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Contact: Kelly Darby  
Phone: (512) 771-8276  
Email: [kelly@iando.com](mailto:kelly@iando.com)

## **Hays County to File Notice of Intent for Second Lawsuit Related to Permian Highway Pipeline**

Hays County, TX -- Commissioners from the fourth fastest-growing county in the United States voted Tuesday to join Travis Audubon Society and three private plaintiffs in filing a notice of intent to sue Kinder Morgan, the United States Army Corps of Engineers, and the United States Fish and Wildlife Service in connection with the proposed 42-inch Permian Highway Pipeline (PHP).

The notice cites a “thinly-veiled attempt to avoid obtaining the necessary federal permits to allow [Kinder Morgan] to lawfully ‘take’ federally listed endangered species during the construction, operation, and maintenance of the PHP.” The term “take” in this context is defined by Section 9 of the Endangered Species Act to include harassing, harming, pursuing, wounding or killing a listed species.

The pipeline’s current 430-mile route crosses some of the most sensitive environmental features in Texas, including the recharge zones of the Edwards and Edwards-Trinity Aquifers (which provide the drinking water supply for over 2 million people) and habitat for federally listed endangered species like the golden-cheeked warbler. Central Texas is the only area in the world where the birds nest, and the PHP could “take” more than 2,000 acres of its habitat.

Kinder Morgan has been continually called into question for choosing a path that would negatively impact the health, safety and economy of the Texas Hill Country and the Texas Innovation Corridor.

Advocates of landowners’ rights point to the Permian Highway Pipeline as an example of serious problems caused by the lack of a public approval process for intrastate oil and gas pipelines in Texas. City of Kyle officials first learned about the proposed pipeline from concerned residents who had been contacted by Kinder Morgan about running a massive pipeline through their land. The proposed route, which was chosen in private by Kinder Morgan customers, will not only go through extremely sensitive aquifers but also derail extensive public planning for new developments and public infrastructure in Kyle and Hays County, costing local taxpayers millions of dollars.

Hays County also voted Tuesday to appeal last month’s ruling in another lawsuit against Kinder Morgan, PHP, and the Texas Railroad Commission. This lawsuit seeks public accountability for these private companies by requiring the Railroad Commission to create a permitting process

for companies before they can condemn private property for their pipeline right-of-way. The City of Kyle, also a plaintiff, voted to appeal the lawsuit last week.

“The City of Kyle remains firm in its assertion that greater transparency is needed in the pipeline routing process,” stated Kyle Mayor Travis Mitchell. “While we respect Judge Livingston’s ruling, the Texas Constitution clearly calls for the Railroad Commission to establish rules and policies for how eminent domain is utilized by private, for-profit corporations to forcibly seize others’ property. No such process currently exists.”

Plaintiffs in the new lawsuit are calling for a full environmental impact study under the National Environmental Policy Act, or NEPA. However, the Army Corps has confirmed that Kinder Morgan intends to use the Nationwide Permitting verification process instead. One distinct difference between NEPA and the Nationwide Permitting processes is the requirement to consider alternative routes. Typically, a project of this scale would require a full NEPA review. By signing on to already-existing permits, Kinder Morgan is bypassing a crucial step that will speed up their timeline, increase their profits, and avoid public transparency.

“In requesting that an environmental review process be followed and a study performed by Kinder Morgan, we are asking for nothing more than what Hays County has to do when planning and building county infrastructure,” Precinct 3 Commissioner Lon Shell said. “The County conducts extensive environmental studies when developing roadways to protect endangered species habitat and water quality.”

“In spite of our disappointment with Judge Livingston’s ruling, the constitutional issues we raised with respect to the lack of due process in taking private property are still there,” Andrew Sansom, owner of Hershey Ranch and plaintiff in the lawsuit against the Texas Railroad Commission. “We’re confident that, at some level, the courts will look favorably on our argument. Everyone who hears about the total lack of due process in these pipeline condemnations is shocked, particularly in Texas where private property rights are sacred.”

Both lawsuits highlight the glaring need for a real oil and gas pipeline routing process in Texas. Formal environmental and economic impact processes are currently not required for pipeline companies when choosing an intrastate route. Plaintiffs from both suits believe that this lack of transparency denies Texans the process its constitution requires and in doing so, puts at risk the health, safety and economy of its citizens across the state.

Under the Endangered Species Act, plaintiff parties must wait 60 days to file a lawsuit after filing a notice of intent to sue. Plaintiffs hope that a formal lawsuit will not be needed.

Attorney David P. Smith represents the plaintiffs and said, “It is our hope that Kinder Morgan will do the sensible thing and comply with federal law, which could obviate the need for a lawsuit to be filed.”

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