

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 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
capacity as Acting Director of the U.S. Fish
and Wildlife Service; UNITED STATES
BUREAU OF LAND MANAGEMENT, and
DAVID BERNHARDT, in his official

CV 19-28-GF-BMM

**TC ENERGY CORPORATION
AND TRANSCANADA
KEYSTONE PIPELINE, LP'S
NOTICE REGARDING
TERMINATION OF
KEYSTONE XL PIPELINE**

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 the Court’s order of May 28, 2021, Defendant-Intervenors TransCanada Keystone Pipeline, L.P. and its parent TC Energy Corporation (jointly “TC Energy”) file this notice to advise the Court and the parties of the termination of the Keystone XL Pipeline Project (“Project”). TC Energy respectfully submits that this case is moot, and the termination of the Project is a material change that warrants reconsideration of the May 28 order.

In the May 28 order, the Court held that President Biden’s revocation of the presidential permit for Keystone XL did not moot Plaintiffs’ challenges to President Trump’s issuance of that permit. The Court viewed President Biden’s revocation of the permit as “voluntary cessation of illegal activity” and held that a live controversy continues to exist because it is “unclear whether President Biden or a future president simply could issue unilaterally another permit to TC Energy.” May 28, 2021 Order at 10-11 (Doc. 166). The Court also thought it could provide relief to plaintiffs by ordering removal of the border segment of the pipeline. *Id.* at

9. The Court's order requested that TC Energy apprise the Court on any changes in the project. *Id.* at 15.

On June 9th, 2021, TC Energy announced that it has definitively terminated the Keystone XL Project. *See* Attachment A. As a result, TC Energy will not pursue any permits for the Project, nor will it perform any construction activities in furtherance of the Project now or at any time in the future. These are changed circumstances that are material to the Court's earlier decision and make it clear that this case is now conclusively moot. No President will unilaterally issue another permit for the Keystone XL Project, which no longer exists. In addition, the changed circumstances make it clear that the Court can no longer grant Plaintiffs the relief they requested in this case.

In their complaint, Plaintiffs asked the Court (1) to declare the presidential permit for Keystone XL "*ultra vires* and of no legal force and effect"; and (2) to enjoin TC Energy "from initiating any activities in furtherance of the Project that could result in any change or alteration of the physical environment unless and until [the Federal Defendants] comply with" the Constitution, Executive Order 13,337 and various federal laws. *See* First Amended Complaint, Doc. 37 at 24-33. The Court can no longer award that relief. There is no presidential permit for the Court to declare "*ultra vires* and of no legal force and effect," and TC Energy will not be "initiating any activities in furtherance of the Project" for the Court to enjoin. And,

having predicated their Article III injuries on alleged harms from construction and operation of the Project, Plaintiffs have no standing to seek any other relief, as the mere presence of a buried 1.2-mile segment of pipe causes them no cognizable injury.

Accordingly, in light of the foregoing changed circumstances, TC Energy will meet and confer with the parties in the case to determine whether they agree this case is now moot. If any party disagrees that the case is moot, TC Energy will file a motion to dismiss.

Dated: June 9, 2021

Respectfully Submitted,

CROWLEY FLECK PLLP

SIDLEY AUSTIN LLP

/s/ Jeffery J. Oven

/s/ Peter C. Whitfield

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Email: joven@crowleyfleck.com
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jroth@crowleyfleck.com

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

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), I certify that this brief contains 522 words, excluding any captions, tables, 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

NewsRelease



TC Energy confirms termination of Keystone XL Pipeline Project

Focus remains on continuing to meet the evolving energy demand today and in the future

CALGARY, Alberta – **June 9, 2021** – News Release – TC Energy Corporation (TSX, NYSE: TRP) (TC Energy or the Company) confirmed today that after a comprehensive review of its options, and in consultation with its partner, the Government of Alberta, it has terminated the Keystone XL Pipeline Project (the Project).

Construction activities to advance the Project were suspended following the revocation of its Presidential Permit on [January 20, 2021](#). The Company will continue to coordinate with regulators, stakeholders and Indigenous groups to meet its environmental and regulatory commitments and ensure a safe termination of and exit from the Project.

Following is a statement from TC Energy's President and Chief Executive Officer, François Poirier:

We value the strong relationships we've built through the development of this Project and the experience we've gained. We remain grateful to the many organizations that supported the Project and would have shared in its benefits, including our partners, the Government of Alberta and Natural Law Energy, our customers, pipeline building trade unions, local communities, Indigenous groups, elected officials, landowners, the Government of Canada, contractors and suppliers, industry associations and our employees.

Through the process, we developed meaningful Indigenous equity opportunities and a first-of-its-kind, industry leading plan to operate the pipeline with net-zero emissions throughout its lifecycle. We will continue to identify opportunities to apply this level of ingenuity across our business going forward, including our current evaluation of the potential to power existing U.S. assets with renewable energy.

TC Energy's infrastructure plays a critical role in powering the North American economy, delivering the energy people need every day, safely and responsibly. The Company continues to progress \$20 billion of secured growth projects, \$7 billion of projects under development, and numerous additional initiatives aligned with its risk preferences and return criteria across its business lines and geographies.

Looking forward, there is tremendous opportunity for TC Energy in the energy transition with its irreplaceable asset footprint, financial strength and organizational capabilities positioning it to capture further significant and compelling growth. The Company will continue to build on its 70-year history of success and leverage its diverse businesses in natural gas and liquids transportation along with storage and power generation to continue to meet the growing and evolving demand for energy across the continent.

About TC Energy

We are a vital part of everyday life – delivering the energy millions of people rely on to power their lives in a sustainable way. Thanks to a safe, reliable network of natural gas and crude oil pipelines, along with power generation and storage facilities, wherever life happens – we're there. Guided by our core values of safety, responsibility, collaboration and integrity, our more than 7,500 people make a positive difference in the communities where we operate across Canada, the U.S. and Mexico.

TC Energy's common shares trade on the Toronto (TSX) and New York (NYSE) stock exchanges under the symbol TRP. To learn more, visit us at [TCEnergy.com](https://www.tcenenergy.com).

FORWARD-LOOKING INFORMATION

This release contains certain information that is forward-looking and is subject to important risks and uncertainties (such statements are usually accompanied by words such as "anticipate", "expect", "believe", "may", "will", "should", "estimate", "intend" or other similar words). Forward-looking statements in this document are intended to provide TC Energy security holders and potential investors with information regarding TC Energy and its subsidiaries, including management's assessment of TC Energy's and its subsidiaries' future plans and financial outlook. All forward-looking statements reflect TC Energy's beliefs and assumptions based on information available at the time the statements were made and as such are not guarantees of future performance. As actual results could vary significantly from the forward-looking information, you should not put undue reliance on forward-looking information and should not use future-oriented information or financial outlooks for anything other than their intended purpose. We do not update our forward-looking information due to new information or future events, unless we are required to by law. For additional information on the assumptions made, and the risks and uncertainties which could cause actual results to differ from the anticipated results, refer to the most recent Quarterly Report to Shareholders and Annual Report filed under TC Energy's profile on SEDAR at www.sedar.com and with the U.S. Securities and Exchange Commission at www.sec.gov.

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Media Inquiries:

Jaimie Harding / Suzanne Wilton
403-920-7859 or 800-608-7859

Investor & Analyst Inquiries:

David Moneta / Hunter Mau
403-920-7911 or 800-361-6522