

JAMES A. PATTEN
PATTEN, PETERMAN,
BEKKEDAHL & GREEN,
PLLC
Suite 300, The Fratt Building
2817 Second Avenue North
Billings, MT 59101-2041
Telephone: (406) 252-8500
Facsimile: (406) 294-9500
email: apatten@ppbglaw.com

STEPHAN C. VOLKER (Pro hac vice)
ALEXIS E. KRIEG (Pro hac vice)
STEPHANIE L. CLARKE (Pro hac vice)
JAMEY M.B. VOLKER (Pro hac vice)
LAW OFFICES OF STEPHAN C. VOLKER
1633 University Avenue
Berkeley, California 94703-1424
Telephone: (510) 496-0600
Facsimile: (510) 845-1255
email: svolker@volkerlaw.com
akrieg@volkerlaw.com
sclarke@volkerlaw.com
jvolker@volkerlaw.com

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) Civ. No. CV 19-28-GF-BMM
NETWORK and NORTH COAST RIVERS)
ALLIANCE,) **PLAINTIFFS' NOTICE OF**
) **MOTION AND MOTION**
) **FOR SUMMARY**
 Plaintiffs,) **JUDGMENT**
 vs.)
)

PRESIDENT DONALD J. TRUMP,) **Judge: Hon. Brian M. Morris**
UNITED STATES DEPARTMENT OF) **Case Filed: April 5, 2019**
STATE; MICHAEL R. POMPEO, in his) **Hearing: April 16, 2020**
official capacity as U.S. Secretary of State;)
UNITED STATES ARMY CORPS OF)
ENGINEERS; LT. GENERAL TODD T.)
SEMONITE, Commanding General and)
Chief of Engineers; UNITED STATES)
FISH AND WILDLIFE SERVICE, a federal)
agency; MARGARET EVERSON, in her)

official capacity as Acting Director of the)
U.S. Fish and Wildlife Service; UNITED)
STATES BUREAU OF LAND)
MANAGEMENT, and DAVID)
BERNHARDT, in his official capacity as)
U.S. Secretary of the Interior,)
)
Defendants,)
)
TRANSCANADA KEYSTONE PIPELINE,)
LP, a Delaware limited partnership, and TC)
ENERGY CORPORATION, a Canadian)
Public Company,)
)
Defendant-Intervenors.)
_____)

TO THE ABOVE-ENTITLED COURT AND TO ALL PARTIES HEREIN:

PLEASE TAKE NOTICE that as soon as this matter may be heard, proper notice having been given, in the courtroom of the Honorable Brian M. Morris of the United States District Court for the District of Montana, Great Falls Division, Plaintiffs Indigenous Environmental Network and North Coast Rivers Alliance will move the Court for summary judgment on the grounds that there are no genuine issues of material fact in dispute, and Plaintiffs are entitled to judgment as a matter of law for the reason that Defendants President Trump, et al. “Federal Defendants”) violated the United States Constitution Commerce Clause (Art. I, § 8, cl. 3), the United States Constitution Property Clause (Art. IV, § 3, cl. 2), and

Executive Order 13,337 (69 Fed.Reg. 25299 (May 5, 2004)), when approving issuance of a Presidential Permit to TC Energy to construct, connect, operate, and maintain pipeline facilities at the international boundary between the United States and Canada.

This motion for summary judgment is based on this Notice, Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Summary Judgment filed concurrently herewith, Plaintiffs' Statement of Undisputed Facts filed concurrently herewith, Plaintiffs' Brief in Response to the Court's December 20, 2019 Order (Dkt. 74) filed January 24, 2020 (Dkt. 80), Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction filed July 10, 2019 (Dkt. 27-2) and the supporting Declarations of Joye Braun (Dkt. 27-4), Angeline Cheek (Dkt. 27-6), Tom B.K. Goldtooth (Dkt. 27-10), Elizabeth Lone Eagle (Dkt. 27-15), Kathleen Meyer (Corrected) (Dkt. 65-2), LaVae High Elk Red Horse (Dkt. 27-19), Stephan C. Volker (Dkt. 27-21), Kandi White (Dkt. 27-24), Bill Whitehead (Dkt. 27-26), and Frank Egger (Dkt. 27-27), and all exhibits thereto, filed August 7, 2019, and October 7, 2019, Plaintiffs' Reply Memoranda in support of Motion for Preliminary Injunction filed August 7, 2019 (Dkt. 53, 54) and Errata thereto filed October 30, 2019 (Dkt. 70, 71), Plaintiffs' Reply Memoranda in support of Renewed Motion for Preliminary Injunction and Application for Temporary Restraining Order filed February 18, 2020 (Dkt. 91, 92), and Plaintiffs' Opposition to TC Energy Corporation and TransCanada Keystone Pipeline, LP's Motion for Summary Judgment filed

concurrently herewith, along with such oral argument as may be heard by this Court, and any other files or records in this proceeding.

On February 25, 2020, counsel for Plaintiffs conferred with counsel for the parties in this matter via email. Counsel for Defendants represented that the Federal Defendants and Defendant-Intervenors TransCanada Keystone Pipeline, L.P. and TC Energy Corporation oppose this motion.

Dated: February 25, 2020

Respectfully submitted,

PATTEN, PETERMAN, BEKKEDAHL &
GREEN, PLLC

s/ James A. Patten

JAMES A. PATTEN

Dated: February 25, 2020

/s/ Stephan C. Volker

STEPHAN C. VOLKER

Attorney for Plaintiffs

INDIGENOUS ENVIRONMENTAL
NETWORK AND NORTH COAST
RIVERS ALLIANCE

CERTIFICATE OF SERVICE

I, Stephan C. Volker, am a citizen of the United States. I am over the age of 18 years and not a party to this action. My business address is the Law Offices of Stephan C. Volker, 1633 University Avenue, Berkeley, California 94703.

On February 25, 2020 I served the following documents by electronic filing with the Clerk of the Court using the CM/ECF system, which sends notification of such filing to the email addresses registered in the above entitled action:

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

I declare under penalty of perjury that the foregoing is true and correct.

s/ *Stephan C. Volker*
STEPHAN C. VOLKER (Pro Hac Vice)