

Jeffery J. Oven
Mark L. Stermitz
Jeffrey M. Roth
CROWLEY FLECK PLLP
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 C. Whitfield
Joseph R. Guerra
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
Telephone: 202-736-8000
Email: pwhitfield@sidley.com
jguerra@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**

INDIGENOUS ENVIRONMENTAL
NETWORK and NORTH COAST RIVERS
ALLIANCE,

Plaintiffs,

vs.

PRESIDENT JOSEPH R. BIDEN, et al.,

Defendants,

TRANSCANADA KEYSTONE PIPELINE,
LP, a Delaware limited partnership, and TC
ENERGY CORPORATION, a Canadian
Public company,

Defendant-Intervenors.

CV 19-28-GF-BMM

**TC ENERGY CORPORATION
AND TRANSCANADA
KEYSTONE PIPELINE, LP'S
STATUS REPORT**

Defendants TransCanada Keystone Pipeline, L.P. and TC Energy Corporation (jointly “TC Energy”) respectfully submit this status report to provide the Court with an update concerning activities and decisions pertaining to the Keystone XL Pipeline Project (“Project”). This report addresses developments since TC Energy’s last status report of September 27, 2021, specifically TC Energy’s removal of the pipeline at the international border between the United States and Canada.

In 2020, TC Energy constructed 1.41 miles of pipeline into Montana from the international boundary. *See* Declaration of Meera Kothari ¶ 4 (attached as Exhibit 1). This included the 1.2 miles covered by the now-revoked 2019 Presidential Permit, plus an additional 0.21 miles to the installation of an above-ground facility. *Id.* The first 0.93 miles from the U.S./Canada border was constructed on land within a right-of-way that the Bureau of Land Management (“BLM”) granted TC Energy for construction and operation of the Project. *Id.* The remaining 0.48 miles (0.27 miles covered by the Presidential Permit) of the border-crossing segment was constructed on Montana state lands. *Id.*

As of October 13, 2021, TC Energy finished excavating and removing the buried pipeline in the border-crossing segment, in accordance with the decommissioning plan approved by BLM on August 31, 2021, and the terms of the 2019 Presidential Permit, which required that, upon termination of the Permit, TC

Energy “at its own expense, shall remove the Border facilities” unless the President decided otherwise. *See* 84 Fed. Reg. 13,101, 13,102 (Apr. 3, 2019) (Article 3); Kothari Decl. ¶ 5. The removed pipe has been sent offsite for salvage. *Id.*

TC Energy also performed reclamation measures to restore the land disturbed by the removal of the pipe as required by the decommissioning plan. The reclamation work was completed on October 13, 2021. *Id.*

TC Energy has already relinquished 43.47 miles of the right-of-way grant outside of the border-crossing segment of Keystone XL. *Id.* ¶ 7; *see also* TC Energy Corporation and TransCanada Keystone Pipeline LP’s Status Report, Doc. 176, at 1 (Sept. 17, 2021). TC Energy will relinquish to BLM the remaining 0.93 miles of the right-of-way grant at the border when BLM determines that the reclamation measures were successful, which is expected in 2022. Kothari Decl. ¶ 7. The government has represented that “[a]fter the decommissioning of the border segment is completed, BLM would accept TC Energy’s relinquishment of the final segment of its right-of-way.” Defs’ Seventh Mot. for an Extension of Time to File a Resp. to Plfs’ Compl., 3, *IEN v. U.S. Bur. of Land Mgmt.*, No. CV 20-115-GF-BMM, Doc. 21 (D. Mont., Oct. 12, 2021).

TC Energy also has begun the process of terminating the lease rights and releasing easements rights it acquired from the State of Montana for the state land in the border crossing segment. Kothari Decl. ¶ 6.

Having removed the pipeline and completed the reclamation measures, TC Energy's only remaining activity on the right-of-way will be to monitor the vegetation that was planted and provide status reports to BLM, as required by the reclamation plan. This further confirms that no live controversy remains between the parties and this case is moot.

Dated: October 19, 2021

Respectfully Submitted,

CROWLEY FLECK PLLP

SIDLEY AUSTIN LLP

/s/ Jeffery J. Oven

/s/ Peter C. Whitfield

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 C. Whitfield
Joseph R. Guerra
1501 K Street, N.W.
Washington, DC 20005
Telephone: 202-736-8000
Email: pwhitfield@sidley.com
jguerra@sidley.com

Counsel for TransCanada Keystone Pipeline LP and TC Energy Corporation

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), I certify that this filing contains 592 words, excluding the caption and certificates of service and compliance.

/s/ Jeffery J. Oven
Jeffery J. Oven

CERTIFICATE OF SERVICE

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

/s/ Jeffery J. Oven
Jeffery J. Oven