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PRESS RELEASE

FOR IMMEDIATE RELEASE

NATIVE AMERICAN AND ENVIRONMENTAL GROUPS DEFEAT MOTIONS TO DISMISS THEIR LAWSUIT AGAINST PRESIDENT TRUMP'S KEYSTONE XL PIPELINE APPROVAL

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SUMMARY

On Friday, December 20 the lead Plaintiffs in the litigation to stop the Keystone XL (KXL) Pipeline—the Indigenous Environmental Network (IEN) and North Coast Rivers Alliance (NCRA)—won a pivotal ruling from Montana Federal District Judge Brian Morris rejecting motions filed by pipeline promoter TC Energy (formerly TransCanada) and the Trump Administration to dismiss IEN's and NCRA's lawsuit to overturn President Trump's approval of the KXL Pipeline. In a 41-page ruling, Judge Morris held that all three of the Plaintiffs' constitutionally-based claims against the approval were plausible and therefore should proceed to a merits hearing. Because TC Energy had voluntarily agreed to refrain from construction until next April, the court denied Plaintiffs' request for a preliminary injunction—but without prejudice to its later renewal. A copy of the Order is linked for download from the Volker Law website. The Judge also ordered the parties to submit additional briefs on eight key issues in January and February.

IEN Executive Director Tom B. K. Goldtooth hailed the ruling as a landmark decision recognizing that President Trump may not ignore limits on his power imposed by the United States Constitution. NCRA President Frank Egger agreed that Judge Morris' rejection of the motions to dismiss their lawsuit showed that the President must still answer to the courts when he oversteps the constitutional bounds of his powers.

The Keystone XL Pipeline would pose grave risks to the environment, including the climate, cultural resources, water quality, fish and wildlife, and human health and safety.

THE RULING

Judge Morris issued six principal rulings on Friday. **First**, Plaintiffs have standing to challenge the approval because it poses specific, impending harm to them. Order at 14-18. **Second**, Plaintiffs' alleged harm is redressable because the Court has authority under the Constitution "to review President Trump's actions for lawfulness and enjoin his actions if it were to determine that President Trump acted unlawfully when he issued the 2019 Permit." Ruling at 19-20. **Third**, "Plaintiffs raise persuasive arguments regarding Congress's authority to regulate cross-border pipeline permits under the Foreign Commerce Clause," and "[t]here are strong arguments that the President cannot exercise a foreign affairs power granted to Congress." Ruling at 23. **Fourth**, "[t]he Property Clause provides Congress the power over the public lands to control their occupancy and use, to protect them from trespass and injury, and to prescribe the conditions upon which others may obtain rights in them." Ruling at 30-31. **Fifth**, "Plaintiffs' assertion that the President lacks the inherent constitutional authority to issue the 2019 Permit, combined with Congress's approval of the 2004 Executive Order's permitting process through the TPTCCA, sufficiently supports Plaintiffs' claim that the 2019 Permit violated the 2004 Executive Order." Ruling at 36. **Sixth**, Judge Morris declined to issue a preliminary injunction at this time because "TC Energy is not currently engaged in any activities that alter the status quo." However, "Plaintiffs remain free to renew their request for a preliminary injunction should TC Energy's future activities interfere with the status quo." Ruling at 40.

BACKGROUND

The 875-mile Keystone XL (KXL) Pipeline would be an environmental disaster. Like all metal pipelines, it would corrode, leak and spill. The many rivers it crosses—and threatens to pollute—include the Missouri, Yellowstone, Cheyenne and Platte, which provide essential water supplies to Indigenous communities and habitat for fish and wildlife including the highly endangered Whooping Crane. Combustion of the 830,000 barrels per day of toxic tar sands oil it would carry would push global warming beyond the point of no return, triggering uncontrollable melting of polar ice, heating of the oceans and sea level rise, propelling the Planet into an ecological tailspin. The Indigenous Nations and the conservation community are united in their condemnation of this reckless, unneeded and destructive project.

In 2015, former Secretary of State John Kerry rejected the KXL Pipeline because the global warming it would unleash would harm the national interest. But on March 23, 2017, President Trump nonetheless purported to approve the project. Four days later, IEN and NCRA filed suit. They won a series of rulings in Montana Federal Court, culminating in Judge Brian Morris' Final Judgment on November 8, 2018 overturning the approval because it violated federal environmental laws. On March 15, 2019 these Plaintiffs won a second victory, when Judges Barry Silverman and Richard Tallman of the Ninth Circuit Court of Appeals rejected TransCanada's appeal of Judge Morris' Judgment.

Having lost in both the trial and appellate courts, on March 29, 2019, President Trump resorted to the extreme measure of openly defying those court orders by reapproving KXL himself, without conducting the additional environmental and agency reviews that the courts had ordered. Seven days later, IEN and NCRA again filed suit, alleging that President Trump's approval violated the Commerce Clause and the Property Clause of the United States Constitution, which give Congress—and not the

President—exclusive power to regulate the importation of foreign oil and the use of federal lands to transport it. The statutes Congress has enacted give authority to regulate the KXL pipeline to federal agencies, which must comply with a host of environmental laws including NEPA, the Endangered Species Act, the Clean Water Act and the Federal Land Policy Management Act. President Trump may not constitutionally bypass these agencies and the environmental laws they enforce.

IEN and NCRA contend that President Trump’s attempt to reapprove the KXL Pipeline without compliance with the previous court rulings, and in disregard of this nation’s environmental laws, must be struck down as unconstitutional. They have confidence that the federal courts—long the protectors of our civil liberties—will once again rise to the challenge and enforce the Constitution and the laws of this land, and restore respect for the law as our Founding Fathers intended.

PLAINTIFFS

Established in 1990, IEN was formed by grassroots Indigenous peoples and individuals to address environmental and economic justice issues both in North America and throughout the planet. IEN’s Executive Director Tom B.K. Goldtooth has been at the forefront of Native and environmental leaders who have called upon President Trump to renounce the KXL Pipeline. “KXL would be a disaster for the Northern Plains and a catastrophe for Mother Earth,” Mr. Goldtooth stated. “Our scientists have confirmed that carbon dioxide levels have now exceeded 400 parts per million, which many believe is the ‘tipping point’ beyond which global warming will accelerate beyond our control. We have already lost most of the glaciers in our great Glacier National Park, and sea levels are rising throughout the globe. The dirty tar sands crude oil that KXL would transport requires far more energy to process than other sources of petroleum, and its extraction has already destroyed hundreds of square miles of boreal forests and wetlands in Alberta. We need to keep our fossil fuels in the ground and shut down extraction of highly polluting tar sands at their source. President Trump’s attempt to sidestep the court rulings that overturned his earlier approval of KXL undermines our system of checks and balances, and must be defeated,” Mr. Goldtooth added.

NCRA is an association of conservation leaders from the western and northern United States and Canada which has advocated for decades on behalf of rivers and watersheds in jeopardy throughout North America. Its President, Frank Egger, has been fighting to save salmon and other endangered fishes in the Pacific Northwest for five decades. “Oil, water and fish do not mix. KXL poses an unacceptable risk to the Missouri, Yellowstone and Cheyenne rivers and their fish and wildlife. No oil pipeline is safe. One major oil spill, and these rivers and their adjacent aquifers would be polluted for generations,” explained Mr. Egger. “President Trump must obey the law and comply with the court orders we have won,” he added.

PLAINTIFFS’ COUNSEL

Stephan Volker, attorney for IEN and NCRA, stated that “The courts correctly rejected the Trump Administration’s false claim that the KXL Pipeline would not worsen global warming, impact Native American cultural resources, nor threaten hundreds of rivers and groundwater basins with oil spills. President Trump’s attempt to evade the courts’ orders attacks the very bedrock of our Constitutional Democracy. Our Founding Fathers understood the vital necessity of our system of checks and balances, where the courts protect our citizens from unlawful conduct by the President. President

Trump has trampled on our Constitution by launching a frontal assault on the power of our courts to enforce the law.” Additional documents pertaining to the litigation can be obtained from the Volker Law Offices.