

Supreme Court restarts key Army Corps permit, but not KXL

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The Supreme Court today allowed the Army Corps of Engineers to resume using its streamlined water-crossing permit for the construction of new oil and gas pipelines, but it excluded the Keystone XL oil pipeline.

The high court accepted a request by the federal agency to lift a court-ordered freeze on its Nationwide Permit 12 program for authorizing dredge-and-fill activities for new pipeline projects across the country.

"The application for stay presented to Justice Kagan and by her referred to the Court is granted in part and denied in part," the justices wrote. "The district court's May 11, 2020, order granting partial vacatur and an injunction is stayed, except as it applies to the Keystone XL pipeline, pending disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the petition for a writ of certiorari, if such writ is timely sought."

The U.S. District Court for the District of Montana this spring put the nationwide permit on hold for pipelines after finding the Army Corps had failed to assess the cumulative impacts of the program on endangered species before reauthorizing it in 2017.

The 9th U.S. Circuit Court of Appeals declined to reboot the program as it considers the legality of the lower court's ruling.

The Montana district court order — which came out of litigation over the Keystone XL oil pipeline — froze the nationwide permit for new pipeline projects until the Army Corps completes an interagency consultation under the Endangered Species Act.

Federal officials, industry groups and red states warned that blocking the use of the program could have significant consequences for pipelines, leading to rising costs and construction delays that could result in project cancellations ([Energywire](#), June 24).

Environmental groups countered that the permit freeze did not pose irreparable harm because project developers can still seek individual water crossing permits for their projects. Other construction activity not covered under the nationwide permit can move forward, they said ([Energywire](#), June 30).

The justices wrote that if the petition for a writ of certiorari is denied for the Keystone XL pipeline, the stay would terminate. "In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court," they wrote.