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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 DONALD J. TRUMP,)
UNITED STATES DEPARTMENT OF)
STATE; MICHAEL R. POMPEO, in his)
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; GREG SHEEHAN, in his official)

Civ. No. CV 19-28-GF-BMM

**PLAINTIFFS' STATUS
REPORT**

Judge: Hon. Brian M. Morris

)
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 Acting 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.)

In accordance with this Court’s Order filed February 2, 2021 (ECF 154), Plaintiffs Indigenous Environmental Network, et al. (“Plaintiffs”) submit this Status Report.

President Joseph Biden’s issuance of Executive Order 13990 on January 20, 2021 revokes the Presidential Permit (“Permit”) that former President Donald Trump had issued on March 29, 2019 allowing TransCanada Keystone Pipeline, L.P. (“TransCanada”) to “construct, connect, operate and maintain” the Keystone XL Pipeline (“Keystone”), pursuant to Article 1(1) of that Permit. President Biden’s revocation of the Permit does not concede that the Permit was issued unlawfully, let alone unconstitutionally. Instead, it states only that its issuance “disserves the U.S. national interest.” 86 Fed.Reg. 7037 (January 20, 2021) (ECF

15, Att. A, §6). Nothing in Executive Order 13990 prevents President Biden from exercising the identical “sole discretion” claimed in that order to unilaterally reissue the Permit.

Plaintiffs have filed two related and still pending actions challenging Keystone: the instant action filed April 5, 2019 challenging the Permit primarily on constitutional grounds, and the second action, *Indigenous Environmental Network v. United States Bureau of Land Management* (“*IEN v. BLM*”), Civ. No. 4:20-cv-00115-BMM), filed December 4, 2020, challenging on statutory and regulatory grounds decisions by officials and agencies of the United States that implement the Permit.

In the instant action, on December 11, 2020 Plaintiffs filed their Notice of Appeal (ECF 151) from this Court’s October 16, 2020 Order (ECF 147) denying Plaintiffs’ July 10, 2019 preliminary injunction motion as renewed (ECF 27, 82, 136), and on January 8, 2021, Plaintiffs filed their Appellants’ Opening Brief and Appellants’ Excerpts of Record (Ninth Circuit No. 20-36068, Dkt. Entries 10 and 11, respectively). On January 29, 2021 Federal Defendants and TransCanada (collectively, “Defendants”) moved for a 31-day extension, from February 5 to March 8, 2021, to file their appellees’ briefs, which Plaintiffs opposed. Ninth Circuit No. 20-36068, Dkt. Entries 15, 16 and 17. To date, the Ninth Circuit has taken no action on Defendants’ motions to extend the February 5, 2021 deadline for their appellees’ briefs. Plaintiffs’ interlocutory appeal, although arising from this Court’s denial of preliminary injunctive relief, raises fundamental, recurring

separation-of-powers issues that question the Permit's underlying constitutionality, transcending President Biden's recent action.

In the second action, *IEN v. BLM*, Plaintiffs served Federal Defendants on December 14, 2020, and thus their deadline for filing a response was February 12, 2021. On February 8, 2021, this Court granted Defendants' unopposed motion for a 31-day extension of time, to Monday, March 15, 2021, to file their Answer to Plaintiffs' Complaint. ECF 7. To Plaintiffs' knowledge, to date the Defendants have taken no publicly-noticed action to rescind any of the approvals they had issued to implement the Permit and that Plaintiffs challenge in their second action. Accordingly, Plaintiffs seek a scheduling order in the second action directing Defendants' prompt preparation of the Administrative Record underlying their challenged approvals, followed by expeditious briefing and hearing of the parties' cross-motions for summary judgment.

February 11, 2021

Respectfully submitted,

LAW OFFICES OF STEPHAN C. VOLKER

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

PATTEN, PETERMAN, BEKKEDAHL &
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s/ *James A. Patten*
JAMES A. PATTEN

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INDIGENOUS ENVIRONMENTAL NETWORK
and NORTH COAST RIVERS ALLIANCE

CERTIFICATE OF COMPLIANCE

Pursuant to Montana District Court, Civil Rule 7.1(d)(2)(E), and this Court's February 2, 2021 Order (ECF 154), I certify that **PLAINTIFFS' STATUS REPORT** contains 499 words, excluding caption, certificate of service, and signature blocks, as counted by WordPerfect X7, the word processing software used to prepare this brief.

Dated: February 11, 2021

/s/ Stephan C. Volker

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 11, 2021 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' STATUS REPORT

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

Dated: February 11, 2021 s/ Stephan C. Volker

STEPHAN C. VOLKER (Pro Hac Vice)