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Green Groups Keep Up Keystone XL Fight After Permit Pulled

By [Clark Mindock](#)

Law360 (January 21, 2021, 6:52 PM EST) -- On the same day President Joe Biden yanked a key permit for the Keystone XL pipeline, environmental groups continued the fight in Montana federal court, saying the Trump administration conducted inadequate environmental reviews before greenlighting the project.

The [Natural Resources Defense Council](#), Bold Alliance, the [Center for Biological Diversity](#), the [Sierra Club](#) and others said on Wednesday that the U.S. [Bureau of Land Management](#)'s approvals of right-of-way and land use permits were unlawful, because they failed to provide evidence that the project wouldn't bring with it significant environmental harms.

The groups claimed the government conducted a "papered-over" review after a previous ruling in the same court found the government had failed its obligations under the National Environmental Policy Act, Endangered Species Act and other statutes.

The groups' request for summary judgment came on the same day that Biden was sworn into office and [swiftly revoked](#) a presidential permit signed by former President Donald Trump for the Keystone project. Biden's action killing that permit — which was signed after the previous Montana ruling — has been largely seen by environmentalists as a death knell for the contentious oil pipeline and has already resulted in the pipeline's developer, [TC Energy](#), announcing a halt to construction.

NRDC attorney Cecilia Segal told Law360 on Thursday that the Biden order cancelling the Keystone border construction permits also included an order for agencies to conduct a review of other agency actions in the past four years related to climate change, suggesting that the environmental analysis at the core of their suit is likely in great peril.

"President Biden's executive order spells the end of the Keystone XL pipeline," she said. "Certainly the executive order calls into question other approvals including the right-of-way grant at issue in our pending lawsuit."

At issue in the environmental groups' suit is permitting for right-of-way and land use access on 44 miles of federal land in Montana, which was previously challenged by the groups and blocked by the Montana district court in November 2018 after a suit by the environmental groups.

The Keystone XL pipeline, which has been subject to fevered opposition from environmental groups, land use groups and Native American tribal entities, was proposed as a way to connect Canadian tar sand crude oil operations with American pipelines in Nebraska, after crossing through Montana and South Dakota. The pipeline was designed to carry more than 800,000 gallons of oil a day, according to court documents.

Biden's actions on Wednesday revoked a permit for the project, including permissions to bring

oil into the U.S. over the border-crossing segment, that Trump [signed in March 2019](#). That segment was completed last year, according to TC Energy.

In their request for summary judgment, the environmental groups described the project as a significant threat to the planet and said that it would contribute to further greenhouse gas emissions and a worsening of climate change. In addition, the project would likely result in spills that would degrade the environment where applicable, the groups said.

Other lawsuits over the project include one [filed by two nonprofits](#) in December seeking to block construction of the pipeline, accusing the federal government and Trump, in part, of continuing to "exacerbate" the country's global warming crisis by allowing the project to move forward.

In October, U.S. District Judge Brian Morris — who is also assigned to the present case — [rejected](#) a separate effort by tribes to stop construction, saying they "blurred" key distinctions between a small cross-border segment and the controversial pipeline's full length in the United States. The [Rosebud Sioux Tribe](#) of South Dakota and the Fort Belknap Indian Community of Montana claimed irreparable injury was likely to lands, waterways and cultural resources that lie "almost entirely" outside the relevant 1.2-mile stretch of cross-border pipeline, according to the order.

BLM didn't immediately respond to a request for comment.

The environmental groups are represented by Cecilia Segal, Jaclyn H. Prange and Alexander L. Tom of the NRDC, Douglas P. Hayes and Eric E. Huber of the Sierra Club, Eric R. Glitzenstein and Jared M. Margolis of the Center for Biological Diversity and Timothy M. Bechtold of Bechtold Law Firm.

The U.S. government is represented by Luther L. Hajek and Bridget K. McNeil of the [U.S. Department of Justice](#) and Mark S. Smith of the U.S. attorney's office in Montana.

The case is Bold Alliance et al. v. [U.S. Department of the Interior](#) et al., case number [4:20-cv-00059](#), in the [U.S. District Court for the District of Montana](#).

--Additional reporting by Emma Whitford, Jasmin Jackson, Keith Goldberg and Michael Phillis. Editing by Nicole Bleier.