

Stephan C. Volker
Alexis E. Krieg
Stephanie L. Clarke
Jamey M.B. Volker (Of Counsel)

Law Offices of
STEPHAN C. VOLKER
1633 University Avenue
Berkeley, California 94703
Tel: 510/496-0600 ★ Fax: 510/845-
1255
e-mail: svolker@volkerlaw.com

March 15, 2019

PRESS RELEASE
RELEASE

FOR IMMEDIATE

**NATIVE AMERICAN AND ENVIRONMENTAL GROUPS WIN RULING
REFUSING TO RELAX INJUNCTION AGAINST KEYSTONE XL PIPELINE**

Contacts:

Indigenous Environmental Network (IEN): Dallas Goldtooth, dallas@ienearth.org
North Coast Rivers Alliance (NCRA): Frank Egger, fegger@gmail.com
Attorney for IEN and NCRA: Stephan Volker, svolker@volkerlaw.com, (510) 496-0600

On Friday, March 15, 2019, 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 the Ninth Circuit Court of Appeals rejecting a motion filed February 21, 2019 by pipeline promoter TransCanada to stay Montana Federal District Judge Brian Morris’ November 8, 2018 injunction that overturned the Trump Administration’s approval of the KXL Pipeline and barred its construction. TransCanada’s motion also attacked Judge Morris’ December 7, 2018 and February 15, 2019 Orders reaffirming key features of that injunction and rejecting TransCanada’s request to (1) build contractor yards, (2) build sites for worker camps, and (3) mow and patrol the pipeline right-of-way to discourage migratory birds from nesting. The Ninth Circuit Court of Appeals agreed with IEN and NCRA that “TransCanada has not made the requisite strong showing that they are likely to prevail on the merits. The record shows that the district court carefully considered all applicable factors in denying the stay of the injunction.”

TransCanada attacked Judge Morris’ rulings because they declare the KXL Pipeline unlawful, prevent TransCanada from building this illegal project, and protect irreplaceable cultural and environmental

resources. The IEN and NCRA Plaintiffs have hailed these rulings as a victory for the environment and the rule of law, and have vigorously defended them in the Ninth Circuit.

The Ninth Circuit's March 15, 2019 Order maintains in place Judge Morris' landmark ruling on November 8 that President Trump violated federal environmental laws when his Administration approved the KXL Pipeline. Judge Morris ruled that approval of the KXL Pipeline violated the National Environmental Policy Act (NEPA) and other federal environmental laws because: (1) President Trump disregarded prior factual findings by former Secretary of State John Kerry that the KXL Pipeline would unjustifiably worsen climate change, (2) failed to conduct an adequate survey of Native American cultural resources that would be harmed by the pipeline, (3) failed to provide adequate modeling of potential oil spills and their impacts on water resources, (4) failed to adequately analyze the cumulative effects of this project on greenhouse gas emissions, and (5) failed to address the effects of current oil prices on the viability of the project.

The Ninth Circuit's March 15, 2019 Order also maintains Judge Morris' ruling on August 15, 2018 that the Trump Administration's approval of a new pipeline route through Nebraska likewise violated NEPA. The Court's August 15 ruling ordered the Trump Administration to conduct further environmental review of the new Nebraska route, and rejected every argument raised by the Trump Administration and the pipeline's promoter, TransCanada, to excuse their failure to conduct this additional review.

This litigation started on March 27, 2017 when IEN and NCRA had filed suit in Federal District Court in Great Falls, Montana challenging the Presidential Permit issued by President Trump allowing construction and operation of the Keystone XL Pipeline. At the direction of President Trump, the U.S. Department of State had issued a Presidential Permit to TransCanada Keystone Pipeline, L.P. on March 23, 2017. The proposed Keystone XL Pipeline would transport up to 830,000 barrels per day of crude oil from Alberta, Canada and the Bakken Shale Formation in Montana over 875 miles to existing pipeline facilities near Steele City, Nebraska, from which the oil would be delivered to Cushing, Oklahoma, and the Gulf Coast region. The Keystone XL Pipeline would pose grave risks to the environment, including the climate, water resources, and wildlife, and to human health and safety.

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," he 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 River, 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," added Mr. Egger.

Stephan Volker, attorney for IEN and NCRA, stated that "We are pleased that the Ninth Circuit has upheld Judge Morris' rulings overturning the Trump Administration's approval and TransCanada's construction of this reckless and risky project. All Americans should join the Ninth Circuit in rejecting TransCanada's deeply troubling claim that the Trump Administration is above the law. The Court correctly rejected the Trump Administration's false claim that the KXL Pipeline would not worsen global warming and found the Trump Administration had failed to adequately address this project's impacts on Native American cultural resources, greenhouse gas emissions, and the hundreds of rivers and groundwater basins that it threatens to harm with oil spills." Mr. Volker explained that "Because President Trump has turned his back on the Native American community and protection of our clean water and endangered fish and wildlife, and refuses to admit global warming threatens all life, we asked

the Federal Courts to order him to stop violating our nation's environmental laws. Judge Morris – and now the Ninth Circuit Court of Appeals -- have repeatedly rejected attempts by TransCanada and the Trump Administration to weaken Judge Morris' strong, fair and wise orders. Judge Morris' rulings protect our irreplaceable lands and waters and the Native American community that depends on them from the dangerous and unneeded KXL Pipeline. Alternatives including renewable energy and conservation must be utilized to protect future generations from the ravages of global warming," stated Mr. Volker.

The Ninth Circuit's March 15, 2019 Order, and the IEN and NCRA March 4, 2019 Opposition to TransCanada's Motion for Stay defending Judge Morris' rulings are attached in PDF format. Additional documents pertaining to the litigation can be obtained from the Volker Law Offices.