- pipeline and ancillary facilities at the United States-Canada border in Phillips County, Montana. 2019 Final SEIS at 1-3.
32. On January 18, 2012, the President denied Keystone's application. Presidential Permit Application at 2; 2019 Final SEIS at 1-3.
 33. On May 4, 2012, Keystone submitted a new application to the Secretary of State for authorization to construct, operate and maintain the Keystone XL pipeline and ancillary facilities at the United States-Canada border in Phillips County, Montana. Presidential Permit Application at 3.
 34. On November 3, 2015, the Secretary of State denied the application for a presidential permit for the Keystone XL border facilities. Presidential Permit Application at 4; 2019 Final SEIS at 1-4.
 35. On January 26, 2017, Keystone submitted an application to the Department of State, pursuant to Executive Order 11,423, as amended, and Executive Order 13,337, for a presidential permit "authorizing the construction, connection, operation, and maintenance of pipeline facilities for the importation of crude oil, to be located at the international border between the United States and Canada, at Phillips County, Montana (the 'border crossing facilities')." Presidential Permit Application at 1.
 36. Consistent with Department of State policy, "the border-crossing facilities" were defined in the permit application as "a 1.2 mile segment of 36-inch

diameter pipeline extending downstream from the United States border, in Phillips County, Montana up to and including the first pipeline isolation valve, located at Milepost 1.2, where the first pump station in the United States is proposed to be located.” Presidential Permit Application at 6.

37. The border-crossing facilities were depicted on Exhibit B to the permit application, which shows: “(i) a pipeline route map reflecting the location of the border crossing facilities; (ii) an engineering drawing depicting the border crossing; and, (iii) photos of the proposed construction site.” Presidential Permit Application at 6 & Exhibit B.
38. On March 23, 2017, the Under Secretary of State for Political Affairs, exercising authority delegated by Executive Order 13,1337, the January 24, 2017 Presidential Memorandum Regarding Construction of the Keystone XL Pipeline, and Department of State Delegation of Authority No. 118-2 of January 26, 2016, issued a permit “to construct, connect, operate and maintain facilities at the border of the United States of the United States and Canada at Morgan, Montana, for the import of crude oil from Canada to the United States.” 82 Fed. Reg. 16,467, 16,467 (Apr. 4, 2017).
39. On March 29, 2019, the President issued a new presidential permit for Keystone XL that superseded the Presidential permit that was issued by the

Under Secretary of State on March 23, 2017. 84 Fed. Reg. 13,101 (Apr. 3, 2019).

Construction of Keystone XL

40. Construction of Keystone XL will follow standard pipeline construction procedures and methods, except that special construction techniques will be used when warranted by site-specific conditions. 2019 Final SEIS at 2-10 (attached as Exhibit 7); 2014 FSEIS at 2.1-47.
41. Construction will generally proceed according to a sequence that is comprised of surveying and staking the construction right-of-way, clearing and grading the land, stringing, bending, welding and coating the pipe, digging the trench and lowering in the pipe, backfilling the trench, hydrostatic testing of the pipe, and cleanup and restoration of the land. 2019 Final SEIS at 2-10; 2014 FSEIS, Figure 2.1.7-2, at 2.1-48.
42. The trench is typically excavated to a depth of 7-8 feet, with a width of 4-5 feet. 2014 FSEIS at 2.1-50.
43. In areas of rocky soils or bedrock, tractor-mounted mechanical rippers or rock trenchers will fracture the rock prior to excavation. 2014 FSEIS at 2.1-50
44. The top soil and subsoil will be removed in layers and stored separately. 2014 FSEIS at 2.1-50.

45. After the pipe is lowered into the trench, the trench is backfilled using the excavated subsoil material. 2014 FSEIS at 2.1-52.
46. In rocky areas, excavated rock is used to backfill the trench to the top of the existing bedrock profile. 2014 FSEIS at 2.1-52.
47. After the backfilling, topsoil is returned to its original position over the trench. 2014 FSEIS at 2.1-52.

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Respectfully Submitted,

CROWLEY FLECK PLLP

SIDLEY AUSTIN LLP

/s/ Jeffery J. Oven

/s/ Peter R. Steenland, Jr.

Jeffery J. Oven
Mark L. Stermitz
Jeffrey M. Roth
490 North 31st Street, Ste. 500
Billings, MT 59103-2529
Telephone: 406-252-3441
Email: joven@crowleyfleck.com
mstermitz@crowleyfleck.com
jroth@crowleyfleck.com

Peter R. Steenland, Jr.
Peter C. Whitfield
1501 K Street, N.W.
Washington, DC 20005
Telephone: 202-736-8000
Email: psteenland@sidley.com
pwhitfield@sidley.com

Counsel for TransCanada Keystone Pipeline LP and TC Energy Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served today via the Court's CM/ECF system on all counsel of record.

/s/ Jeffery J. Oven