

# Keystone XL Ruling Has 'Sweeping' Impacts for Other Projects (2)

A federal court's decision striking down a critical Keystone XL permit has broad implications beyond the embattled oil pipeline.

The Wednesday [ruling](#) from the U.S. District Court for the District of Montana tossed a nationwide permit the Army Corps of Engineers uses to approve water crossings for projects all over the country, concluding the agency hadn't properly considered impacts on endangered species.

"This is a sweeping ruling," said Larry Liebesman, a former Justice Department environmental lawyer now at the water resources consulting firm Dawson & Associates. "This judge used his authority to enjoin it nationwide."

That means the Army Corps, for now, won't be able to greenlight other projects under the streamlined permitting process it typically uses for pipelines, Liebesman said.

A spokesman said the agency is still reviewing the on-the-ground impacts of the ruling. Pipeline developers say they're watching the case closely to assess impacts on their

own projects.

## General Permit

At issue in the Keystone XL case is Nationwide Permit 12, or NWP 12, which applies to pipelines, transmission lines, and cables that cross or discharge fill material into federally regulated waterways.

The Army Corps uses nationwide permits, updated every five years, to authorize broad categories of development. Instead of conducting an individual permitting process for a proposal, the agency simply ensures the plan meets pre-set criteria and adds site-specific conditions as needed.

Chief Judge Brian Morris invalidated NWP 12 pending completion of an Endangered Species Act consultation process, and barred the Army Corps from using the nationwide permit to approve any wetlands dredging and filling in the meantime.

The Trump administration could ask the U.S. Court of Appeals for the Ninth Circuit to block the decision. If that's unsuccessful, the Army Corps will have to do more time-consuming individual permits for pipelines' water crossings until it completes the consultation process and could face numerous challenges to other approvals, Liebesman said.

Completing a broad consultation with federal wildlife agencies could take longer than a year, Bloomberg Intelligence analyst Brandon Barnes said.

## **Continued Review**

In a Thursday research note, ClearView Energy Partners analyst Christine Tezak said the ruling could delay the Atlantic Coast and Mountain Valley natural gas pipelines on the East Coast because developers planned to rely on the NWP 12 program, though they don't have any authorizations in place.

Dominion Energy Inc.'s Ann Nallo, spokeswoman for Atlantic Coast, said the company is aware of the Keystone XL ruling's potential impacts.

"We anticipate that DOJ will immediately seek clarification and narrowing of the order, which is consistent with established DOJ policy," she said in an email. "We will continue to review the scope of the decision in order to assess any impact on ACP."

Mountain Valley pipeline spokeswoman Natalie Cox said her team is reviewing the ruling but still is focused on completing the West Virginia-Virginia gas line this year.

"We are evaluating any potential impact to the MVP project

from this federal court decision and, in doing so, continue to target MVP's late 2020 in-service date," she said.

## **'Rock and a Hard Place'**

"We were specifically focused on Keystone XL, but obviously the ruling is much broader," said Jared Margolis, a senior attorney for the Center for Biological Diversity, one of several groups behind the lawsuit.

Margolis said it's too early to say whether his group will use Wednesday's ruling to target other projects approved under NWP 12, but said several other pipelines in other parts of the country are raising concerns.

Environmental advocates have long criticized the nationwide permitting system as overly streamlined.

Developers could try to avoid legal fallout by proposing new engineering plans to tunnel under water bodies and avoid the need for federal approval under the Clean Water Act, Liebesman said, but those designs are costly.

"Applicants are put somewhat between a rock and a hard place in figuring out what to do right now," he said.

The Sierra Club is part of the coalition challenging Keystone XL. The group has received funding from Bloomberg Philanthropies, the charitable organization founded by

Michael Bloomberg. Bloomberg Law is operated by entities controlled by Michael Bloomberg.

The case is [N. Plains Res. Council v. Army Corps of Engineers](#), D. Mont., No. 4:19-cv-00044, 4/15/20.

(Adds comment from Mountain Valley pipeline spokeswoman.)