

# Court Ends States' Fight Over the Keystone XL Pipeline

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On January 6, 2022, Judge Jeffrey V. Brown dismissed a suit brought by Texas and 22 other states in a Texas federal court against President Biden and 22 cabinet heads challenging the President's authority to revoke a permit for the Keystone XL Pipeline. *Texas v. Biden*, No. 3:21-cv-65, 2022 U.S. Dist. LEXIS 2612 (S.D. Tex. Jan. 6, 2022). The court ultimately found the dispute moot after TC Energy, the energy company seeking to build the pipeline, informed the public that it no longer intended to pursue the Keystone XL Pipeline any further.

This case concerned the Keystone XL project, a venture TC Energy initiated in 2008. Keystone XL was planned to originate in Alberta and travel through Montana, South Dakota, Nebraska, Kansas, and Oklahoma before reaching refineries on the Texas Gulf Coast. At capacity, Keystone XL would have transported 830,000 barrels of crude oil per day from Canada to the Gulf Coast.

Because the pipeline would have crossed the Canadian border, federal authorization was required. In December 2011, Congress passed legislation directing the President to authorize the pipeline within 60 days unless the President deemed that it was not in the national interest. President Obama denied the permit request without prejudice, meaning TC Energy could reapply. President Obama explained that 60 days was not long enough for the appropriate analysis to take place.

In May 2012, TC Energy renewed its permit request, but in 2015 the permit was again denied. This time the permit was denied by Secretary of State John Kerry, who explained his determination that the pipeline would have limited benefit and would frustrate climate concerns. When President Trump assumed office, he invited TC Energy to re-submit its permit request and the permit was granted on March 23, 2017. After some legal challenges, a new permit was issued in 2019 that specifically provided that it may be revoked at any time at the sole discretion of the President.

On January 20, 2021, President Biden's first day in office, he revoked the permit. After years of struggling to build the Keystone Pipeline, TC Energy finally threw in the towel. On June 9, 2021,

TC Energy announced that it had terminated the project. In this particular lawsuit, several states sued President Biden and various cabinet heads, claiming that they exceeded their constitutional authority in denying and revoking the permit.

But with TC Energy's announcement that it was no longer pursuing the Keystone Project, the court never reached those constitutional questions. TC Energy's decision made the overall dispute moot, because no matter how the court ruled, the pipeline would not be built. Under longstanding judicial principles, federal courts are without authority to issue rulings in cases once the controversy is no longer "live." The plaintiff States argued that the issue was not moot because a ruling in their favor would "resurrect" the Keystone Project. The court rejected this argument, stating that it "took TC Energy at its word" when it unequivocally stated that it had completely abandoned any future plans to continue with the Keystone XL Pipeline.

The Keystone XL Pipeline has been a hotly contested political issue for over a decade. But this might be the end of the road. TC Energy has seemingly determined that the likelihood it would eventually be able to construct and operate its pipeline is insufficient to invest more resources in the endeavor. Because this case was untimely dismissed on mootness, the question of the President's authority over such permits remains unanswered for now. While cliché, the only lesson learned here is politics can be fickle and erratic. TC Energy learned that the hard way.