Jeffery J. Oven
Jeffrey M. Roth
CROWLEY FLECK PLLP
490 North 31st Street, Ste. 500
Billings, MT 59103-2529
Telephone: 406-252-3441
Email: joven@crowleyfleck.com
jroth@jcrowleyfleck.com

Peter R. Steenland, Jr.
Peter R. Whitfield
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: 202-736-8000
Email: psteenland@sidley.com
pwhitfield@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

ROSEBUD SIOUX TRIBE, *et al.*, Plaintiffs, v. DONALD J. TRUMP, *et al.*, Defendants, and TRANSCANADA KEYSTONE PIPELINE, LP, a Delaware limited partnership, and TC ENERGY CORPORATION, a Canadian Public company, Defendant-Intervenors.	CV 18-118-GF-BMM **REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS TC ENERGY CORPORATION AND TRANSCANADA KEYSTONE PIPELINE, LP'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

Plaintiffs' response to the motions to dismiss makes it clear that Plaintiffs are no longer challenging the 2017 Permit, and all of their remaining claims proceed from the premise that the 2019 Permit authorizes construction and operation of the entire Keystone XL pipeline. Pltfs.Br. 3-4, 7-8. That premise is wrong.

The 2019 Permit only authorizes construction and operation of Keystone XL facilities in the 1.2-mile corridor in Phillips County, Montana where the pipeline crosses the U.S./Canada border. That corridor does not cross any Indian reservation, and it is far from any land where Rosebud or its members are alleged to hold any interest. Consequently, the authorization to construct and operate Keystone XL in that corridor cannot harm Plaintiffs or violate any treaty, fiduciary duty, tribal law, or federal statute regulating Indian mineral interests or surface estates.

Indeed, the lack of harm is further reinforced by the fact that the 2019 Permit does not relieve Keystone XL of the duty to obtain additional authorizations required by federal, state and local law. Thus, TC Energy still must obtain a right-of-way from the Bureau of Land Management (BLM) before it can construct the border-crossing facilities on federal land, and authorizations and permits from the Army Corps of Engineers (Corps) before it can cross waters of the United States

elsewhere along the route. For these reasons and others discussed in more detail below, the Amended Complaint should be dismissed for lack of jurisdiction and failure to state any claim for which relief can be granted.

ARGUMENT

I. Plaintiffs Lack Standing To Challenge The 2019 Presidential Permit

Although Plaintiffs claim that construction and operation of Keystone XL could harm tribal territory and natural resources, destroy cultural sites, and endanger tribal members, they do not claim that these harms will occur in the 1.2-mile corridor where Keystone XL crosses the U.S./Canada border. Pltfs.Br. 14-15. That corridor does not cross Fort Belknap's Reservation or Rosebud's Reservation or alleged historic treaty territory in South Dakota. *See* FAC ¶¶ 156-60. Plaintiffs' claim of standing is thus based on the assertion that the 2019 Permit authorizes construction and operation of "the entire Pipeline." Pltfs.Br. 8; *see also id*. at 14. But the Permit admits of no such reading.

It "grant[s] permission … to construct, connect, operate, and maintain pipeline *facilities at the international border* of the United States and Canada *at Phillips County, Montana*." 84 Fed. Reg. 13,101 (Apr. 3, 2019) (emphases added). Its title reflects this limitation. *See id.* (authorizing pipeline facilities "*at the International Boundary* Between the United States and Canada") (emphasis added). And it defines "Border facilities" as those "appurtenant" to the pipeline

segment "from the international border … to and including the first mainline shut-off valve in the United States located approximately 1.2 miles from the international border." *Id.* This language plainly limits TC Energy's authorization to activities at the border—as both TC Energy and the Government have stated.

In an effort to invalidate this limited authorization, Plaintiffs claim that the definition of "Facilities" operates to authorize the entire pipeline. But that term (as opposed to the term "Border facilities") is not used in the sections of the Permit that actually authorize any activities by TC Energy. Instead, the term "Facilities" is used only in the "Conditions" section, where TC Energy's authorization is conditioned on (1) its compliance with the laws that apply to the rest of the pipeline, and (2) its indemnification of the United States from any liability arising from the construction or operation of the rest of the route. *See* Arts. 1(2) & 6(2), 84 Fed. Reg. at 13,101-02. Neither of these conditions on TC Energy's right to construct facilities at the border authorizes construction or operation of facilities elsewhere.

Moreover, the 2019 Permit is not, in and of itself, sufficient to authorize construction of even the Border facilities. Much of the 1.2 mile border-crossing corridor is on federal land. *See* FAC ¶ 147. The Permit does not exempt TC Energy from complying with any law, and the activity it authorizes is conditioned on TC Energy's acquisition of "any right-of-way grants or easements, permits, and other

authorizations as may become necessary or appropriate," Art. 6(1), 84 Fed. Reg. at 13.102. Thus, TC Energy must obtain a right-of-way from BLM before it can even construct the Border facilities, and permission from the Corps before it can cross waters of the United States elsewhere along the route. Those agencies must comply with the National Environmental Protection Act (NEPA) and the National Historic Preservation Act (NHPA) before taking such action. *See* TC.Br. 4, 13; U.S.Br. 2, 12. The harms Plaintiffs fear are thus too speculative to create standing. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 413 (2013).

Finally, even if issuance of the 2019 Permit would cause Plaintiffs imminent harm (and it will not), Plaintiffs have not shown that it is redressable by the court. The APA provides no cause of action to enjoin the President's actions. *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992). Of course, "the President's actions may still be reviewed for constitutionality," and a court may enter "injunctive relief against executive officials" who implement an unconstitutional presidential directive. *Id*. at 801-02. But here there is no executive official to enjoin, because no agency action is needed to act to make the 2019 Permit effective.

It is no answer for Plaintiffs to say that the Court can enjoin TC Energy "from further proceedings on the pipeline." Pltfs.Br. 47. If the 2019 Permit is "unconstitutional as a usurpation of Congress's foreign commerce power," as Plaintiffs allege, *id*. at 48, that would not justify an injunction against Keystone

XL. It would mean the President has no role to play in the approval process, so Keystone XL can be constructed and operated wherever it obtains the approvals required by *other* laws, whether federal, state, or local. TC.Br. 22.

II. Fort Belknap's Treaty And Tribal Law Claims Must Be Dismissed

Even if the 2019 Permit authorized the entire pipeline (and it does not), and Plaintiffs had standing (which they do not), Fort Belknap's claims must be dismissed. The pipeline will not cross the Fort Belknap Reservation or land owned by the tribe or its members, so the Permit cannot violate any treaty right, fiduciary duty, or tribal law of the Fort Belknap.

A. The Treaty Claim For Alleged Failure To Protect The Tribe From Depredations Ignores Controlling Ninth Circuit Precedent.

The Ninth Circuit's decision in *Gros Ventre Tribe v. United States*, 469 F.3d 801 (9th Cir. 2006), compels dismissal of the claim that the 2019 Permit violated Fort Belknap's treaty rights. Fort Belknap was a plaintiff in *Gros Ventre*, and it raised claims based on the same treaties that Plaintiffs cite here. *See id*. at 803-04; TC.Br. 15, n.39; Pltfs.Br. 2-3. Plaintiffs in *Gros Ventre* claimed that the treaties created "trust responsibilities" that BLM breached by approving the expansion of gold mines that threatened the water supply for the Fort Belknap Reservation and interfered with the tribes' "spiritual, cultural and religious interests." 469 F.3d at 806. The Ninth Circuit rejected that claim because the mines were not on the Reservation, and it was "clear" that "the United States agreed to protect the Tribes

from depredations that occurred only on tribal land." *Id.* at 813. That the mines were on land that had been "part of the Tribes' territory" when the treaty "was ratified" and "may impact resources on the Reservation" was irrelevant because the treaty language does not require the government "to manage that land for the benefit of the Tribes in perpetuity, even after the Tribes later relinquished their ownership in that land." *Id.*

Because Keystone XL concededly will not cross the Fort Belknap Reservation, *Gros Ventre* forecloses Plaintiffs' claim that the 2019 Permit violates the treaty obligation to protect Fort Belknap's natural resources from "depredation" or "waste." Pltfs.Br. 8, n.3 & 25-26. *Gros Ventre* cannot be distinguished on the ground that the tribes there "sought a mandatory injunction to force the United States to manage property off the tribe's reservation," while the tribes here seek "to maintain the status quo." Pltfs.Br. 28. The *Gros Ventre* plaintiffs sought to "compel[] the government to comply" with their treaty obligations and to enjoin "further destruction of tribal trust resources," 469 F.3d at 806, while Plaintiffs here seek a similar injunction "requiring Federal Defendants to fully comply" with their treaty obligations and barring further development of the pipeline, FAC, Requested Relief ¶ 10. And Plaintiffs invoke the same treaty right to protection "against depredations and other unlawful acts which white men

residing in or passing through their country may commit." *See* 469 F.3d at 804, 813; Pltfs.Br. 25.

B. There Is No Cognizable Claim For Breach Of Fiduciary Duty Under NEPA Or The NHPA.

Gros Ventre also compels the conclusion that, in issuing the 2019 Permit, the President had no fiduciary duty to comply with the APA, NEPA, or NHPA. The court explained that the tribes' interest in protecting the quality of their water supply was no different from that of "any other affected landowner, subject to the same statutory restrictions." 469 F.3d at 811. "[U]nless there is a specific duty that has been placed on the government with respect to Indians, [the government's general trust obligation] is discharged by the [government's] compliance with general regulations and statutes not specifically aimed at protecting Indian tribes." *Id*. at 810 (quoting *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 574 (9th Cir. 1998)). That reasoning controls here. No other person could state a claim under the APA, NEPA, or the NHPA challenging the President's action because (as Plaintiffs admit) those laws do not apply to the President. Pltfs.Br. 17, n.6 & 27.

Pit River Tribe v U.S. Forest Service, 469 F.3d 768 (9th Cir. 2006), does not compel a different result. Pltfs.Br. 27-28. The court there held that the government's fiduciary duty requires it to "at least show 'compliance with general regulations and statutes not specifically aimed at protecting Indian tribes.'" *Pit*

River, 469 F.3d at 788. The court concluded that because the "agencies violated both NEPA and NHPA during the leasing and approval process" at issue, "it follows that the agencies violated their minimum fiduciary duty to the Pit River Tribe." *Id*. The opinion nowhere states that the "*substantive* provisions of the generally applicable statutes set forth the 'minimum fiduciary duty,'" and "that the technical requirements of the statutes do not apply." Pltfs.Br. 27. The court expressly declined to decide whether "the fiduciary obligations of federal agencies to Indian nations might require more" than the statutes themselves require. *Pit River*, 469 F.3d at 788. Plaintiffs' ignore that critical language and fail to address *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011), which makes clear that the "Government assumes Indian trust responsibilities only to the extent it expressly accepts those responsibilities by statute."

C. The Tribal Law Claim Cannot Apply to Keystone XL.

Fort Belknap's tribal laws do not apply to Keystone XL, which has no contractual relationship with the Tribe and is on private land off the Fort Belknap Reservation. *See* TC.Br. 26-27. Plaintiffs cite no case allowing tribal jurisdiction over such activity.[1] And their assertion that "TransCanda has consented to their

[1] Plaintiffs cite (at 49-52) *Window Rock Unified Sch. Dist. v. Reeves*, 861 F.3d 894 (2017), which involved employment claims against the district that operated schools on tribal land under a lease requiring compliance with tribal law; *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011), which involved breach of lease claims against a resort that leased reservation land

jurisdiction," Pltfs.Br. 49, is false. The Permit requires the company to comply with "applicable law" as described in the application (Art. 1(2)), and to acquire "necessary" authorizations (Art. 6(1)). 84 Fed. Reg. at 13,101-02. That does not encompass Fort Belknap laws, which are inapplicable.

III. Rosebud's Treaty, Tribal Law, And Statutory Claims Must Be Dismissed.

Rosebud's claims must be dismissed because they are based on the erroneous premise that the 2019 Permit authorized construction of Keystone XL "within its permanent homeland" in South Dakota without its consent. Pltfs.Br. 9. The Permit only authorized the border-crossing segment in Montana. *Supra* pp.2-3. And even if the 2019 Permit authorized the entire route (which is does not), there are additional defects in Rosebud's claims.

A. Rosebud's Treaty And Tribal Law Assertions Fail To Present Claims That Can Be Adjudicated In Federal Court.

Rosebud claims that Keystone XL will cross its reservation established by the 1868 Fort Laramie Treaty and a statute enacted in 1889. *See* Pltfs.Br. 8-9 & n.4. Although the Treaty described those boundaries as "permanent," *id.* at 8, it is clear that "Congress can alter the terms of an Indian treaty by diminishing a reservation." *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998).

---

from the tribe; and *Rincon Mushroom Corp. v. Mazzetti*, 490 F. App'x 11 (9th Cir. 2012), which involved environmental regulation of activity on the reservation.

What is more, the Supreme Court held that Congress did precisely that in statutes passed in 1904, 1907, and 1910, which diminished the Rosebud Reservation "so as to exclude … four counties in South Dakota," including Tripp County, *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 585 (1977), through which Keystone XL will pass, *see* FAC ¶ 88. As a result, the treaty duty to protect Rosebud from "depredations" no longer exists in these excluded areas, *supra* pp.5-6, and Rosebud has no jurisdiction over the pipeline. *Rosebud Sioux*, 430 U.S. at 616 (Marshall, J., dissenting) (the Court's decision precludes Rosebud "from continuing to exercise … jurisdiction" over areas removed from the reservation).

Accordingly, Rosebud's treaty and tribal law claims must be dismissed for failure to state a claim

B. Rosebud's Breach Of Fiduciary Duty Claims Under NEPA And NHPA Also Fail.

Rosebud's breach of fiduciary duty claim is largely identical to Fort Belknap's claim, so it too fails to state a claim. *Supra* pp.7-8. Rosebud also alleged that the United States holds the Rosebud Water System in trust for the tribe, but Plaintiffs have no response to our argument that the statute establishing the water system does not require the President to comply with NEPA, and courts cannot require compliance with duties that Congress did not impose. *See* TC.Br. 20.

C. Rosebud Cannot Pursue Claims Under The Indian Rights-Of-Way Act And The Indian Mineral Leasing Act.

Rosebud also has no viable response to our argument that the Indian Rights-of-Way Act and Indian Mineral Leasing Act claims in Count Five must be dismissed because there is no final agency action as required for judicial review under the APA, and no private right of action under these statutes against TC Energy. *See* TC.Br. 24-26. Rosebud cites *United States v. Jenks*, 22 F.3d 1513, 1519 (10th Cir. 1994), for the proposition that a party may be enjoined from acting without proper authorization from an agency. Pltfs.Br. 58. But there the *government* sued to enforce the permitting requirement, so the case says nothing about whether a private party can sue without statutory authorization.

Beyond that, Rosebud cannot state a claim under the Indian Mineral Leasing Act because construction of the pipeline does not involve "mining" or "mineral development." Construction will require excavating a trench 7-8 feet deep and 4-5 feet wide,[2] which may involve "rock ripping" (breaking up and temporarily removing rock with an excavator)[3] in segments where bedrock is near the surface. But Rosebud is wrong to say that constitutes "mineral development." Pltfs.Br. 60. The case it cites makes clear that "merely dig[ging] holes in the ground" or

[2] Dep't of State, *Final Supplemental Environmental Impact Statement for Keystone XL Project* ("FEIS") at 2.1-50 (Jan. 2014).

[3] FAC ¶ 112 (quoting FEIS at 4.1-4).

"disrupting the mineral estate" is not "mineral development" or "mining" as defined in Interior's regulations. *United States v. Osage Wind, LLC*, 871 F.3d 1078, 1091-92 (10th Cir. 2017), *cert. denied*, 139 S. Ct. 784 (2019). The Osage Wind project was held to have engaged in mining because it went further: "It *sorted* the rocks, *crushed* the rocks into smaller pieces, and then *exploited* the crushed rocks as structural support for each wind turbine." *Id.* at 1091.

The Amended Complaint does not allege there will be "sorting and crushing of rocks to provide structural support" for Keystone XL. *Id.* at 1092. Instead, the soil will be removed in layers so it can be placed back in the trench in its original position after the pipeline is installed.[4] And in rocky areas, "excavated rock [will] be used to backfill the trench to the top of the existing bedrock profile" before the "topsoil [is] returned to its original position over the trench."[5] Such removal and replacement of soil and rock is not "mining" or "mineral development."

Rosebud says that defendants have misread Count Five because it also seeks to enforce a treaty right to exclude outsiders from Rosebud's land. Pltfs.Br. 57. Even assuming that this treaty right exists (and TC Energy does not concede that it does), Rosebud has identified no statute that provides a cause of action against TC

[4] FEIS at 2.1-50, 2.1-52.

[5] *Id.* at 2.1-52.

Energy. Rosebud cites *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wis., Inc.*, 759 F. Supp. 1339, 1344 (W.D. Wis. 1991), where the court enjoined protesters from interfering with the Indians' exercise of their treaty right to spear walleye. But that case was brought under federal civil rights statutes that are inapplicable here, where there is no claim that Defendants are "driven by racial hostility toward Indians." *Id.* at 1349. Count Five must be dismissed in its entirety.

IV. The Tribes' Commerce Clause Claim Provides No Basis For Enjoining Construction of Keystone XL

Plaintiffs' challenge to the President's constitutional authority to issue the 2019 Permit rests on the theory that Congress acquiesced in the process established by Executive Order 13,337, and that the President impermissibly "upended the established practice" when he "unilaterally" issued the 2019 Permit. Pltfs.Br. 43. Not so.

Presidents personally issued permits for cross-border facilities prior to 1968. *See* TC.Br. 4-5. The 2011 statute directing President Obama to issue a permit for Keystone XL under EO 13,337, Pltfs. Br. 45, did not codify that Executive Order. Instead, the relevant history shows that Congress acquiesced in a practice in which Presidential Permits for cross-border oil pipeline facilities were *routinely granted*,

whether by the President or the State Department, [6] and that Congress objected the only time (to our knowledge) that an oil pipeline was ever denied a Presidential Permit. *See* TC.Br. 22, n.47. Presidential issuance of the 2019 Permit is fully consistent with the historical practice.

Moreover, Plaintiffs have no response to our argument that the Commerce Clause challenge provides no basis for enjoining Keystone XL. *Id*. at 22. If the President has no constitutional authority to issue a permit, then the pipeline and related facilities may be constructed whenever permitted by the laws enacted by Congress and by applicable state and local laws.

CONCLUSION

For the foregoing reasons, and those stated in our Opening Brief, the Amended Complaint should be dismissed for lack of jurisdiction and failure to state a claim upon which relief can be granted.

[6] *See* Adam Vann & Paul W. Parfomak, Cong. Research Serv., R43261, *Presidential Permits for Border Crossing Energy Facilities*, at 12, tbl.3 (Oct. 29, 2013) (Ex. 1) (listing 19 cross-border oil pipelines).

DATED this 15th day of August 2019,

CROWLEY FLECK PLLP

/s/ Jeffery J. Oven
Jeffery J. Oven
Jeffrey M. Roth
490 North 31st Street, Ste. 500
Billings, MT 59103-2529
Telephone: 406-252-3441
Email: joven@crowleyfleck.com
jroth@jcrowleyfleck.com

SIDLEY AUSTIN LLP

/s/ Peter R. Steenland, Jr.
Peter R. Steenland, Jr.
Peter R. Whitfield
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: 202-736-8000
Email: psteenland@sidley.com
pwhitfield@sidley.com

Counsel for TransCanada Keystone Pipeline, LP and TC Energy Corporation

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), I certify that this brief is printed in 14-point font, double spaced, and contains 3,230 words, excluding tables, caption, signatures, and certificates of service and compliance.

/s/ Jeffery J. Oven

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served today via the Court's CM/ECF system on all counsel of record.

/s/ Jeffery J. Oven

Exhibit 1

Presidential Permits for Border Crossing Energy Facilities

Adam Vann
Legislative Attorney

Paul W. Parfomak
Specialist in Energy and Infrastructure Policy

October 29, 2013

Congressional Research Service
7-5700
www.crs.gov
R43261

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Controversy over the proposed Keystone XL pipeline project has focused attention on the existing U.S. requirements for authorization to construct and operate pipelines and other energy infrastructure at international borders. For the most part, developers are required to obtain a Presidential Permit for border crossing facilities. The agency responsible for reviewing applications and issuing Presidential Permits varies depending on the type of facility. Oil and other hazardous liquids pipelines that cross borders are authorized by the U.S. Department of State. Natural gas pipeline border crossings are authorized by the Federal Energy Regulatory Commission. Electricity transmission facilities are authorized by the Department of Energy. CRS has identified over 100 operating or proposed oil, natural gas, and electric transmission facilities crossing the U.S.-Mexico or U.S.-Canada border.

The authority for federal agencies to review applications and issue Presidential Permits for oil pipelines comes from a series of executive orders. These executive orders have been upheld by the courts as legitimate exercises of the President's constitutional authority over foreign affairs as well as his authority as Commander in Chief. It is worth noting, however, that Congress has enacted statutes applying to cross-border natural gas and electric transmission facilities that require developers of such projects to apply for authorization from executive branch agencies.

In recent years, in the context of the Presidential Permit application for the proposed Keystone XL crude oil pipeline project, Congress has acted to modify the State Department permitting process. Legislation proposed in the 112th and 113th Congresses has been, for the most part, directed at Presidential Permit authority only with respect to the Keystone XL project—although such legislation could set a precedent for Congress to assert authority over cross border energy infrastructure permits more broadly. However, the North American Energy Infrastructure Act (H.R. 3301) would change presidential permitting for all border crossing energy infrastructure. What practical effects any of these legislative proposals would have on the review and approval of future border crossing energy infrastructure projects is the subject of ongoing debate.

Contents

Tables

Contacts

Introduction

The executive branch of the U.S. federal government has mandated for decades that developers of border crossing energy facilities must first obtain a Presidential Permit. Until recently, this administrative oversight was undertaken with little fanfare. However, controversy over the proposed Keystone XL oil pipeline—a project that would transport oil sands crude from Alberta, Canada, into the United States—has focused attention on federal permitting of energy infrastructure border crossings.[1] Generally, the construction, operation, and maintenance of facilities that cross the U.S.-Mexico or U.S.- Canada border must be authorized by the federal government through the issuance of a Presidential Permit in accordance with requirements set forth in a series of executive orders. This report discusses these executive orders, including the source of the executive branch authority to issue the orders, the standards set forth in the orders, and the projects approved pursuant to the orders.

Oil and Products Pipelines

The executive branch exercises permitting authority over the construction and operation of "pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum, petroleum products" and other products pursuant to a series of executive orders. This authority has been vested in the U.S. State Department since the promulgation of Executive Order 11423 in 1968.[2] Executive Order 13337 amended this authority and the procedures associated with the review, but did not substantially alter the exercise of authority or its delegation to the Secretary of State.[3]

Executive Order 11423 provided that, except with respect to cross-border permits for electric energy facilities, natural gas facilities, and submarine facilities:

> The Secretary of State is hereby designated and empowered to receive all applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of: (i) pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum, petroleum products, coal, minerals, or other products to or from a foreign country; (ii) facilities for the exportation or importation of water or sewage to or from a foreign country; (iii) monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country; and (iv) bridges, to the extent that congressional authorization is not required.[4]

Executive Order 13337 designates and empowers the Secretary of State to "receive all applications for Presidential Permits, as referred to in Executive Order 11423, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels

[1] For more analysis of Keystone XL pipeline issues, *see* CRS Report R41668, *Keystone XL Pipeline Project: Key Issues*, by Paul W. Parfomak et al.

[2] Exec. Order No. 11423, *Providing for the Performance of Certain Functions Heretofore Performed by the President with Respect to Certain Facilities Constructed and Maintained on the Borders of the United States*, 33 Fed. Reg. 11741 (August 20, 1968).

[3] Exec. Order No. 13337, *Issuance of Permits With Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States,* 69 Fed. Reg. 25299 (May 5, 2004).

[4] Exec. Order No. 11423, 33 Fed. Reg. at 11741.

to or from a foreign country."[5] Executive Order 13337 further provides that after consideration of the application and comments received:

> If the Secretary of State finds that issuance of a permit to the applicant would serve the national interest, the Secretary shall prepare a permit, in such form and with such terms and conditions as the national interest may in the Secretary's judgment require, and shall notify the officials required to be consulted ... that a permit be issued.[6]

Thus the Secretary of State is directed by the order to authorize those border crossing facilities that the Secretary has determined would "serve the national interest," although the text of the Executive Order provides no further guidance on what is considered to "serve the national interest." Agency documents for a specific permit have discussed the "national interest" determination stating, for example, that "determination of national interest involves consideration of many factors, including: energy security; environmental, cultural, and economic impacts; foreign policy; and compliance with relevant federal regulations."[7]

One recent example of a national interest determination is the one made for Enbridge Energy's Alberta Clipper[8] crude oil pipeline, which was issued a Presidential Permit by the State Department in August 2009. The 36-inch-diameter pipeline provides crude oil transportation from the oil sands region of Alberta, Canada, to oil markets in the Midwestern United States, crossing the international border in North Dakota. The State Department's national interest determination concluded that, for this particular project, the addition of crude oil pipeline capacity between Canada and the United States would advance a number of U.S. "strategic interests."[9]

> These included increasing the diversity of available supplies among the United States' worldwide crude oil sources in a time of considerable political tension in other major oil producing countries and regions; shortening the transportation pathway for crude oil supplies; and increasing crude oil supplies from a major non-Organization of Petroleum Exporting Countries producer. Canada is a stable and reliable ally and trading partner of the United States, with which we have free trade agreements which augment the security of this energy supply.... Approval of the permit sends a positive economic signal, in a difficult economic period, about the future reliability and availability of a portion of United States' energy imports, and in the immediate term, this shovel-ready project will provide construction jobs for workers in the United States.... [10]

The State Department also considered the greenhouse gas emissions associated with the project, concluding that "the reduction of greenhouse gas emissions are best addressed through each country's robust domestic policies and a strong international agreement."[11]

The State Department has considerable discretion with respect to making national interest determinations, so its conclusions for one project may not apply to another due to differences in

[5] Exec. Order No. 13337, 69 Fed. Reg. at 25299.

[6] Ibid. at 25230.

[7] U.S. Department of State, *Final Environmental Assessment for the Vantage Pipeline Project*, May, 2013, p. ES-1.

[8] This pipeline is now referred to by Enbridge as "Line 67."

[9] U.S. Department of State, "Permit for Alberta Clipper Pipeline Issued," Media note, August 20, 2009, http://www.state.gov/r/pa/prs/ps/2009/aug/128164.htm.

[10] Ibid.

[11] Ibid.

project configuration, energy market conditions, technology, environmental conditions, and other important factors. Thus, Presidential Permit applications even for projects that appear similar are evaluated on a case-by-case basis by the agency and may realize different permit outcomes.

Natural Gas Pipelines and Electric Transmission

Executive Orders 11423 and 13337 explicitly exclude cross-border natural gas pipelines and electric energy facilities (among others) from their reach. Instead, permitting for these facilities is addressed in the Federal Power Act, the Natural Gas Act, and Executive Order 10485.[12] Executive Order 10485 designates and empowers the now-defunct Federal Power Commission:

> (1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.
>
> (2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign country.
>
> (3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Secretary of Energy shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.[13]

In many ways this authority resembles the authority granted to the State Department in Executive Orders 11423 and 13337. However, as mentioned above, those orders do not describe the source of the executive branch permitting authority granted by the orders. Judicial opinions indicate that there is a substitution basis for permitting authority being an exercise of the President's "inherent constitutional authority to conduct foreign affairs."[14] By contrast, Executive Order 10485 cites federal statutes for the permitting authority granted to the Department of Energy. The order states:

> Section 202(e) of the Federal Power Act, as amended ... requires any person desiring to transmit any electric energy from the United States to a foreign country to obtain an order from the Federal Power Commission authorizing it to do so... Section 3 of the Natural Gas Act ... requires any person desiring to export any natural gas from the United States to a foreign country or to import any natural gas from a foreign country to the United States to obtain an order from the Federal Power Commission authorizing it to do so.

Executive Order 10485 empowered the Federal Power Commission (FPC) to receive applications for and to issue Presidential Permits for cross-border electric facilities. The Department of Energy Organization Act of 1977[15] eliminated the Federal Power Commission, transferring its functions

---

[12] Exec. Order No. 10485, *Providing for the Performance of Certain Functions Heretofore Performed by the President with Respect to Electric Power and Natural Gas Facilities Located on the Borders of the United States*, 18 Fed. Reg. 5397 (Sept. 3, 1953).

[13] Ibid.

[14] Sisseton-Wahpeton Oyate v. U.S. Department of State, 659 F. Supp. 2d 1071, 1081 (D.S.D. 2009).

[15] P.L. 95-91, 42 U.S.C. § 4101 note.

to either the newly created Department of Energy (DOE) or the Federal Energy Regulatory Commission (FERC), an independent federal agency that regulates the interstate transmission of electricity, natural gas, and oil. Section 402(f) of the act specifically reserved import/export permitting functions for DOE rather than FERC. As a result, DOE took over the FPC's Presidential Permit authority for border crossing facilities under Executive Order 10485 pursuant to the act. The authority to issue Presidential Permits for natural gas pipeline border crossings was subsequently transferred to FERC in 2006 via DOE Delegation Order No. 00-004.00A.[16]

Modifications: When is a New or Amended Permit Needed?

As described above, Presidential Permits authorize specific border crossing facilities. Obviously a new facility requires a new Presidential Permit, and a significant overhaul of existing facilities would similarly require a new or amended Permit to authorize the changed facility. On the other hand, at some point a change to a facility is presumably small enough that no new permit would be required. Because every border crossing facility and proposed modification is different, there is no bright line rule about when a proposed modification is significant enough to require a new or amended Presidential Permit. For example, the Presidential Permit issued by the State Department in 2013 for the NOVA Chemicals natural gas liquids pipeline states "the permittee shall make no substantial change in the United States facilities, the location of the United States facilities, or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate."[17] Thus, whether a Presidential Permit must be amended ultimately will depend on both the nature of the modification and on the exact nature of the authorization found in the existing permit language. However, the relevant agencies have provided some helpful guidance on this subject.

FERC Review of Natural Gas Pipeline Modifications

FERC regulations governing authorization of facilities to construct, operate, or modify natural gas import/export facilities are set forth at 18 C.F.R. Part 153. Applications for Presidential Permits are subject to these regulatory requirements. 18 C.F.R. § 153.5 articulates "who should apply" for such FERC authorizations. The regulation provides that any person proposing to site, construct, or operate natural gas import or export facilities or to "amend an existing Commission authorization, including the modification of existing authorized facilities," must apply for a permit.

State Department Review of Oil Pipeline Modifications

In February 2007, the State Department's Bureau of Western Hemisphere Affairs—Office of Canadian Affairs published *Interpretive Guidance on Non-Pipeline Elements of E.O. 13337, Amending E.O. 11423*.[18] As the title indicates, the document is not binding with respect to pipeline facilities, although dialogue with State Department staff indicated that the guidance found in the document would be applied in a similar manner to pipeline facility permitting

[16] Available at http://www.ferc.gov/industries/electric/indus-act/siting/doe-delegation.pdf.

[17] U.S. Department of State, Presidential Permit Authorizing NOVA Chemicals, Inc. to Connect, Operate, and Maintain Pipeline Facilities at the International Boundary Between the United States and Canada, August 16, 2013, p. 1, http://www.state.gov/documents/organization/213499.pdf.

[18] 72 Fed. Reg. 8245 (February 23, 2007).

decisions.[19] It may also be informative as applied to how other agencies may view the need for new or amended Presidential Permits for the facilities under their purview. According to the *Interpretive Guidance*, any "substantial modifications of existing border crossings" would fall under Executive Order 13337 and thus require a new or amended Presidential Permit. The *Interpretive Guidance* defines "substantial modifications" as

> 1. An expansion beyond the existing footprint or land port-of-entry inspection facility, including its grounds, approaches, and appurtenances, at an existing border crossing in such a way that the modification effectively constitutes a new piercing of the border;
>
> 2. a change in ownership of a border crossing that is not encompassed within or provided for under an applicable Presidential permit;
>
> 3. a permanent change in authorized conveyance (e.g., commercial traffic, passenger vehicles, pedestrians, etc.) not consistent with (a) What is stated in an applicable Presidential permit, or (b) current operations if a Presidential permit or other operating authority has not been established for the facility; or
>
> 4. any other modification that would render inaccurate the definition of covered U.S. facilities set forth in an applicable Presidential permit.[20]

The *Interpretive Guidance* also provides that projects should be placed in one of three categories: Red (both notification to the State Department and a new or amended permit is required), Yellow (notification required and a new permit may be required), and Green (neither notification nor a permit required). The "Red" category is described in language similar to that found in the document's definition of a "substantial modification." The "Yellow" category includes capacity changes, temporary changes due to construction projects and changes in responsibility for ownership, operations, or maintenance, among other things. The "Green" category includes regular maintenance and repair work, exterior changes to a facility within its existing footprint, systems changes (e.g., HVAC, electrical), and changes made at the request or direction of the State Department, among other changes. By way of illustration, **Table 1** summarizes applications for amended Presidential Permits pending at the State Department and the reasons for the applications. Note that this list includes all liquids pipelines under State Department Jurisdiction, including oil and other liquid products.

[19] David. Huitema, Attorney-Advisor, U.S. Department of State, e-mail correspondence, September 26, 2013.

[20] Ibid.

Table 1. Pending Applications for Liquids Pipeline Presidential Permit Amendments

U.S. Owner/Operator	Commodity	State	Reason
NOVA Chemical	Brine	MI	Ownership/name change
Kinder Morgan (Cochin)	Light hydrocarbons	ND	Ownership/name change
Plains Services LPG	Light hydrocarbons	MI	Ownership/name change
Enbridge (Line 67)	Crude oil	ND	Expansion
Spectra Energy (Express)	Crude oil	MT	Ownership/name change
Magellan Pipeline	Refined petroleum products	TX	Ownership/name change

Source: Department of State permit filings, October 28, 2013, http://www.state.gov/e/enr/applicant/applicants/index.htm.

Department of Energy Review of Electric Transmission Modifications

DOE regulations provide limited express guidance as to when an electric transmission facility modification is significant enough to trigger a requirement that a new or amended Presidential Permit be obtained. For example, DOE regulations note that a new permit application is required when the border crossing facility changes ownership.[21] Recent permitting decisions, however, suggest that any modification that goes beyond regular maintenance and may have reliability impacts would likely require the party to obtain a new or amended Presidential Permit. For example, a new Presidential Permit issued to Energia Sierra Juarez by DOE in August 2012 provided in part that the permit should be amended if/when subsequent phases of a related wind generation project necessitate changes to the facility, including higher capacity transmission lines or other changes that could impact the reliability of the U.S. power grid.[22] Six months earlier, DOE issued a new Presidential Permit to ITC Transmission to account for transformer upgrades at an existing facility.[23]

Executive Branch Authority: Constitutional Issues

The source of the executive branch's permitting authorities in the Executive Orders described above is not explicitly stated in all cases. Powers exercised by the executive branch are authorized by legislation or are inherent presidential powers based in the Constitution. Executive Order 11423 does not reference any statute or constitutional provision as the source of its authority, although it does state that "the proper conduct of foreign relations of the United States requires that executive permission be obtained for the construction and maintenance" of border crossing facilities.[24] Executive Order 13337 refers only to the "Constitution and the Laws of the United States of America, including Section 301 of title 3, United States Code."[27] 3 U.S.C. § 301 simply provides that the President is empowered to delegate authority to the head of any department or agency of the executive branch. Executive Order 10485 cites Section 202(e) of the Federal Power Act as a source of executive branch authority to permit cross-border electricity transmission

[21] 10 C.F.R. § 205.323(b).

[22] Presidential Permit available at http://energy.gov/sites/prod/files/PP-334%20ESJ_2.pdf.

[23] Presidential Permit available at http://energy.gov/sites/prod/files/PP-230-4%20ITCTransmission.pdf.

[24] Exec. Order No. 11423, 33 Fed. Reg. at 11741.

facilities and Section 3 of the Natural Gas Act as a source of the executive branch authority to permit cross-border natural gas pipelines. It also states that "the proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities for the exportation or importation of electric energy and natural gas."[25]

Federal courts have addressed the legitimacy of cross-border permitting authority not explicitly granted by statute. In *Sisseton-Wahpeton Oyate v. U.S. Department of State*, the plaintiff tribes asked the court to suspend or revoke a presidential permit issued under Executive Order 13337 for the TransCanada Keystone Pipeline.[26] The plaintiffs claimed that the issuance of the national interest determination and the border crossing permit for the project violated NEPA and the Administrative Procedure Act (APA). The U.S. District Court for the District of South Dakota determined that even if the plaintiffs' injury could be redressed, "the President would be free to disregard the court's judgment," as the case concerned the President's "inherent constitutional authority to conduct foreign policy," as opposed to statutory authority granted to the President by Congress.[27] The court further found that even if the tribes had standing, the issuance of the Presidential Permit was a presidential action, not an agency action subject to judicial review under APA.[28] The court stated that the authority to regulate the cross-border pipeline lies with either Congress or the President.[29] The court found that "Congress has failed to create a federal regulatory scheme for the construction of oil pipelines, and has delegated this authority to the states. Therefore, the President has the sole authority to allow oil pipeline border crossings under his inherent constitutional authority to conduct foreign affairs."[30]

In *Sierra Club v. Clinton*,[31] the plaintiff Sierra Club challenged the Secretary of State's 2009 decision to issue a permit authorizing the Alberta Clipper. The plaintiff claimed that issuance of the permit was unconstitutional because the President had no authority to issue the permits referenced in Executive Order 13337.[32] The defendant responded that the authority to issue permits for these border-crossing facilities "does not derive from a delegation of congressional authority ... but rather from the President's constitutional authority over foreign affairs and his authority as Commander in Chief."[33] The U.S. District Court for the District of Minnesota agreed, noting that the defendant's assertion regarding the source of the President's authority has been "well recognized" in a series of Attorney General opinions, as well as a 2009 judicial opinion.[34] The court also noted that these permits had been issued many times before and that "Congress has not attempted to exercise any exclusive authority over the permitting process. Congress's inaction suggests that Congress has accepted the authority of the President to issue cross-border

[25] Exec. Order No. 10485 18 Fed. Reg. at 5397 (Sept. 3, 1953).

[26] 659 F. Supp. 2d 1071, 1078 (D.S.D. 2009). This Keystone pipeline project preceded the Keystone XL pipeline.

[27] Id.i at 1078, 1078 n.5

[28] Ibid. at 1081-82.

[29] Ibid. at 1081.

[30] Ibid.

[31] 689 F. Supp. 2d 1147 (D. Minn. 2010).

[32] Ibid. at 1162.

[33] Ibid.

[34] Ibid. at 1163 (citing 38 U.S. Att'y Gen. 163 (1935); 30 U.S. Op. Att'y Gen. 217 (1913); 24 U.S. Op. Att'y Gen. 100 (1902); 22 Op. Att'y Gen. 408 (1899); and Natural Resources Defense Council (NRDC) v. U.S. Department of State, 658 F. Supp. 2d 105, 109 (D.D.C. 2009)).

permits."[35] Based on the historical recognition of the President's authority to issue those permits and Congress's implied approval through inaction, the court found the permit requirement for border facilities constitutional.

Congressional Action Related to Presidential Permits

As the aforementioned cases show, courts have analyzed the President's exercise of permitting authority and have held that it is a legitimate exercise of the President's constitutional authority, and that it does not require legislative authorization. However, they have indicated that congressional inaction plays a role in validating this exercise of executive branch authority, suggesting that these roles could be amended through legislation should Congress choose to do so. In recent years, in the context of the Presidential Permit application for the proposed Keystone XL crude oil pipeline project, Congress has acted to influence the State Department permitting process, or to assert direct congressional authority over permit approval, through new legislation. Note that the developer, TransCanada, has applied for a Presidential Permit for this project two times—initially in 2008 (the permit was denied) and again, with a reconfigured project, in 2012. The latter application is still under review.

In the 112th Congress, the Temporary Payroll Tax Cut Continuation Act of 2011 (P.L. 112-78) included provisions requiring the Secretary of State to issue a Presidential Permit for the Keystone XL project within 60 days, unless the President determined the project not to be in the national interest. Other legislative proposals also would have imposed deadlines on a national interest determination for the Keystone XL project. All of these proposals were mooted by the State Department's initial denial of the permit. Additional legislative proposals related to the Presidential Permit process followed TransCanada's second permit application.

In the 113th Congress, several legislative proposals from the prior Congress have been reintroduced. The Energy Production and Project Delivery Act of 2013 (S. 17) would eliminate the Presidential Permit requirement for the reconfigured Keystone XL Project. The Keystone for a Secure Tomorrow Act (H.R. 334) and a Senate bill to approve the Keystone XL Project (S. 582) would directly approve the Keystone XL Project under the authority of Congress to regulate foreign commerce. The Northern Route Approval Act (H.R. 3) would eliminate the Presidential Permit requirement for Keystone. On March 22, 2013, the Senate passed an amendment to the Fiscal Year 2014 Senate Budget Resolution (S.Con.Res. 8) that would provide for the approval and construction of the Keystone XL Project (S.Amdt. 494). The North American Energy Infrastructure Act (H.R. 3301) would transfer permit authority for oil pipelines from the State Department to the Department of Commerce; would require agencies to approve applications within 120 days of submission unless they determine the project is not in the national *security* interest (as opposed to "national interest" more generally); would eliminate the need for new or revised Presidential Permits for modifications such as reversal of flow direction, volume expansion, or adjustments to maintain flow or in cases of changes in ownership; and would remove the requirement for natural gas pipelines that would cross U.S. borders into Canada or Mexico to receive approval from the Department of Energy.

The relevant legislative proposals in the 113th Congress, for the most part, would affect Presidential Permit authority only with respect to the Keystone XL project—although they could

[35] Ibid.

set a precedent for Congress to assert authority over cross -border energy infrastructure permits more broadly. However, as stated by its sponsors, H.R. 3301 explicitly seeks to "to modernize and reform the approval process" for all border crossing energy infrastructure by replacing the current Presidential Permit system set forth in the executive orders discussed in this report.[36] What practical effects any of these legislative proposals would have on the review and approval of future border crossing energy infrastructure projects is the subject of ongoing debate beyond the scope of this report.

Current and Pending Cross-Border Energy Projects

Through analysis of federal agency permit records, energy trade data, GIS maps, and company information, CRS has identified over 100 operating or proposed oil, natural gas, and electric transmission facilities crossing the U.S.-Mexico or U.S.-Canada border. The facilities, owners, and approximate border-crossing locations are listed in the tables on the following pages. Note that these tables are a listing of existing infrastructure, not permits issued. In many cases specific projects are subject to an initial Presidential Permit and subsequent permit amendments due to changes in ownership, configuration, or operation as discussed above. A number of permit amendment applications (e.g., Enbridge Line 67 expansion) are currently under review. There are also border-crossing projects carrying other commodities not included in these tables. Examples include NOVA Chemical's brine pipelines and the Cochin Pipeline transporting light hydrocarbons (e.g., ethane and propane) listed earlier in **Table 1.** Another example is the Dakota Gasification Company's 167-mile carbon dioxide pipeline crossing the border between North Dakota and Saskatchewan, Canada.[37]

[36] House Energy and Commerce Committee, "Upton and Green Introduce Legislation to Modernize and Reform Cross-Border Energy Project Approvals," press release, October 22, 2013.

[37] U.S. Department of State, *Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States*, 64 Fed. Reg. at 38070.

Table 2. U.S. Natural Gas Pipelines Crossing the International Border

U.S. Owner/Operator	U.S. Border Location	State	Status
Alliance Pipeline Co.	Sherwood	ND	Operating
Bluewater Pipeline	Marysville	MI	Operating
Centra-Minnesota Pipeline Co.	Baudette	MN	Operating
Centra-Minnesota Pipeline Co.	International Falls	MN	Operating
Centra-Minnesota Pipeline Co.	Warroad	MN	Operating
Connector Pipeline Co.	Regent Station	MT	Operating
El Paso Natural Gas Co.	Douglas	AZ	Operating
El Paso Natural Gas Co.	Douglas II	AZ	Operating
El Paso Natural Gas Co.	Nogales	AZ	Operating
El Paso Natural Gas Co.	Willcox Lateral	AZ	Operating
El Paso Natural Gas Co. (Sierrita)	Sasabe	AZ	Applied for Permit
El Paso Natural Gas Co.	Penitas	TX	Operating
El Paso Natural Gas Co.	El Paso	TX	Operating
Empire State Pipeline	Grand Island	NY	Operating
EnCana Pipelines Ltd.	Whitlash	MT	Operating
EnCana Pipelines Ltd.	Babb	MT	Operating
Encinal Gathering Ltd.	Galvan Ranch	TX	Operating
Great Lakes and Viking Transmission Co.	Noyes	MN	Operating
Great Lakes Gas Transmission Co.	Sault Ste. Marie	MI	Operating
Havre Pipeline Co.	Harve	MT	Operating
Iroquois Gas Transmission	Waddington	NY	Operating
Kinder Morgan Border Pipeline	McAllen	TX	Operating
Kinder Morgan Texas Pipeline	Roma	TX	Operating
Kinder Morgan Border Pipeline Co.	Salineno	TX	Operating
Maritimes & Northeast Pipeline Co	Calais	ME	Operating
NET Mexico Pipeline	Rio Grande City	TX	Applied for Permit
Norteno Pipeline	El Paso	TX	Operating
North Baja Pipeline Co.	Ogilby	CA	Operating
North Country Pipeline	Champlain	NY	Operating
Northern Border Pipeline	Port of Morgan	MT	Operating
Northwest Pipeline	Sumas	WA	Operating
Omimex Resources Inc.	Port of del Bonita	MT	Operating
Omimex Resources Inc.	South Battle Creek	MT	Operating
Panhandle Eastern Pipeline	Detroit	MI	Operating
PG&E Gas Transmission - Northwest	Eastport	ID	Operating

U.S. Owner/Operator	U.S. Border Location	State	Status
Portal Municipal Gas/Williston Basin PL Co.	Portal	ND	Operating
Portland Natural Gas Transmission	Pittsburg	NH	Operating
Reef International Pipeline	Eagle Pass-Tidelands	TX	Operating
Samalayuca Pipeline (El Paso Energy)	Clint	TX	Operating
Sempra Energy Co.	Otay Mesa	CA	Operating
Sierra Pipeline	Sweetgrass	MT	Operating
Sierra Production Co.	Sierra Station	MT	Operating
Southern California Gas Co.	Calexico	CA	Operating
St Lawrence Gas Co.	Massena	NY	Operating
Tennessee Gas Pipeline Co.	Rio Bravo	TX	Operating
Tennessee Gas Pipeline Co.	Niagara Falls	NY	Operating
Tennessee Gas Pipeline Co.	Alamo	TX	Operating
Texas Eastern Pipeline	Hidalgo	TX	Operating
Vector Pipeline/Great Lakes Transmission co	St Clair River	MI	Operating
Vermont Gas System	Highgate Springs	VT	Operating
West Texas Gas Co.	Eagle Pass-WTG	TX	Operating
West Texas Gas Co.	Del Rio	TX	Operating

Sources: Energy Information Administration, *Natural Gas Imports and Exports, Fourth Quarter Report 2012*, DOE/FE-0563, 2013; Federal Energy Regulatory Commission permit filings; Platt's GIS Database; company web sites; CRS analysis.

Table 3. U.S. Oil Pipelines Crossing the International Border

U.S. Owner/Operator	U.S. Border Location	State	Status
Bridger Pipeline LLC	Outlook	MT	Operating
Enbridge	Portal	ND	Operating
Enbridge (Mainline)	Neche	ND	Operating
Enbridge (Line 13)	Neche	ND	Operating
Enbridge (Line 67)	Neche	ND	Operating
Enbridge (Light Sour)	Neche	ND	Operating
Enbridge (Line 5)	Marysville	MI	Operating
Enbridge (Line 6B)	Marysville	MI	Operating
Enbridge	Erie County	NY	Operating
Inter Pipeline	Toole County	MT	Operating
Kinder Morgan	Sumas	WA	Operating
Magellan Midstream Partners	El Paso	TX	Operating
Plains All American Pipeline	Glacier County	MT	Operating
PMI Services	El Paso	TX	Operating
Portland Pipe Line Corp.	North Troy	VT	Operating
Spectra Energy	Hill County	MT	Operating
Sunoco Logistics Partners	Marysville	MI	Operating
Tesoro Logistics	Portal	ND	Operating
TransCanada	Walhalla	ND	Operating
TransCanada	Phillips	MT	Applied for permit
Vantage Pipeline (ethane)	Tioga	ND	Permit issued

Sources: Department of State permit filings; Canadian Association of Petroleum Producers; Energy Information Administration; Platt's GIS Database, company web sites; CRS analysis.

Table 4. U.S. Electric Transmission Lines Crossing the International Border

U.S. Owner/Operator	U.S. Border Location	State	Status
AEP Texas Central	Laredo	TX	Operating
AEP Texas Central	Brownsville	TX	Operating
AEP Texas Central	Eagle Pass	TX	Operating
Bangor Hydro-Electric Co.	Baileyville	ME	Operating
Basin Electric Power Coop.	Tioga	ND	Operating
Bonneville Power Administration	Blaine	WA	Operating
Bonneville Power Administration	Nelway	WA	Operating
Champlain Hudson Power Express	Lake Champlain	NY	Applied for Permit
Eastern Maine Electric Cooperative	Calais	ME	Operating
El Paso Electric	Ascarate	TX	Operating
El Paso Electric	Diablo	NM	Operating
Electric Transmission Texas, LLC	Presidio	TX	Operating
Frontera Generation LP	Frontera	TX	Operating
Highgate Project	Highgate	VT	Operating
ITC Transmission	St. Clair	MI	Operating
ITC Transmission	St. Clair	MI	Operating
ITC Transmission	Detroit	MI	Operating
ITC Transmission	Marysville	MI	Operating
Long Sault, Inc.	Massena	NY	Operating
Maine Electric Power Co.	Houlton	ME	Operating
Maine Public Service	Aroostook	ME	Operating
Maine Public Service	Limestone	ME	Operating
Maine Public Service	Ft. Fairfield	ME	Operating
Maine Public Service	Madawaska	ME	Operating
Minnesota Power	International Falls	MN	Operating
Minnkota Power Cooperative	Roseau County	MN	Operating
Montana Alberta Tie Ltd.	Cut Bank	MT	Pemit Issued
New York Power Authority	Massena	NY	Operating
New York Power Authority	Massena	NY	Operating
New York Power Authority	Niagara Falls	NY	Operating
New York Power Authority	Devils Hole	NY	Operating
Niagara Mohawk Power Co.	Devils Hole	NY	Operating
Northern Pass Transmission	Pittsburg	NH	Applied for Permit
San Diego Gas & Electric	Miguel	CA	Operating
San Diego Gas & Electric	Imperial Valley	CA	Operating

U.S. Owner/Operator	U.S. Border Location	State	Status
Sea Breeze Olympic Converter	Port Angeles	WA	Operating
Sharyland Utilities	McAllen	TX	Operating
Soule Hydro	Hyder	AK	Applied for Permit
Tucson Electric	Sahuarita	AZ	Applied for Permit
Twin Rivers Paper Co.	Madawaska	ME	Operating
Vermont Electric Power Co.	Derby Line	VT	Operating
Vermont Electric Transmission Co.	Norton	VT	Operating
Western Area Power Administration	San Luis	AZ	Operating
Western Area Power Administration	Falcon Dam	TX	Operating
Western Area Power Administration	Amistad Dam	TX	Operating
Xcel Energy	Roseau County	MN	Operating
Xcel Energy	Red River	ND	Operating
Xcel Energy	Rugby	ND	Operating

Sources: Department of Energy, Office of Electricity Delivery and Energy Reliability, permit filings; Regional power pool maps; Platt's GIS Database, company web sites; CRS analysis.

Author Contact Information

Adam Vann
Legislative Attorney
avann@crs.loc.gov, 7-6978

Paul W. Parfomak
Specialist in Energy and Infrastructure Policy
pparfomak@crs.loc.gov, 7-0030