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Keystone XL Pipeline: The Saga Continues

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On March 29, 2019, President Trump issued a new Presidential Permit for the proposed Keystone XL Pipeline, superseding the prior Presidential Permit issued by the U.S. State Department in 2017. By issuing the new permit personally, rather than delegating his permit authority as before, the President pursued a new approach to advance the pipeline project in the face of ongoing legal challenges. The pipeline's developer, TC Energy (previously named TransCanada), has not yet made major capital commitments to the project as it evaluates changing oil market conditions and seeks "a clear path to construction." Congress has acted in the past to influence the pipeline's approval and many Members remain interested in its development.

Keystone XL Pipeline Project

Keystone XL is intended to transport oil sands crude from western Canada, and shale oil from North Dakota and Montana, to a hub in Nebraska for further delivery to Gulf Coast refineries (**Figure 1**). The U.S. pipeline section would be 880 miles long with the capacity to deliver 830,000 barrels per day. The project is motivated by constrained oil pipeline capacity for Canadian exports, which has depressed Western Canadian oil prices realized by oil sands producers. Development of Keystone XL has been controversial, however. Pipeline proponents argue for increasing U.S. oil supplies from a stable ally, which they argue offers economic benefits, especially jobs. Opponents express concern about greenhouse gas emissions, continued U.S. dependency on fossil fuels, and the environmental risk of an oil release.

Keystone XL requires a Presidential Permit because it would cross an international border. The developer applied for a Presidential Permit initially in 2008 and again in 2012. The Obama Administration denied both applications. However, upon invitation from the Trump Administration and an associated directive for federal agencies to expedite review, TransCanada resubmitted its application on January 26, 2017. Prior to issuing the 2017 State Department permit, the Trump Administration exempted Keystone XL from the scope of a Presidential Memorandum requiring domestically produced materials for new U.S. pipelines.

Figure 1. Proposed Keystone XL Pipeline Route

Source: CRS, adapted from: U.S. Department of State, *Final Supplemental Environmental Impact Statement for the Keystone XL Project*, January 2014, p. 1.2-3; and *Draft Supplemental Environmental Impact Statement Keystone XL Mainline Alternative Route*, September 2018, p. S-2.

Permit Status and Related Litigation

A series of decisions by the U.S. District Court for the District of Montana in 2018 and early 2019 vacated the 2017 Presidential Permit on the grounds that its environmental review under the National Environmental Policy Act (NEPA) was inadequate, among other reasons, and stopped pre-construction work on Keystone XL. A November 2018 decision identified a number of shortcomings in the State Department's NEPA compliance efforts and enjoined the government "from engaging in any activity in furtherance of the construction or operation of Keystone and associated facilities" until it addressed those shortcomings. However, in June 2019 the U.S. Court of Appeals for the 9th Circuit lifted the injunction, agreeing with the assertions by the developer and the federal government that the President's March 29 issuance of a new Presidential Permit, and concurrent revocation of the 2017 Permit, mooted the legal dispute over that earlier Permit.

In response to the new Presidential Permit, project opponents have initiated new litigation in federal district court, challenging President's Trumps authority to approve siting of facilities on Bureau of Land Management (BLM) lands or facilities away from the border. The new permit also may raise legal challenges with respect to NEPA, the Administrative Procedure Act, and other federal statutes. In particular, the Trump Administration has asserted in legal filings that the new permit is not subject to NEPA because the President's action is not an agency action and, thus, not subject to the statute—but

permit opponents may disagree. Notwithstanding this assertion, State Department officials plan to complete an environmental review already underway as ordered by the November 2018 court decision. Keystone XL also faces siting-related litigation in Nebraska state court.

Although Keystone XL has a Presidential Permit, the project still requires other federal agency consultations and approvals under various statutes for specific parts of the pipeline. These approvals include permits under the Clean Water Act from the U.S. Army Corps of Engineers (Corps) for construction at regulated water crossings and wetlands as well as rights-of-way granted to cross federal lands from the Bureau of Land Management (BLM). If the Corps, BLM, or other federal approvals for Keystone XL face protracted legal challenges or regulatory review, it could further affect the timing, cost, and route of the pipeline.

Project Economics

The Keystone XL Pipeline initially was proposed when U.S. crude oil prices exceeded $100 per barrel. However, due to global oil market oversupply—including U.S. oil production growth—prices have fallen to around $60 per barrel as of May 2018. This drop in oil prices has reduced the economic attractiveness of Canadian oil sands crude—which is costly to produce—and, consequently, has caused analysts to question the need for the Keystone XL Pipeline to move it. The pipeline also faces potential competition from the Trans Mountain Pipeline Expansion, which would increase oil sands shipment capacity to Canada's west coast, and the Enbridge Line 3 replacement, which would increase capacity to the U.S. Midwest. However, both of these projects also face ongoing regulatory and legal challenges. Even if these other projects proceed, Canadian oil producers maintain that Keystone XL's additional pipeline capacity would still be needed, eventually. Likewise, TC Energy recently stated that it had "secured commercial support for all available capacity on the Keystone XL system." Nonetheless, uncertainty remains about the pipeline's ability to secure enough shipments over the next decade to justify its construction to investors.

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