

# Judge pressed to halt Army Corps pipeline permit program

By Niina H. Farah

02/08/2022 07:07 AM EST

Conservation groups last week called on a federal judge to once again block a major permitting program that allows oil and gas pipeline construction across waterways without comprehensive environmental review.

The Center for Biological Diversity and four other groups made their request to Chief Judge Brian Morris of the U.S. District Court for the District of Montana, who in 2020 blocked an earlier version of the Army Corps of Engineers' Nationwide Permit 12 (NWP 12) for violating the Endangered Species Act.

"The Corps, flouting this Court's prior ruling, once again determined that the issuance of 2021 NWP 12 has 'no effect' on listed species," the groups [wrote](#) in their motion filed Friday. "In doing so, the Corps reiterated the same erroneous arguments previously rejected by this Court."

The groups' challenge focuses on the Army Corps' decision to reissue the permitting program in the final days of the Trump administration.

The program speeds up permitting for dredge-and-fill activities for projects that are deemed to have minimal environmental impact by allowing developers to bypass the lengthier process of obtaining an individual Section 404 permit under the Clean Water Act.

Conservation groups suing the government argue that the nationwide permit has been improperly applied to oil and gas pipelines.

While the program is meant to greenlight activities affecting no more than half an acre of federal waters, the approach masks the overall impact of pipelines and other infrastructure by treating each individual water crossing as a discrete project, the groups said.

"NWP 12 thereby allows the Corps to artificially treat large interstate pipeline projects as hundreds or even thousands of separate 'single and complete projects' to avoid the more transparent and thorough individual permit process," the groups wrote.

## Keystone XL fight

Conservation groups first mounted their opposition to the streamlined permitting process in litigation over the now-canceled Keystone XL pipeline.

In that case, the groups argued that the prior 2017 nationwide permitting program had violated the Endangered Species Act and other environmental laws.

In 2020, Morris, an Obama appointee, made headlines by issuing an order blocking all use of the permitting program for all projects, causing an uproar from the oil and gas industry ([Energywire](#), April 16, 2020).

Morris ruled that the Army Corps had failed to review how the permitting program had affected threatened species and said regulators should have conducted an interagency consultation.

The judge later narrowed the scope of his decision to apply just to new oil and gas pipelines. The Supreme Court then took the unusual step of intervening and limiting application of Morris' order strictly to Keystone XL.

Instead of conducting Endangered Species Act consultation for the 2017 permitting program, the Trump administration decided to issue a new nationwide permit that applied only to oil and gas pipelines.

### **Back to court**

The Trump team's decision to reissue the nationwide permit — while repeating its finding that the program had "no effect" on endangered species — reignited the legal battle.

Conservation groups returned to court, arguing that the newly authorized program repeated violations of the Endangered Species Act, National Environmental Policy Act and Clean Water Act ([Greenwire](#), May 3, 2021)

The Army Corps has said that it is not required to do any project-level NEPA analysis because an environmental assessment of the permitting program as a whole found it did not have significant impact.

But that analysis does not consider the effects of numerous crossings, the removal of wetlands or contributions of climate change, the groups said in their motion to the Montana district court last week.

"And the [environmental assessment] does not evaluate the risks or impacts of oil spills or gas leaks into waterways from pipelines at all," they said.

Similarly, the Army Corps also violates Clean Water Act requirements that a project must have "minimal impact" since there is "no limit to the number of times a pipeline can use NWP 12 or the total number of acres the project can impact," they wrote.

The Army Corps does not comment on pending litigation.