

Keystone XL Pipeline: Recent Developments

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Introduction

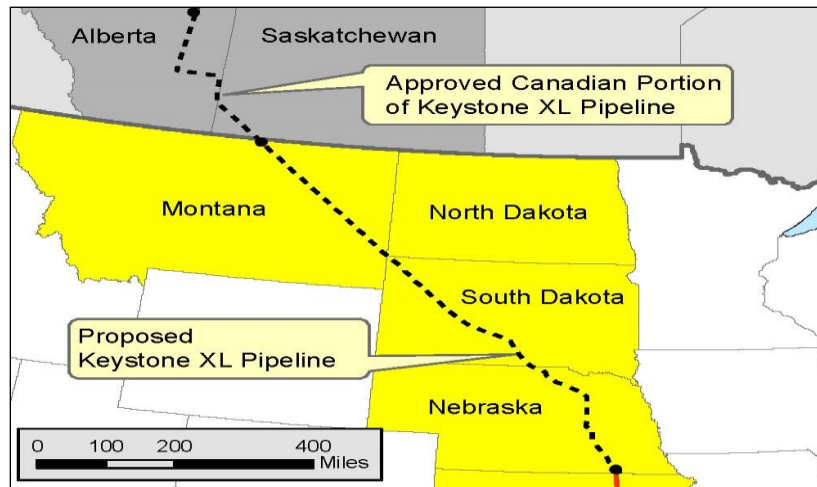
TransCanada's proposed Keystone XL Pipeline would transport oil sands crude from Canada and shale oil produced in the Bakken region of North Dakota and Montana to a market hub in Nebraska (**Figure 1**). On November 20, 2017, the Nebraska Public Service Commission (PSC) approved the "alternative mainline" route for the Nebraska segment of Keystone XL which would co-locate some of the new pipeline with the company's existing Keystone (Mainline) Pipeline. This route differs from the siting that TransCanada originally proposed (**Figure 2**, "preferred route"). Due to the PSC's decision, Keystone XL may require additional federal authorizations and revision of existing ones, among other consequences, increasing the regulatory and economic uncertainty around the pipeline's construction.

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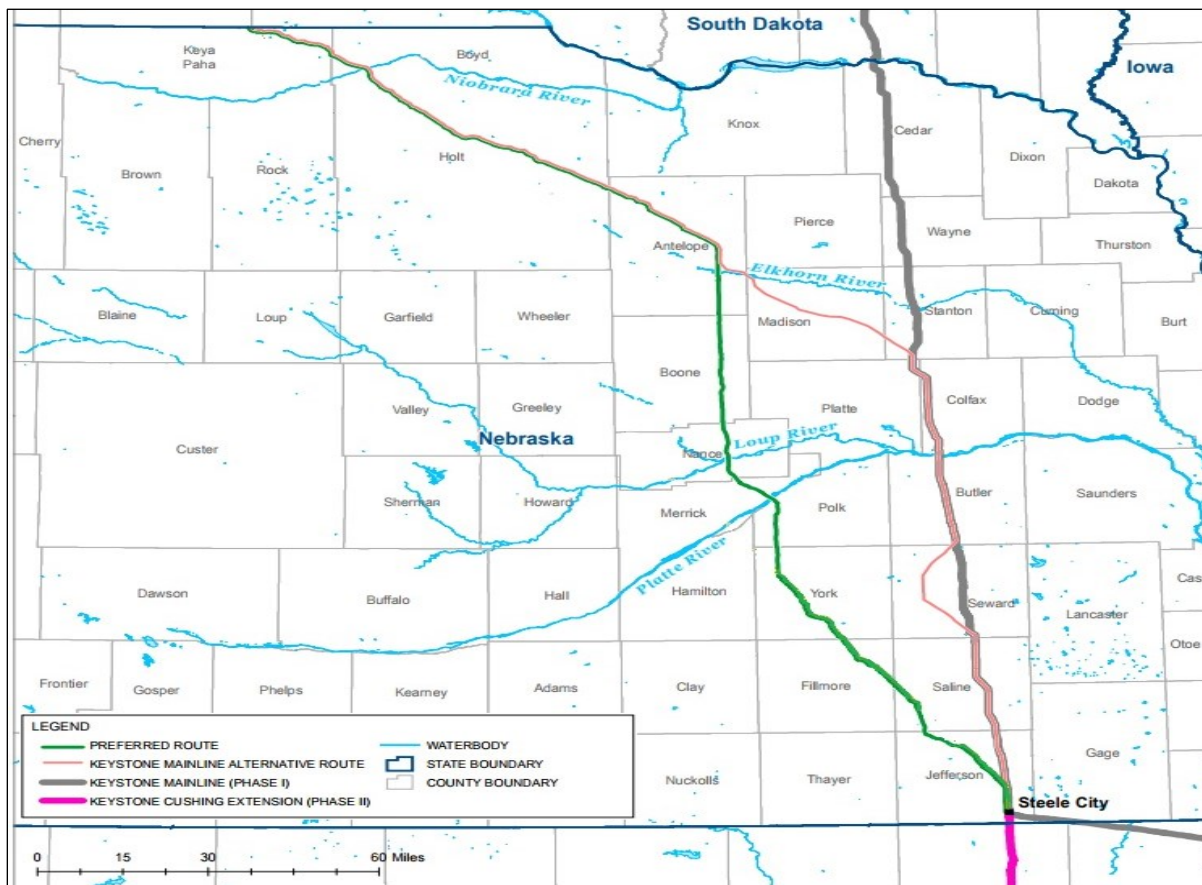
Figure I. Proposed Keystone XL Pipeline Route

Source: CRS with data from *S&P Global Platts* and *Esri Data & Maps*, November 2017.

Keystone XL has been controversial. Proponents base their support primarily on energy security (increasing U.S. oil supply from a neighboring ally) and economic grounds, especially job creation. Some opposition is based on objections to potential increased greenhouse gas emissions and environmental impacts from oil production and use, while other opponents raise concerns about possible oil spills and other local impacts from pipeline construction. There also is debate about how much Keystone XL crude oil, or fuels refined from it, would be exported overseas. Congress has acted in the past to influence approval of the pipeline and remains interested in its development. Some opponents view the Nebraska PSC's decision as a new opportunity to affect the federal approvals it requires.

Route Approval

Keystone XL needs approval from state regulators for its overall route within U.S. borders. TransCanada already had siting approvals from Montana and South Dakota—the other states it traverses—but still required eminent domain authority from Nebraska. The Nebraska PSC's approval confers that authority. The PSC's regulatory review excluded safety issues. Environmental considerations were separately addressed—for the original route—in an environmental approval by the Nebraska Department of Environmental Quality (DEQ) and the governor. The new route may require the DEQ to reevaluate the project. Canada's National Energy Board approved the Canadian portion of the pipeline in 2010.

Figure 2.Keystone XL Alternative Mainline Route

Source: Adapted from TransCanada Keystone Pipeline, L.P., *In the Matter of the Application of TransCanada Keystone Pipeline, LP for Route Approval of the Keystone XL Pipeline Project Pursuant to the Major Oil Pipeline Siting Act*, February 16, 2017, Fig. 2.2-2.

Federal Approvals

Although no U.S. federal authority regulates the siting of Keystone XL as a whole, construction of specific segments requires federal consultations and approvals under various statutes. Most federal approvals for Keystone XL have been issued, but agency decisions on certain authorizations are pending and may be affected by an altered route in Nebraska.

State Department

Keystone XL requires a Presidential Permit because it would cross an international border. On March 23, 2017, the U.S. State Department issued a Presidential Permit for the proposed border facilities of the pipeline. Although the Presidential Permit is in force, it faces a legal challenge on National Environmental Policy Act (NEPA) and Administrative Procedure Act grounds. Because the State Department's 2014 Final Supplemental Environmental Impact Statement (FSEIS) evaluated the entire Keystone XL project, an alternative route in Nebraska could require reconsideration of this permit.

Army Corps of Engineers

TransCanada must obtain authorizations from the Army Corps of Engineers (Corps) before constructing Keystone XL segments that may affect federally regulated waters and wetlands. For the original route, the Corps has provided verifications for Keystone XL's construction using Nationwide Permit (NWP) 12 at all but one regulated segment; the pending verification is for a Missouri River crossing near the Corps-operated Fort Peck Dam and spillway in Montana. If the Corps concludes that the pipeline would neither harm the Corps project nor injure the public, the agency would be expected to grant TransCanada a "Section 408 permission" related to the Fort Peck project (which may occur as soon as December 2017), as well as the NWP 12 verification for the Missouri River water crossing near Fort Peck. Segments of Keystone XL's alternative mainline route in Nebraska may require additional Corps authorizations.

Bureau of Land Management

The Keystone XL Pipeline would cross 45 miles of federal land in the vicinity of the Montana border and Fort Peck Dam. Under the Mineral Leasing Act, the pipeline requires rights-of-way (ROW) for these segments from the Bureau of Land Management (BLM). The agency has not granted TransCanada the necessary rights-of-way in Montana. Its decision to do so would be contingent upon the Section 408 review by the Corps (as the other affected federal land management agency). BLM may grant the rights-of-way within 60 days of a favorable Section 408 review, although BLM rights-of-way for Keystone XL are being challenged preemptively in the litigation cited above. It is unclear if changes to the route in Nebraska would directly affect BLM's decision regarding ROW in Montana. However, any change to the Presidential Permit could have implications for BLM's process because BLM has adopted the State Department's FSEIS as a valid NEPA document for its own Record of Decision.

Economic Viability

The Keystone XL Pipeline was initially proposed when U.S. crude oil prices exceeded \$100 per barrel. However, due in large part to U.S. oil production growth, prices have fallen to around \$50 per barrel. This price drop has reduced near-term projections for growth in Canadian oil sands crude supplies—which are costly to produce. These lowered projections have caused some analysts to question the economic viability of Keystone XL. However, Canadian oil producers maintain that additional pipeline capacity will still be in demand. TransCanada also has stated that it expects "commercial support for the pipeline to be substantially similar" to when Keystone XL was first proposed, although it has not publicly committed to build it. Additional costs and delays due to regulatory compliance (and litigation) and construction along the alternative mainline route in Nebraska may affect TransCanada's investment decision.

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