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THE NEWEST TRIAL TO KEYSTONE XL PIPELINE: TRIBES BRING NEW SUIT AGAINST FEDERAL GOVERNMENT

[Natural Resource \(/full-blog/category/Natural+Resource\)](#)

BY: ANDREW GILLESPIE

Two Native American Tribes may soon have the Keystone XL oil pipeline traversing through their backyards as the construction of the controversial pipeline moves forward.

In a controversial move, the State Department issued a permit in 2017 allowing the much-debated construction of the Keystone XL pipeline to move forward.[i] Though the Obama administration rejected the pipeline's construction, the Trump administration released a memorandum in January of 2017 inviting TransCanada, the builder of the pipeline, to re-apply for a cross-border permit as well as ordering the State Department to complete a review of the application within 60 days.[ii] In March of 2017, the State Department approved the permit application for the construction of the Keystone XL pipeline, allegedly without an in-depth analysis of the various harms which could befall the Tribes.[iii]

In September 2018, two Tribes brought a new suit against the State Department regarding the permit approval of the pipeline, and the possible effects such a pipeline could have on the Tribes' lands.[iv] The Tribes – the Rosebud Sioux Tribe and the Fort Belknap Indian Community – are both federally recognized Native American tribes that would be directly in the path of the pipeline.[v] The suit alleges that the State Department issued the permit in direct violation of the Environmental Policy Act and National Historic Preservation Act due to a failure to complete the required analyses of the trust obligation the federal government owes the Tribes.[vi] The Tribes request relief due to the State Department failing to conduct adequate consultation with the Tribes and failing to make good faith efforts to identify and protect historic properties.[vii]





credit (<https://www.npr.org/sections/thetwo-way/2014/11/18/365048998/senate-rejects-keystone-xl-pipeline-bill-in-a-close-vote>)

In addition, the Tribes assert that the State Department failed to conduct an analysis of the potential impact to the water system operated by the Tribes and that the State Department failed to analyze the pipeline's leak detection system and the potential impact of spills due to the "subpar" leak detection system.[viii] Finally, the Tribes claim that the State Department gave no consideration to how the pipeline would affect the cultural and historic climates of the people living on the tribe land,[ix] stating, "[a]ll historical, cultural, and spiritual places and sites of significance in the path of the pipeline are at risk of destruction." [x]

Through the arguments raised by the Tribes, it is clear that the Keystone XL Pipeline would not only adversely affect both the Rosebud Sioux Tribe and the Fort Belknap Indian Community but also would pose possible natural and environmental ramifications.[xi]

Alternatively, the State Department concluded that most environmental impacts would be minor or negligible after a federal judge ordered the State Department to supplement an environmental review in August of 2018.[xii] Moreover, the State Department on Friday, September 21, 2018, issued an environmental assessment of a revised route for the Keystone XL Pipeline.[xiii] The revised route, which would see the pipeline pass through Nebraska, would not have an impact on groundwater or wildlife, according to the State Department's latest review.[xiv]

The State Department, who along with the Trump administration, is eager to see the pipeline built, stated both that a prompt cleanup response would be capable of remediating contaminated soils and that the revised route would have no significant direct or indirect cumulative effects on the quality of natural or human environments.[xv] Additionally, the Trump administration stated that the pipeline project is part of an energy policy that will lower costs for American families, reduce our dependence on foreign oil, and create jobs.[xvi]

However, without a more compelling study on the possible environmental and cultural effects which would be suffered by the Native American Tribes whose land the pipeline would pass through, the construction of the Keystone XL Pipeline should not move forward. The Trump administration seems to hold strong a strong policy rationale for the pipeline's eventual construction, but the historical and cultural impacts on the federally protected Native American Tribes cannot be overlooked simply for the convenience of cheaper oil.

[i] Keith Goldberg, *Trump Grants Cross-Border Permit For Keystone XL Pipeline*, Law360 (Mar. 24, 2017, 8:28 AM), <https://www.law360.com/articles/905648>.

[ii] *Id.*

[iii] Juan Carlos Rodriguez, *Tribes Launch Fresh Challenge To Keystone XL Approval*, Law360 (September 10, 2018, 5:49 PM), <https://www.law360.com/energy/articles/1081044/tribes-launch-fresh-challenge-to-keystone-xl-approval>.

[iv] *Id.*

[v] Compl. at 6, *Rosebud Sioux Tribe and Fort Belknap Indian Community v. U.S. Dep't of State*, No. 4:18-cv-00118, (D. Mont. Sept. 10, 2018).

[vi] Rodriguez, *supra* note iii.

[vii] Compl. at 74-75, *supra* note v.

[viii] *Id.*

[ix] *Id.*

[x] Emily Birnbaum & Timothy Cama, *Native American Tribes Sue Over Keystone XL Pipeline*, The Hill (Sept. 10, 2018, 3:55 PM), <https://thehill.com/policy/energy-environment/405936-native-american-tribes-sue-over-keystone-xl-pipeline>.

[xi] Rodriguez, *supra* note .

[xii] *Id.*

[xiii] Timothy Gardner, *Keystone XL Pipeline Route Would Not Harm Environment: State Department*, Reuters (Sept. 21, 2018, 5:05 PM), <https://www.reuters.com/article/us-usa-pipeline-keystone/keystone-xl-pipeline-route-would-not-harm-environment-state-department-idUSKCN1M12OZ>.

[xiv] *Id.*

[xv] *Id.*

[xvi] Vanessa Romo, *Native American Tribes File Lawsuit Seeking to Invalidate Keystone XL Pipeline Permit*, NPR (Sept. 10, 2018, 11:59 PM), <https://www.npr.org/2018/09/10/646523140/native-american-tribes-file-lawsuit-seeking-to-invalidate-keystone-xl-pipeline-p>.

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631 SOUTH LIMESTONE, LEXINGTON, KY

40508 (859) 257-4747 BLOG.KJEANRL@GMAIL.COM (MAILTO:BLOG.KJEANRL@GMAIL.COM)