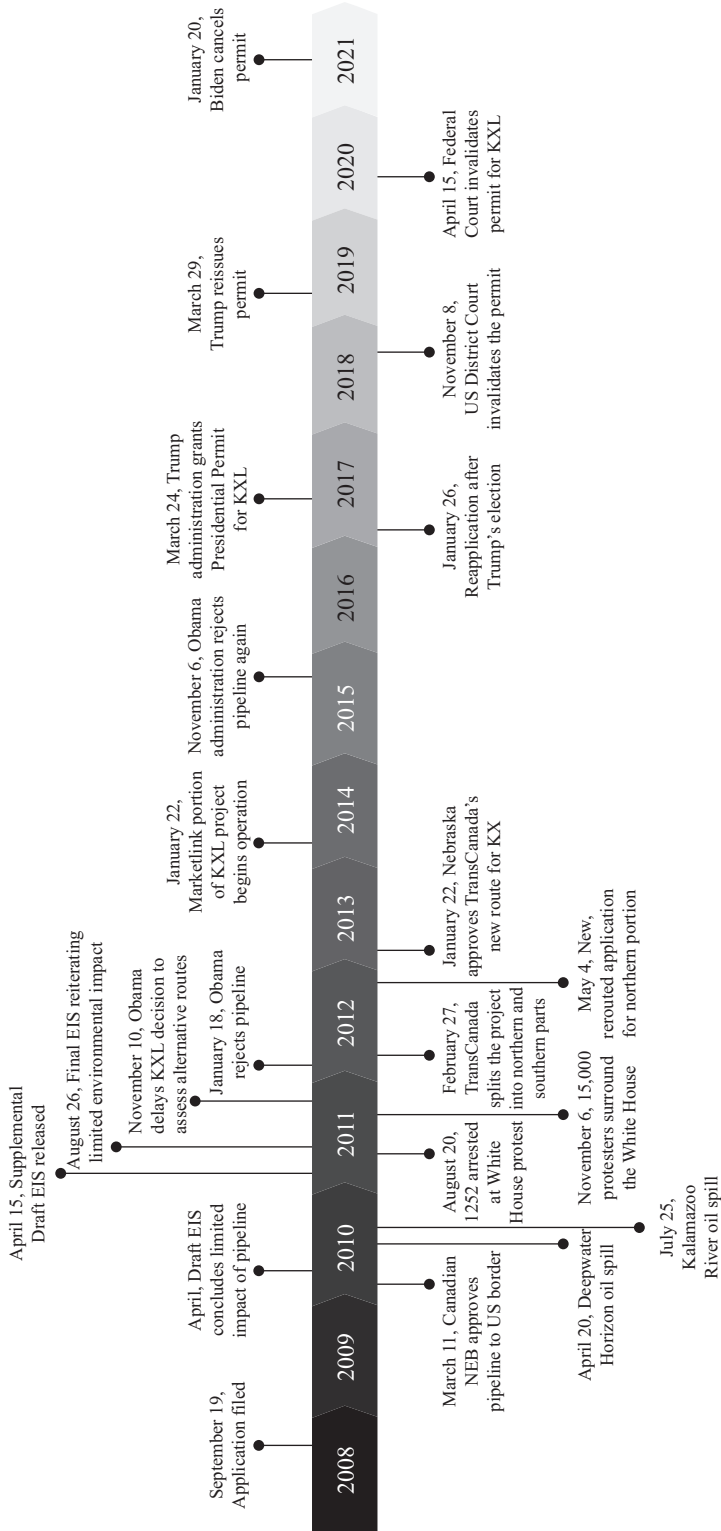


## 4 Keystone XL and the Rise of the Anti-pipeline Movement

Tzeporah Berman is arguably the most influential Canadian environmental activist of her generation. From 2012 to 2018, she was coordinator of the Tar Sands Solution Network, the organization built to coordinate the multiple anti-pipeline campaigns. Prior to that, in 2011, she was working for Greenpeace International. A veteran protester who was one of the architects of the Clayoquot Sound civil disobedience campaign in the early 1990s (Pralle 2006a), she explains how she first learned of the idea of targeting Keystone XL with a massive protest campaign:

I was in Amsterdam. One day I got a call and it was Bill McKibben. He said, look, there's this proposal, the Keystone XL pipeline. I think we should have hundreds of people come and get arrested in Washington. And I said, so you want to focus the US climate movement on a pipeline from Canada? At the point when there is all this backlash, with Sarah Palin out there shouting "drill baby drill"? I thought, well as a Canadian, thank you. But are you sure you want to do that? I know a lot of Canadians who would love that, because it's right in line with this strategy we developed several years ago. But I can't see that being successful with the US media. I was very, very wrong. That was the beginning. . . . That summer was the first protest on Keystone. (Berman 2016)

Keystone XL was the first major pipeline controversy of the 2010s and ultimately proved to be one of the most divisive environmental conflicts in recent American history. The 830,000 barrels per day project was proposed in September 2008 to connect the oil sands in northern Alberta to the Gulf Coast of the United States, promising the landlocked oil resource access to coveted "tidewater." A timeline for this extraordinary regulatory and political controversy is presented in figure 4.1. Pipeline opponents achieved an extraordinary victory, first in getting the project delayed numerous times and eventually having it rejected by President Obama in 2015. That decision



**Figure 4.1**  
Keystone XL timeline.

was reversed by the Trump administration, but Trump's reversal was held up in the courts. Keystone XL was proposed in 2008, when George W. Bush was president, and ultimately terminated 13 years later by President Joe Biden on January 20, 2021. It is both a remarkable success for the pipeline resistance movement and an indication of the dysfunction of the US regulatory process (Zolden 2015; McConaghy 2017).

Applying the analytical framework developed in chapter 1, the Keystone XL pipeline certainly posed substantial political risks for pipeline proponents. The pipeline route was a new "greenfield" project through the prairie region. It crossed an international boundary, giving two national governments a veto. It crossed three US state boundaries, giving each of those states a veto. The Canadian project required approval by the US government, exposing the project to the notoriously fragmented American regulatory process, where vetoes were held by the president, the courts, and multiple actors within Congress. Given that its initial route crossed a precious aquifer, it activated intense place-based opposition. Risks and benefits were separated geographically and across national borders. Most of the benefits would accrue to the Canadian oil sector, whereas the risks were felt along the pipeline and by the climate more generally. Given these challenges, it's not surprising that the pipeline approval process has been a long, protracted, divisive affair.

Like the other pipeline controversies examined in this book, the Keystone XL story is complicated to tell because there were so many diverse actors, competing in overlapping venues and with different strategies. In an effort to bring order to the narrative, the first section of this chapter describes public and private actors, and their interests and strategies in the pipeline controversy. We'll focus in particular on the climate movement, because this is where the strategy of using place-based resistance to foster climate mobilization was first adopted. That discussion will allow us to explore the hypothesis introduced in chapter 1: that to strengthen their leverage, climate activists will ally themselves with groups representing place-based interests when possible.

The second section examines the ideas that have shaped the Keystone XL controversy by analyzing the discourses of the competing coalitions and how they become manifest in media reporting and public opinion polling. That section suggests some limitations to the prediction that opponents will focus on place-based risks. The third section describes how the controversy played out in separate but interdependent institutional arenas. That

section will examine the hypothesis that strategic actors will focus their strategy on the institutional venue(s) most favorable to their interests. The fourth section explores the decision rationales used by Presidents Obama and Trump to evaluate the hypothesis that such rationales are more likely to emphasize place-based risks than climate risks. The concluding section puts this case in the context of the analytical framework and sets up the discussion of the Canadian pipelines to come.

## Actors

### Industry and Its Allies

The lead industry actor is unquestionably the pipeline company and project proponent, Calgary-based TransCanada Corporation (the company formally changed its name to TC Energy in early 2019). The company specializes in oil and gas pipelines and terminals and has substantial stakes in the US\$8 billion Keystone XL project. In addition to the project's proponents, the oil sands companies that would use the pipeline also have a powerful interest in getting their expanded oil sands production to market. Pipeline capacity constraints have been a major concern for the landlocked Alberta oil industry, creating a significant discount for oil sands products, as described in chapter 2.

TransCanada and the oil companies have received substantial political support in this case from the government of Alberta and the government of Canada. Alberta is heavily dependent on the oil and gas sector, and government revenues are particularly sensitive to the price of oil. The government of Alberta has been a tireless champion of increasing oil sands access to tidewater, whether it was the Keystone XL pipeline or the alternatives linking the province to the Pacific or the Atlantic. This was the case when the pro-business Progressive Conservative Party ran the province but continued with the left-leaning New Democratic Party that came to power in 2015. In 2019, that NDP government was replaced by the more pro-industry United Conservative government of Jason Kenney. In March 2020, the Kenney government actually bought US\$1.1 billion in equity in Keystone XL in an effort to rescue the ailing project (Government of Alberta 2020b).

The government of Canada has also been a strong advocate for the Keystone XL pipeline, under both Stephen Harper's Conservative government and Justin Trudeau's Liberal government.

### Environmental Groups and Their Allies

Chapter 1 described the rationale for the climate movement's choice to shift from the frustrating politics of lobbying to blocking new fossil fuel infrastructure. The Keystone XL conflict was in fact the turning point for the movement, with 350.org's founder, Bill McKibben, being the catalyst. McKibben describes the evolution of his thinking in his 2013 memoir, *Oil and Honey: The Education of an Unlikely Activist*. He had already formed 350.org as a global environmental group focused on climate. In spring 2011, he taught a course on social movement strategies, including a deep dive into the US civil rights movement, and it inspired a vision for a new strategy. He explained, "By the time I was done with the semester, I'd decided that 350.org should organize the first major civil disobedience action for the climate movement. I sensed, from the speeches I was giving and the e-mail that flowed in hourly, that people were ready for a deeper challenge—it was time to stop changing lightbulbs and start changing systems. If we were going to shake things up, we'd need to use the power [Martin Luther] King had tapped: the power of direct action and unearned suffering. We'd need to go to jail" (McKibben 2013c).

McKibben seized on the Keystone XL issue after reading a blog post by climate scientist turned activist James Hansen, arguing that fully exploiting Canada's oil sands would amount to "game over" for the climate:

His calculations put a sudden spotlight on a previously little-known pipeline proposal called Keystone XL that was designed to carry almost a million barrels a day of that tar sands oil south from Canada to the Gulf of Mexico. Native leaders in Canada had been fighting tar sands mining for years, because it had wrecked their lands—only 3 percent of the oil had been pumped out. . . . And some ranchers in the United States had begun to rally along the planned route of the pipeline itself, particularly in Nebraska, where it was destined to run straight across the iconic Sandhills and atop the Ogallala Aquifer that irrigates the Great Plains. But these protests hadn't gained enough traction to stop the plan. Keystone XL awaited only a presidential permit. (McKibben 2013c)

The decision to launch a major resistance campaign against Keystone XL transformed the American wing of the climate movement and had profound repercussions not only for the project and the future of the oil sands but for American politics and US-Canada relations.

While the centerpiece of McKibben's message was about climate, the Keystone XL resistance movement was only able to be as effective as it was because it allied itself with place-based interests: farmers, landowners, and

Native Americans along the route, whose principal concern was the threat to local water quality. Much of the land on the proposed right-of-way was either privately owned or tribal land, so the positions of these groups were central to the conflict. The most influential voice of these place-based interests has been Bold Nebraska, a group created in 2010, originally to organize progressive groups in the state. But when the Keystone XL conflict emerged, the “small but mighty” group, as it calls itself, turned its attention to organizing the pipeline resistance movement (Ternes, Ordner, and Cooper 2020). The group’s website describes itself this way: “Bold Nebraska is best known for our work with an unlikely alliance of farmers, ranchers, Tribal Nations and citizens to stop the risky Keystone XL pipeline. We work on issues including eminent domain, clean energy, small family farms and lifting up small businesses. . . . The typical national environmental model—where a campaign is run from DC and local folks brought in for only lobby days or press conferences—must be disrupted if we are going to win local and national fights against fossil fuel interests while advancing clean energy” (Bold Nebraska, n.d.).

While active in the campaign from the beginning, these local groups banded together in 2014 to form the “Cowboy-Indian Alliance” in a campaign labeled “resist and protect.” The campaign website describes the initiative as follows: “Reject and Protect is led by the ‘Cowboy-Indian Alliance,’ a group of ranchers, farmers, and tribal communities from along the Keystone XL pipeline route” (Reject and Protect, n.d.). The addition of these groups diversified and strengthened the political coalition behind the resistance. This coalition was closely allied with 350.org and the climate movement, as the list of supporters on the “about” page of the group demonstrates.

In one of his efforts to articulate the philosophy of the movement, McKibben was quite direct about the central role played by making alliances with “front-line communities”: “For all of us, it means standing with communities from the coal fields of Appalachia to the oil-soaked Niger Delta as they fight for their homes. They’ve fought longest and hardest and too often by themselves. Now that global warming is starting to pour seawater into subways, the front lines are expanding and the reinforcements are finally beginning to arrive” (McKibben 2013a). The “keep it in the ground” strategy represented by the anti-Keystone XL campaign clearly supports the hypothesis that, in the effort to increase their leverage, climate activists will ally themselves with groups representing place-based interests when possible.

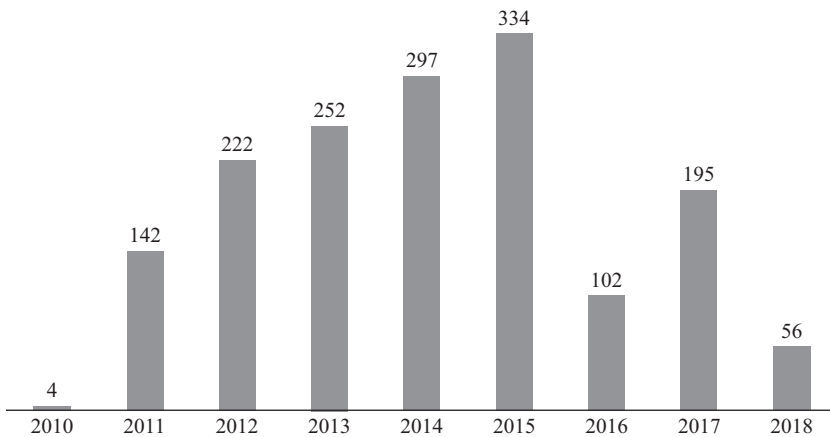
## Reframing the Oil Sands: The Battle over Ideas

Political conflict over public policy is not just a battle of strategic actors and institutions but also a battle of ideas (Baumgartner and Jones 2010). These battles are fought in both mainstream and social media and attempt to reshape public opinion to the advantage of strategic actors. On the pro-pipeline side, the core arguments were about job creation and energy security, particularly reducing dependence on Middle Eastern oil. On the anti-pipeline side, the core arguments were about risks to freshwater resources and, increasingly, the threat of climate change.

The core ideas motivating the “keep it in the ground” movement, most critically the carbon budget, were described in chapter 3. Environmental activists, led by 350.org’s Bill McKibben, adapted the concept as the rhetorical centerpiece of the anti-Keystone XL campaign by highlighting the threat to a threshold for a safe climate of oil sands expansion enabled by the pipeline. The movement was given a framing metaphor by climate scientist James Hansen, then director of NASA’s Goddard Institute for Space Studies. Hansen argued that, if fully exploited, Canada’s oil sands would add so much carbon to the atmosphere that it would be “game over for the climate” (Mayer 2011; Hansen 2012). He labeled the Keystone XL pipeline the “fuse to the biggest carbon bomb on the planet” (McGowan 2011). This “game over” frame was picked up by many environmentalists, including McKibben (Mayer 2011). Many climate analysts took issue with Hansen’s metaphor, showing that it was greatly exaggerated (Revkin 2011; Levi 2012; Leach 2014), but the frame helped mobilize urgency and opposition to Keystone XL and ultimately helped pave the way for Obama’s rejection.

### Issue Framing Analysis

Hodges and Stocking (2016) analyzed how this battle played out on Twitter, and Lawlor and Gravelle (2018) examined differences between national and local media reporting on Keystone XL through 2014. In this analysis, we examine a sample of mainstream media content. An analysis of mainstream media provides some indication of the relative importance given to different issues in the pipeline dispute. Figure 4.2 shows trends in US media mentions of Keystone XL from 2010 to the end of 2018, from Lexis Nexis. Mentions increased steadily through 2015, when Obama rejected the pipeline. It continued to receive media attention in 2016 because Trump made



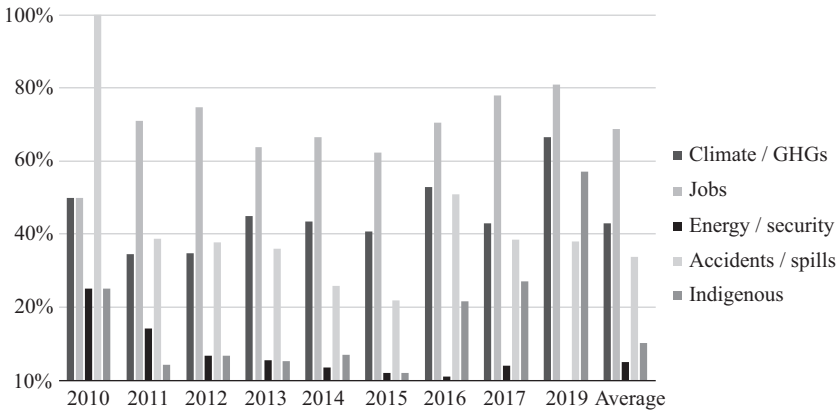
**Figure 4.2**

Total Keystone XL mentions in US media, 2010–2018.

it an election issue and in 2017 because his reversal of Obama’s rejection was a prominent issue.

As a way to measure which values or issues were highlighted in discourses on the controversy, figure 4.3 compares the number of times news articles mentioning the Keystone XL pipeline also mention five particular issues: (1) climate change; (2) jobs and the economy; (3) energy security; (4) risks of pipeline accidents or tanker spills; and (5) rights of Indigenous groups. Data come from the Lexis-Nexis database and are for the *New York Times* and *Washington Post* from 2010 through August 31, 2019.<sup>1</sup> Analyzing mainstream media coverage provides only a proxy for the relative importance of issue frames in the discourse of the pipeline conflict. It is not a direct measure of the discourses of the competing coalitions, but it is a measure of how the media chose to report the conflict.<sup>2</sup> The data show that once media attention began in 2011, jobs and the economy were the dominant issues in this sample of mainstream media mentions. While jobs and the economy remained prominent in media discourses, mentions of energy security declined considerably, reflecting the remarkable surge in domestic oil production since 2010. Our hypothesis is about whether place-based environmental impacts (e.g., pipeline spills and accidents) are given more attention than the more diffuse issue of climate change. This analysis of media called that hypothesis into question. Climate mentions exceed spill and accident mentions from 2013 on. This shift no doubt reflects the TransCanada agreement to





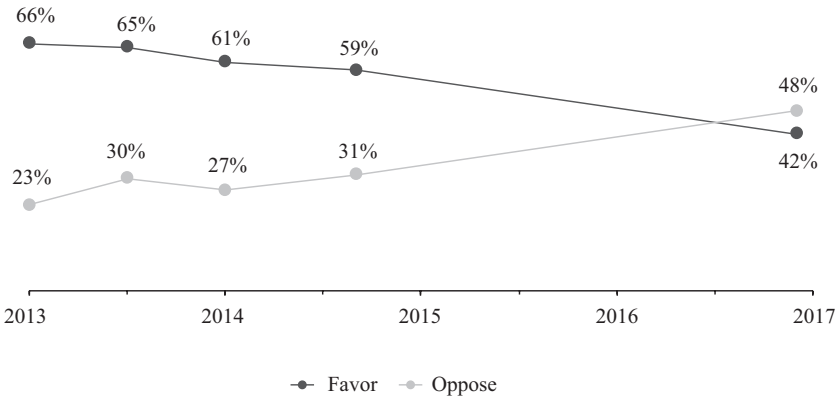
**Figure 4.3** Mentions of the keywords climate change, jobs and the economy, energy security, risks of pipeline accidents or tanker spills, and rights of Indigenous groups as a proportion of total mentions of the Keystone XL pipeline in the *New York Times* and *Washington Post*, 2010–2019.

reroute the pipeline away from the Ogallala Aquifer in Nebraska. Mentions of Indigenous rights, another indicator of place-based concerns, increased as a fraction of total media attention from 2016 through 2019, probably as a result of the connections drawn to the Dakota Access Pipeline Standing Rock controversy, but Indigenous rights still received substantially less attention than climate.

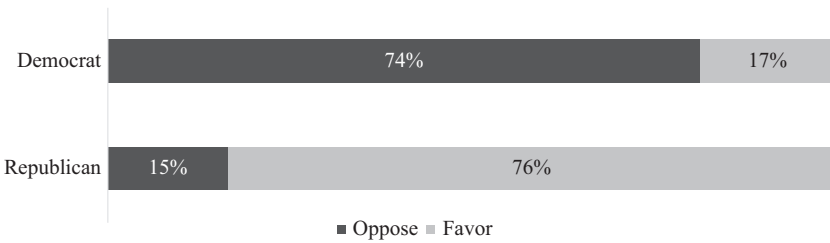
In their Keystone XL campaign, environmentalists took care to ally themselves with place-based interests, but they clearly did not shy away from the climate message. Climate issues were the dominant environmental issue, far more so than local issues of spills or accidents, at least as reflected in this sample of mainstream media coverage of the Keystone XL controversy.

**Public Opinion**

Public opinion on Keystone XL has changed dramatically. Public sentiment was initially highly favorable toward the Keystone XL pipeline: in early 2013, 66% of respondents in a Pew poll favored the pipeline, with only 23% opposed (see figures 4.4 and 4.5). Opposition increased modestly over several years but then surged, apparently as it became an issue associated with Trump (Pew Research Center 2017). Gravelle and Lachapelle (2015) examined the factors influencing support or opposition to it before the precipitous decline.



**Figure 4.4**  
 Poll results for Keystone XL pipeline support.  
 Note: “Don’t know” responses are not shown.  
 Source: Pew Research Center (2017).



**Figure 4.5**  
 Partisan views of Keystone XL pipeline (February 2017).  
 Note: “Don’t know” responses are not shown.  
 Source: Pew Research Center (2017).

They found, not surprisingly, that the level of opposition was strongly influenced by partisan affiliation and political ideology but also that the closer to the pipeline one lived, the more likely one was to support it, stating that “local framing of economic benefits appears to have outweighed counter-framing regarding risks” (Gravelle and Lachapelle 2015, 106). This finding certainly complicates the climate movement’s strategy of allying itself with place-based interests and also reflects the fact that pipeline proponents focus heavily on jobs in part because they are a concrete, place-based phenomenon, but it does not undermine the logic of mobilizing resistance by appealing to concerns about risks to local environmental values.

## Institutions and the Politics of Structure

Policy conflicts are struggles among strategic actors but also conflicts over institutions. Like many controversial issues, the struggle over the “rules of the game” has been a central component of this issue. Keystone XL has been caught in conflicts between Canada and the United States; between landowners, regulators, and corporations; between states and the US government; and between Congress and the president. The competing coalitions carefully chose the most strategic venues: opponents focused on the state of Nebraska, President Obama, and the courts. Proponents chose to focus on Congress and, after November 2016, President Trump. In this case, the political battle over who should play what role in decision-making is a clear demonstration that strategic actors will focus their strategy on the institutional venue(s) most favorable to their interests.

Because it crosses the Canada-US border, the Keystone XL pipeline required the approval of both federal governments. In Canada, the regulatory process was not controversial, and the project was approved by the National Energy Board in 2010 (National Energy Board 2010). The pipeline was strongly advocated by the Harper government (2006–2015), and even the more environmentally minded Prime Minister Justin Trudeau (2015–) has advocated for the pipeline’s approval by the United States. In the United States, however, the regulatory process was anything but straightforward.

### Conflict within the Executive Branch

Even within the executive branch of the US government, Keystone XL was the subject of division and conflict. On the US side of the border, the law requires that the transboundary pipeline receive a “national interest” determination issued by the secretary of state.<sup>3</sup> The State Department is responsible for the environmental impact assessment process under the National Environmental Policy Act (NEPA) in this case. TransCanada submitted its application for the Keystone XL pipeline process on September 19, 2008. The State Department began the process of environmental assessment, and it issued a draft environmental impact statement in April 2010 that suggested there were no significant environmental concerns. Even Secretary of State Hilary Clinton publicly stated, in October 2010, that the department was “inclined to approve” the project (McConaghy 2017, 50–53).

But a combination of accidents and political mobilization fundamentally altered the political environment of the entire Keystone XL project.

First, two major oil spills highlighted the risks of oil production and transport. The BP Deepwater Horizon accident in the Gulf of Mexico occurred in April 2010. More directly relevant to Keystone XL, an Enbridge pipeline carrying oil sands products ruptured and spilled into the Kalamazoo River in Michigan in late July 2010. Second, the environmental campaign against the project began in earnest, as described in the following section.

Within the Obama administration, environmental concerns about the project were pushed by the Environmental Protection Agency (EPA). Conflict within the administration began when the EPA, during the required period of interagency review, took issue with the State Department's finding of limited environmental impact. The EPA was particularly concerned that the draft impact statement did not adequately assess climate risks, declaring that the State Department draft was "inadequate" (Parfomak et al. 2013). This intervention delayed the process, and the State Department issued a draft supplemental environmental impact statement in April 2011, a full year after the draft had been issued. This time, the EPA revised its rating from inadequate to "Environmental Objections—Insufficient Information." The final environmental impact statement was released in August 2011. It examined risk to the Sand Hills and Ogallala Aquifer and considered alternative routes. It found that alternative routes were less desirable, either for reasons of cost or environmental impact, stating that "alternatives would be longer than the proposed route and would disturb more land and cross more water bodies than the proposed route" (US Department of State 2011a, ES-12). While it found that the greenhouse gas intensity of oil sands products was greater than for other sources of oil, the life cycle analysis it commissioned "reported that there would be no substantive change in global GHG emissions and . . . there would likely be no substantial change in oil sands imports to the gulf coast region" (US Department of State 2011a, 3.14–3.56).

The next stage in the process was the "national interest determination" made by the secretary of state. Even at this point, TransCanada was confident that the project would be expeditiously approved, anticipating that a certificate of approval would be received by the end of 2011 (McConaghy 2017, 53). But the company, like the entire oil sands coalition, dramatically underestimated the political power of the anti-pipeline coalition, in this case spearheaded by Bill McKibben of 350.org.

### Spotlighting President Obama

Environmentalists seized on resistance to Keystone XL as a way to breathe new life into a climate movement devastated by defeats at Copenhagen and in Congress (Cheon and Urpelainen 2018; McConaghy 2017). Choosing a specific project allowed the movement to overcome some of the political challenges of climate mobilization. The choice to focus on Keystone XL was also based on an institutional opportunity: it provided an opportunity for a political win because the requirement for a determination of national interest focused the decision on the executive branch and the core veto player to whom they had access: President Barack Obama. Naomi Klein describes the choice this way: “Unlike so many other key climate policies, which either required approval from Congress or were made at the state level, the decision about whether to approve the Keystone XL pipeline was up to the State Department and, ultimately, the president himself, based on whether he determined the project to be in the ‘national interest.’ On this one, Obama would have to give his personal yes or no, and it seemed to us that there was value in extracting either answer” (Klein 2014, 140).

Bill McKibben explained the strategy in these words: “Congress didn’t need to act, which was good since I knew there was no possible way to even think about convincing the Republican-controlled House of Representatives to block the pipeline. But this decision would be made by Barack Obama, and Barack Obama was fifteen months away from an election. Maybe we had an opening to apply some pressure—an opening to see if we’d nurtured a climate movement strong enough to make a difference” (McKibben 2013c).

Environmentalists were considered a core component of the Obama coalition, and the Keystone XL strategy was careful to seize the opportunity by, among other things, making Obama’s own words the focus on protest signs at various events. If they were able to convince Obama to stop the pipeline, it would be a much-needed win. If they failed, that would also clarify that they needed to shift electoral strategies away from supporting him.

The campaign began in earnest in summer 2011, when McKibben, Klein, Hansen, and others called for a large-scale act of civil disobedience outside the White House. The open letter began: “We want you to consider doing something hard—coming to Washington in the hottest and stickiest weeks of the summer and engaging in civil disobedience that will likely get you arrested.” It used evocative, even alarmist, language about the stakes: “The Keystone Pipeline would also be a 1,500-mile fuse to the biggest carbon

bomb on the continent, a way to make it easier and faster to trigger the final overheating of our planet” (McKibben et al. 2011). The action was timed for the second half of August because that was when the State Department was expected to release the final environmental assessment.

The response was impressive: in August, 1,252 protesters, including McKibben, Hansen, and a number of celebrities, were arrested outside the White House. In a pivotal development for the US environmental movement, the civil disobedience campaign was endorsed by mainstream US environmental groups, including the NRDC, the Environmental Defense Fund, and the Sierra Club.<sup>4</sup> The letter couldn’t have been more direct at threatening Obama with a political backlash from his base:

Dear President Obama:

Many of the organizations we head do not engage in civil disobedience; some do.

Regardless, speaking as individuals, we want to let you know that there is not an inch of daylight between our policy position on the Keystone Pipeline and those of the very civil protesters being arrested daily outside the White House. This is a terrible project—many of the country’s leading climate scientists have explained why in their letter last month to you. It risks many of our national treasures to leaks and spills. And it reduces incentives to make the transition to job-creating clean fuels.

You have a clear shot to deny the permit, without any interference from Congress. It’s perhaps the biggest climate test you face between now and the election. If you block it, you will trigger a surge of enthusiasm from the green base that supported you so strongly in the last election. We expect nothing less. (Henn and Kessler 2011)

The action was also endorsed by nine Nobel Peace Prize laureates, including Desmond Tutu and the Dalai Lama (Cheon and Urpelainen 2018, 71).

The campaign followed the August action with a larger call designed to pressure Obama on the national interest determination. On November 6, 2011, about 15,000 protesters surrounded the White House, demanding Obama reject the pipeline. Four days later, the Obama administration announced that it was delaying its decision on the pipeline for a year “to undertake an in-depth assessment of potential alternative routes in Nebraska” (US Department of State 2011b).

The environmental mobilization clearly had a profound policy impact, by obtaining first numerous delays and then, ultimately, Obama’s decision to reject the pipeline outright. Obama’s first rejection decision occurred when, as described in the next section, Congress tried to force his hand

by requiring him to issue a decision within 60 days. But, in doing so, the administration also said that TransCanada was welcome to submit a new application with a new route to avoid the sensitive Sand Hills region. The company agreed and filed the new application in May 2012.

As the new environmental review proceeded, protests continued and the Keystone XL controversy became one of the most divisive political issues, and certainly the most divisive environmental issue, of the first half of the decade in the United States. In February 2013, what was billed as the largest climate rally in the United States brought 40,000 protesters to the Washington mall. In March 2014, a civil disobedience action by youths led to almost 400 arrests (Cheon and Urpelainen 2018, 72).

Obama had pledged action on climate since receiving the Democratic nomination for president, but in June 2013 he tied climate action directly to the Keystone XL pipeline for the first time, during a speech at Georgetown University:

I know there's been . . . a lot of controversy surrounding the proposal to build a pipeline, the Keystone pipeline, that would carry oil from Canadian tar sands down to refineries in the Gulf. And the State Department is going through the final stages of evaluating the proposal. That's how it's always been done. But I do want to be clear: Allowing the Keystone pipeline to be built requires a finding that doing so would be in our nation's interest. And our national interest will be served only if this project does not significantly exacerbate the problem of carbon pollution. The net effects of the pipeline's impact on our climate will be absolutely critical to determining whether this project is allowed to go forward. It's relevant. (Obama 2013)

This new climate test for pipelines was a major victory for the US climate movement.

While the articulation of that climate test seemed to have set the stage for rejecting the pipeline, the State Department environmental assessment was unable to provide the rationale for a finding that the project would “significantly exacerbate” climate pollution. In January 2014, another 20 months of review after the formal draft, the State Department issued its second final environmental impact statement, again concluding that “the proposed Project is unlikely to significantly affect the rate of extraction in oil sands areas” (US Department of State 2014). Again, the ball was back in Obama's court to make a national interest determination, but there was no timeline for doing so. Developments in Nebraska, described later, provided political cover for

further delays. Obama did ultimately reject the project in November 2015, for reasons described later.

### **Asserting Congressional Control**

While pipeline opponents focused their campaign on President Obama, pipeline proponents focused much of their effort on Congress. Keystone XL became a major issue in the increasingly rancorous partisanship dividing Democratic president Barack Obama's White House from the Republican-dominated Congress. Republicans took a majority in the House in the 2010 midterm elections, and while they didn't gain a majority in the Senate until 2014, they had enough seats in the Senate to help thwart most of Obama's initiatives. When Obama decided to postpone a decision on the pipeline late in 2011, Congress tried to assert control by passing legislation requiring that a decision be made within 60 days. The president complied with the deadline but not the desired outcome: he rejected the pipeline because of insufficient information about risks to groundwater in Nebraska (Parfomak et al. 2015).

Republicans in Congress again tried to assert control over the decision in February 2015 by passing a bill requiring that Obama approve the pipeline. Obama vetoed the bill and Republicans were unable to get enough votes to override the veto. The Senate voted 62–36 in favor, enough to withstand a filibuster but not enough to override a presidential veto (Parfomak et al. 2015; Zoldan 2015). The veto decision did not reject Keystone XL. The text of the veto decision emphasized that its purpose was to protect presidential authority over cross-boundary pipeline decisions. As Obama explained, “Because this act of Congress conflicts with established executive branch procedures and cuts short thorough consideration of issues that could bear on our national interest—including our security, safety, and environment—it has earned my veto” (White House 2015). While the authorizing statute and the presidential veto allowed Obama to thwart the congressional assertion of control, his pipeline legacy was quickly reversed with Trump's election.

### **The Institutional Struggle within Nebraska**

A further institutional complication for pipeline construction is that each individual state through which the pipeline would travel needed to approve the project. This multiplied the number of possible veto points in the American process. While approvals by Montana and South Dakota were relatively smooth, Nebraska became a major obstacle because of the



concerns over the Ogallala Aquifer and the organizational activities of Bold Nebraska and other local groups. This battle over institutional rules was between landowners resisting the pipeline and TransCanada, with the issue being executive authority versus an independent regulatory commission.

As an indication of how effective Bold Nebraska and its allies were in turning public opinion against the project, when a TransCanada ad was shown at a University of Nebraska football game during the fall 2011 season, it was loudly booed by many of the 80,000 fans in attendance. The next day, the university announced that TransCanada would no longer be able to advertise at university events (Cheon and Urpelainen 2018, 81). To Greenpeace's Keith Stewart, this was a major blow to the project: "Where I think TransCanada lost in Nebraska was the day the football team gave them back their money and took down their ads from the stadium. As an indicator of social license: if your money isn't good to the Cornhuskers, that's a sign you've lost in Nebraska" (Stewart 2016).

In late August 2011, Nebraska governor Dave Heineman stunned TransCanada and its allies by writing to President Obama asking that the pipeline be rerouted to avoid the sensitive Sand Hills area. He also called a special session of the Nebraska legislature to pass a new law for pipeline reviews. Several months later, the Nebraska legislature passed the new pipeline siting law establishing an application process through the Nebraska Public Service Commission. In April 2012, the legislature amended the statute to give final decision authority to the governor. Relying on that authority, Governor Heineman approved the pipeline's route through the state in January 2013 (Omaha World Herald 2017).

Landowners challenged the legal basis for the governor's decision in court, and in February 2014 a Lancaster County district judge ruled that the action violated the state's constitution. In January 2015, the Nebraska Supreme Court overturned the decision (*Thomson v. Heineman*, Nebraska Supreme Court 289 Neb. 798 (2015)), so the governor's approval decision stood. But then legal battles turned to the "condemnation" process by which TransCanada was attempting to invoke eminent domain regarding landowners who refused to sign pipeline easements (Omaha World Herald 2017). After a setback in court, TransCanada decided to change course in November 2015 and submit its application to the Nebraska Public Service Commission. This move was considered a desperate "Hail Mary" to fend off what they believed was imminent rejection of the pipeline by Obama

(Morton 2015), but the Obama administration declined the company's request that it suspend its review and formally rejected the pipeline several days later.

In the wake of Trump's election and his January 2017 executive order to restart the Keystone XL review, TransCanada resubmitted its application to the Nebraska Public Service Commission in February 2017. After public hearings, the commission issued a ruling that cast further doubt on the pipeline's fate by rejecting the company's preferred route and approving instead an alternative route that followed the existing pipeline more closely (Hammel 2017).

### The Battle in the Courts

While Nebraska-based opponents focused on that venue, other pipeline opponents challenged Trump's project approval in court.<sup>5</sup> Trump's decision has been successfully challenged in court by a coalition of environmental groups and Indigenous groups, including the Indigenous Environmental Network, the Sierra Club, the Natural Resources Defense Council, the Northern Plains Resource Council, and Bold Alliance (a coalition of citizens fighting pipelines). A federal district court in Montana first ruled, in August 2018, that the Trump administration was required to file a new environmental impact statement. Then, in November, the court struck down the presidential permit, ruling that the Trump administration had violated the National Environmental Policy Act and Administrative Procedures Act because it "disregarded prior factual findings related to climate change and reversed course" (*Indigenous Environmental Network et al. vs. Department of State et al.*, US District Court, Montana, Case 4:17-cv-00029-BMM, November 8, 2018).

After the US Court of Appeals for the Ninth Circuit refused to overturn the injunction, in March 2019 the Trump administration reissued a presidential permit for construction, ignoring the court's direction that it update the environmental assessment. Anti-pipeline groups challenged that action in court again, this time using the Clean Water Act's provisions as ammunition. In April 2020, the US district court in Montana invalidated the generic permit the Army Corps of Engineers had implemented for violating the Endangered Species Act (*Northern Plains Resource Council et al. vs. Army Corps of Engineers et al.*, Case 4:19-cv-00044-BMM, April 15, 2020). This decision cast further doubt on the viability of the pipeline despite the Trump administration's enthusiasm for it.

This section supports the hypothesis that strategic actors will focus their strategies on the institutional venue(s) most favorable to their interests. Environmentalists chose the Keystone XL battle in large part to take advantage of the fact that the federal decision was controlled by their ally, President Obama. Pipeline advocates chose to focus their efforts on Congress, where environmental values were less well represented after the GOP takeover of the House. The 2016 presidential election gave pipeline advocates an ally in the White House, so pipeline opponents shifted their focus to the state of Nebraska and the federal courts. The Nebraska rerouting decision was a significant setback for the project, and the federal court decisions forced the company to postpone construction yet again. These delays thwarted progress on the pipeline long enough for Joe Biden to assume the presidency and immediately cancel the presidential permit.

### **The Reflection of Values in Presidential Determinations**

The fourth behavioral hypothesis argues that decision rationales about pipelines will emphasize place-based risks far more than climate risks. The Keystone XL battle has witnessed four different presidential determinations, three by Obama and one by Trump (Trump's March 2019 presidential permit was not accompanied by a detailed rationale). Obama's first determination was the rationale for the fall 2011 decision to postpone action on the pipeline. It made scant mention of climate issues. In its four-paragraph statement explaining the decision, virtually all the focus was on the risks to a sensitive watershed along the pipeline route in the state of Nebraska, the Ogallala Aquifer, and the need to consider alternative routes to avoid jeopardizing that area. Only the final sentence gave a passing nod to climate change: "Among the relevant issues that would be considered are environmental concerns (including climate change), energy security, economic impacts, and foreign policy" (US Department of State 2011b).

The second determination was Obama's January 2012 response to congressional demands to make a decision. The brief statement from the White House does not mention climate at all. The decision rationale was based on the fact that more time was needed to conduct an "assessment of alternative pipeline routes that avoided the uniquely sensitive terrain of the Sand Hills in Nebraska" (US Department of State 2012). With the rerouting of the pipeline around the Sand Hills area and the resulting reduced threat to the

Ogallala Aquifer, it became much more difficult to justify decisions based on place-based environmental concerns.

In Obama's November 2015 decision to reject the pipeline, climate concerns did take center stage in the rationale. While the analysis suggested the pipeline was "unlikely to significantly impact the level of GHG-intensive extraction of oil sands," the principal rationale for the decision was reputational: "It is critical to the United States to prioritize actions that are not perceived as enabling further GHG emissions globally" (US Department of State 2015).

Revealingly, the decision was not based on the climate test from the Georgetown speech that Keystone XL "would significantly exacerbate" GHG emissions. The State Department analysis did not support that. The decision rationale directly states that "the proposed project by itself is unlikely to significantly impact the level of GHG-intensive extraction of oil sands" (US Department of State 2015). Instead, the decision cites the broader standard of the "net effects of the pipeline's impact on our climate." Despite finding little measurable impact on GHG emissions, the record of decision continued, "it is critical for the United States to prioritize actions that are not *perceived as enabling* further GHG emissions globally" (emphasis added).

In effect, the decision transformed Obama's climate test into a broader consideration of the impact of the decision on global climate politics: "A key consideration at this time is that granting a Presidential Permit for this proposed Project would undermine U.S. climate leadership and thereby have an adverse impact on encouraging other States to combat climate change and work to achieve and implement a robust and meaningful global climate agreement. Strong climate targets and an effective global climate agreement would lead to a reduction in global GHG emissions that would have a direct and beneficial impact on the national security and other interests of the United States" (US Department of State 2015).

In his public remarks, Obama expressed frustration over the exaggerated claims about the pipeline, not just from industry but also from the environmental movement: "Now, for years, the Keystone Pipeline has occupied what I, frankly, consider an overinflated role in our political discourse. It became a symbol too often used as a campaign cudgel by both parties rather than a serious policy matter. And all of this obscured the fact that this pipeline would neither be a silver bullet for the economy, as was promised by some, nor the express lane to climate disaster proclaimed by others" (Obama 2015). He stressed the role model justification for the decision,

saying, “Today, we’re continuing to lead by example, because ultimately, if we’re gonna prevent large parts of this Earth from becoming not only inhospitable but uninhabitable in our lifetimes, we’re going to have to keep some fossil fuels in the ground rather than burn them and release more dangerous pollution into the sky” (Obama 2015).

This decision was a remarkable rhetorical and political victory for the climate movement in two ways. First, Obama’s adoption of the “keep it in the ground” framing was a major breakthrough for the movement. But more importantly, the Record of Decision essentially acknowledged that symbolism had triumphed over analysis. The power of the “carbon bomb/game over” framing is that it enabled Obama to reject the pipeline even without demonstrated climate impacts. The symbolic magnification of importance manufactured through the anti-pipeline coalition’s framing had so damaged the global political interpretation of Keystone XL that the United States couldn’t go to Paris with credibility on climate if it approved the project.

The climate movement, remarkably, transformed Keystone XL into a symbol of climate destruction, and it worked in getting the project killed at least until the White House was surrendered to an ally of the oil sands coalition.

Eighteen months later, Trump reversed Obama’s decision and issued a presidential permit. The determination used the same GHG analysis but emphasized the absence of a significant impact on emission levels. While the Obama decision emphasized the project’s “limited benefit for energy security,” Trump’s decision stated that the pipeline “will meaningfully support U.S. energy security.” In the most important passage, Trump’s decision replaced Obama’s prioritization of the international reputation of the United States on climate with prioritization of energy security and economic growth. Given the commitments of many countries to act under the Paris agreement, Trump’s determination concludes, “A decision to approve this Project at this time would not undermine U.S. objectives in this area.” Rather, approving the project “would support U.S. priorities relating to energy security, economic development, and infrastructure” (US Department of State 2017).

The analysis of presidential decisions gives partial support to the fourth hypothesis. The decision rationales in the first round, when the route through Nebraska went through the sensitive Sand Hills region, gave clear priority to place-based risks over climate concerns. When the most salient place-based risks were eliminated by rerouting, Obama had no choice but to justify the decision on climate grounds. When Republicans took over

the White House, economic values easily trumped climate concerns, and the pipeline was granted a presidential permit. When President Joe Biden reversed course and canceled the permit in January 2021, he stated: “The United States must be in a position to exercise vigorous climate leadership in order to achieve a significant increase in global climate action and put the world on a sustainable climate pathway” (White House 2021).

## Conclusion

Keystone XL became one of the most controversial issues in American politics in the 2010s. Stung by losses in Congress and at the United Nations, US environmentalists deliberately reframed the pipeline as the poster child for the emerging “keep it in the ground” strategy to fight climate change. The requirement for an executive branch determination of national interest allowed them to deliberately target President Obama, who was ideologically sympathetic to the climate issue and anxious to maintain the committed electoral support of the environmental community. They also allied themselves with Native Americans, farmers, and landowners concerned about the risks pipeline accidents posed to their water supply. In doing so, they were able to ally themselves with place-based interests who had access to possible veto points at the state level and reduce the exceptional organizational challenges posed by the climate problem.

The analysis yields strong support for the first two hypotheses and mixed support for the third and fourth. Climate activists allied themselves with groups representing place-based interests in a conscious effort to strengthen their political leverage. The analysis of the institutional “politics of structure” clearly demonstrates that strategic actors will focus their strategies on the institutional venue(s) most favorable to their interests. The third hypothesis was that pipeline opponents would adopt framing that emphasized place-based risks. Unquestionably, climate activists did ally themselves with place-based groups and emphasized their concerns, but clearly not at the expense of climate issues. Climate issues were the dominant environmental issue, far more so than local issues, in mainstream media coverage of the Keystone XL controversy, at least as reflected in reporting by the *New York Times* and *Washington Post*. The analysis also found some support for the hypothesis that decision rationales about pipelines would

emphasize place-based risks far more than climate risks. But once the most salient place-based risks were removed, climate issues took front and center.

The initial victories of pipeline opponents, first in having the decision postponed several times and then finally winning the rejection of the pipeline late in 2015, reveal the power of actors' strategic choices. Such significant policy changes are considered unlikely without "significant perturbations external to the subsystem" (Sabatier and Jenkins-Smith 1993), but in this case, it was the climate movement's shift to embracing the "keep it in the ground" strategy that seemed to be the most important force driving the policy change. Background economic conditions, most importantly the boom in US domestic energy production and the collapse of oil prices late in 2014, reduced the apparent economic benefits of the project. But those changes were not evident in 2011 and 2012, when aggressive campaigning by pipeline opponents won vital delays and the rejection of the initial proposal in 2012.

The case is also a clear reminder of the importance of presidential control and presidential power. On even relatively salient environmental controversies such as this one, the values of the president can be the most important determinant of policy, even in the face of a hostile Congress and public opinion. Recall that when Obama delayed and then rejected the pipeline, public opinion was in favor of the pipeline by a substantial margin. By the time Trump approved the pipeline in March 2017, public opinion had shifted to decisive opposition to it.

Led by McKibben, the environmental movement deliberately set out to elevate Keystone XL into a symbol of the climate crisis, and it worked. Thirteen years after it was initially proposed, President Joe Biden, as part of a package of climate initiatives announced on the first day of his presidency, terminated the project.





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# The Resistance Dilemma

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By: George Hoberg

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