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Office of the Governor  
Attn: Right to Know/Public Information Request  
P. O Box 200801  
Helena, MT 59620-0801

Office of the Attorney General  
Attn: Right to Know/Public Information Request  
215 N Sanders St.  
P. O Box 201401  
Helena, MT 59620-1401

Montana Highway Patrol  
Attn: Right to Know/Public Information Request  
2550 Prospect Ave.  
P. O Box 201419  
Helena, MT 59620-1419

Montana Department of Revenue  
Attn: Right to Know/Public Information Request  
125 N. Roberts  
P. O Box 5805  
Helena, MT 59604-5805

Montana Department of Fish, Wildlife & Parks  
Attn: Right to Know/Public Information Request  
1420 East Sixth Ave.  
P. O Box 200701  
Helena, MT 59620-0701

Tuesday, February 20, 2018

**Re: ACLU Request for Public Records Regarding Government Activities Related to  
Keystone XL Construction in Montana.**

## To Whom It May Concern:

On March 24, 2017, President Donald Trump announced federal approval for construction of the Keystone XL pipeline. This pipeline poses a threat<sup>1</sup> to the water supply of the Fort Peck Reservation.<sup>2</sup> Like the Water Protectors of Standing Rock, both Indigenous communities and their supporters in Montana are likely to protest the construction of Keystone XL as well as the continued desecration of Tribal sacred sites that pipelines bring. These issues moved onto the national stage when the Standing Rock Sioux Water Protectors rose up and protested to protect sacred water. These courageous actions inspired protests and rallies throughout Montana.<sup>3</sup> The peaceful Water Protectors at Standing Rock were besieged by state law enforcement and made to endure caustic plumes of tear gas, the searing stings of rubber bullets, and torrents of government sanctioned force led by riot shields.<sup>4</sup> Based on the tactical and forceful response seen from law enforcement during the Standing Rock protests, those in Montana who intend to protest the construction of Keystone XL may be faced with a similar dangerous and oppressively forceful response from law enforcement.

Since the end of the Standing Rock protests, federal<sup>5</sup> and state governments<sup>6</sup> have taken actions to silence current and future Water Protectors. Further, it has been confirmed that law enforcement has engaged in unconstitutional monitoring and other insidious actions to undermine protests of this nature.<sup>7</sup> The American Civil Liberties Union (“ACLU”) of Montana is committed to protecting the civil rights of Montanans engaged in pipeline protests and fighting so that Indigenous people are not oppressed or marginalized as they historically have been. The ACLU of Montana believes that public agencies of the State of Montana are involved in pre-emptive planning and coordination with private, local, and federal entities to assist in efforts to further criminalize Indigenous rights and environmental justice activism. Further, the ACLU is concerned that the Montana Department of Justice (“MTDoJ”) is engaged in unconstitutional

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<sup>1</sup> Karl Puckett, *Montana Tribes Seek Keystone Route Change*, Great Falls Tribune (Feb. 20, 2017), <http://www.greatfallstribune.com/story/news/local/2017/02/20/montana-tribes-seek-keystone-route-change/98179708/>.

<sup>2</sup> *Route Maps*, TransCanada (2018), <http://www.keystone-xl.com/wp-content/uploads/2017/01/Transcanada-KXL-Montana-map.pdf>.

<sup>3</sup> Brie Ripley, *Standing Rock Rallies Echo Across Montana*, Yellowstone Public Radio (Nov. 16, 2016), <http://ypradio.org/post/standing-rock-rallies-echo-across-montana#stream/0>.

<sup>4</sup> Sam Levin, *Dakota Access Pipeline Activists say Police have Used ‘Excessive’ Force*, The Guardian (Jan. 18, 2017), <https://www.theguardian.com/us-news/2017/jan/18/dakota-access-pipeline-protesters-police-used-excessive-force>.

<sup>5</sup> Timothy Gardner, *U.S. Lawmakers Ask DOJ If Terrorism Law Covers Pipeline Activists*, Reuters (Oct. 23, 2017), <https://www.reuters.com/article/us-usa-pipelines-activism/u-s-lawmakers-ask-doj-if-terrorism-law-covers-pipeline-activists-idUSKBN1CS2XY>.

<sup>6</sup> Jayme Fraser, *Bill to Ban Masks at Protests that Become Riots Divides Police, Civil Rights Advocates*, Helena Independent Record (Mar. 22, 2017), [http://helenair.com/news/politics/state/bill-to-ban-masks-at-protests-that-become-riots-divides/article\\_f381326a-ba79-5528-857c-7f9520a27a8f.html](http://helenair.com/news/politics/state/bill-to-ban-masks-at-protests-that-become-riots-divides/article_f381326a-ba79-5528-857c-7f9520a27a8f.html).

<sup>7</sup> Sam Levin, *Revealed: FBI Terrorism Taskforce Investigating Standing Rock Activists*, The Guardian (Feb. 10, 2017), <https://www.theguardian.com/us-news/2017/feb/10/standing-rock-fbi-investigation-dakota-access>.

monitoring of the individual and group financial information and contributions of persons and groups supporting Water Protectors.

The ACLU has obtained documentation that shows the involvement of divisions of the Montana Department of Justice, specifically the Montana Analysis and Technical Information Center (“MATIC”), in the production of a Department of Homeland Security field analysis report titled, *TTPs Used in Recent US Pipeline Attacks by Suspected Environmental Rights Extremists*.<sup>8</sup> This report suggests that “Native American causes”, such as oil pipeline protests, are being used to obfuscate the presence and coordination of “environmental rights extremists” in carrying out acts of civil disobedience and criminal conduct.<sup>9</sup> The ACLU is concerned that these reports will be used as a pretext for actions intended to chill the free speech and disrupt the right to free association of peaceful Pipeline protesters. The ACLU is also concerned that these efforts will result in discriminatory targeting and continued oppression of Indigenous protesters. To ensure the protection of the rights of Montana citizens, Indigenous and otherwise, the ACLU is requesting the public records and information listed below.

Pursuant to Mont. Code Ann. (“MCA”) § 2-6-1003, the ACLU respectfully requests the following records from the entities provided below, in electronic format unless only available in paper:

**Office of the Governor:**

- 1) All records and public information generated and/or maintained by the Office of the Governor including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>10</sup> detailing policy, coordination, draft legislation, emergency plans, emergency declarations or uses of the Emergency Management Assistance Compact regarding the Keystone XL pipeline and associated protests.
- 2) All records and public information generated and/or maintained by the Office of the Governor including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes related to expenditures, policies, procedures, drafted legislation and work done by the Office of the Governor or any of its

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<sup>8</sup> Department of Homeland Security, *TTPs Used in Recent US Pipeline Attacks by Suspected Environmental Rights Extremists*, Field Analysis Report (02 May 2017), (Accessible at: <https://www.documentcloud.org/documents/4325264-May-2017-Field-Analysis-Report.html>).

<sup>9</sup> *Id.*

<sup>10</sup> 41 Mont. A.G. Op. 151 (1985).

subdivisions dealing with the monitoring social media platforms for information related to the Keystone XL pipeline.

**Montana Department of Justice:**

- 1) All records and public information generated and/or maintained by MTDoJ, including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>11</sup> related to any programs, expenditures, policies, and plans dealing with Keystone XL, oil pipelines, and pipeline protests.
- 2) All records and public information generated and/or maintained by MTDoJ including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>12</sup> related to any advice, guidance, or coordination with the Office of the Governor regarding executive actions dealing with pipeline protests, related emergency planning, or use of the Emergency Management Assistance Compact in response to protests.
- 3) All records and public information generated and/or maintained by MTDoJ including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>13</sup> related to all work, coordination, and/or communications with any federal government entities and any subdivision of those entities dealing with the enforcement of federal law on federal lands associated with the Keystone XL path through Montana.
- 4) All records and public information generated and/or maintained by MTDoJ including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>14</sup> related to any program, policies, expenditures, action plans, emergency management plans, coordination, agreements, and/or communications with local law enforcement and/or local government entities regarding Keystone XL and possible associated protests.
- 5) All records and public information generated and/or maintained by MTDoJ including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and

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<sup>11</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>12</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>13</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>14</sup> 41 Mont. A.G. Op. 151 (1985).

informal meeting notes<sup>15</sup> related to any program, policies, expenditures, action plans, emergency management plans, coordination, and/or communications with law enforcement and/or government entities of any other State of the United States regarding Keystone XL and possible associated protests.

- 6) All records and public information generated and/or maintained by MTDoJ including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>16</sup> related to communications between any state or local law enforcement agency and any law enforcement agency in North Dakota regarding or resulting from the Standing Rock protests.
- 7) All records and public information generated and/or maintained by MTDoJ including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>17</sup> related to expenditures, policies, procedures, drafted legislation and work done by MATIC and/or any other MTDoJ subdivision dealing with the monitoring social media platforms for information related to the Keystone XL pipeline.
- 8) All records and public information generated and/or maintained by MTDoJ including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>18</sup> related to communications, policies, plans, or coordination, with private entities, as well as those entities agents and/or subsidiaries, dealing with the Keystone XL pipeline or associated protests.
- 9) All records and public information generated and/or maintained by MTDoJ including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes related to communications, policies, plans, or coordination, with private entities, as well as those entities agents and/or subsidiaries, dealing with possible protest camp locations associated with the Keystone XL pipeline.
- 10) All records and public information generated and/or maintained by MTDoJ, including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>19</sup> regarding financial contributions to protestor organizations, groups, or individuals involved in pipeline protests in the United States and/or Canada.

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<sup>15</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>16</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>17</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>18</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>19</sup> 41 Mont. A.G. Op. 151 (1985).

- 11) All records and public information generated and/or maintained by MTDoJ, including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>20</sup> related to any media strategy, program, plan, or policy regarding pipeline protests and individual protestors.
- 12) All records and public information generated and/or maintained by MTDoJ, including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>21</sup> regarding coordination, training, cooperation, information sharing with TransCanada and any contractor or sub-contractor hired by TransCanada to provide pipeline security or engage with protestors.

**Montana Highway Patrol (“MTHWP”):**

- 1) All records and public information generated and/or maintained by MTHWP including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>22</sup> related to construction of the Keystone XL pipeline and associated protests.
- 2) All records and public information generated and/or maintained by MTHWP including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes related to expenditures, policies, procedures, drafted legislation and work done by MTHWP or any of its subdivisions dealing with the monitoring social media platforms for information related to the Keystone XL pipeline.

**Montana Department of Revenue (“MTDoR”):**

- 1) All records and public information generated and/or maintained by MTDoR including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>23</sup> relating to requests for information, coordination, or assistance by any private, local, state, or federal entity regarding the monitoring or investigation of persons involved in environmental rights or pipeline protests.

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<sup>20</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>21</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>22</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>23</sup> 41 Mont. A.G. Op. 151 (1985).

- 2) All records and public information generated and/or maintained by MTDOR including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes related to expenditures, policies, procedures, drafted legislation and work done by MTDOR or any of its subdivisions dealing with the monitoring social media platforms for information related to the Keystone XL pipeline.

**Montana Department of Fish, Wildlife, and Parks (“FWP”):**

- 1) All records and public information generated and/or maintained by FWP, including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>24</sup> dealing with Keystone XL pipeline construction, state public lands where that construction will occur, and access to those public lands before, during, and after construction.
- 2) All records and public information generated and/or maintained by FWP, including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>25</sup> regarding coordination with any state governmental entities regarding state public lands associated with the Keystone XL pipeline and access to those public lands.
- 3) All records and public information generated and/or maintained by FWP, including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>26</sup> regarding communications, policy, agreements, and guidance related to the Keystone XL pipeline and associated protests provided to the county or any local government in McCone, Dawson, Prairie, Fallon, Valley, Phillips, and Carter County.
- 4) All records and public information generated and/or maintained by FWP including but not limited to, physical documents, emails, correspondence, transcripts, meeting notes, draft administrative rules, draft legislation, procurement requests, procurement bids, and informal meeting notes<sup>27</sup> related to expenditures, policies, procedures, drafted legislation and work done by FWP or any of its subdivisions dealing with the monitoring social media platforms for information related to the Keystone XL pipeline.

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<sup>24</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>25</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>26</sup> 41 Mont. A.G. Op. 151 (1985).

<sup>27</sup> 41 Mont. A.G. Op. 151 (1985).

If any of these entities refuses to provide any of the information requested, the ACLU requests that those refusals be provided to them in writing. The ACLU also requests that the refusals contain specific reasons for each denial, and those reasons provided contain “specific findings concerning privacy or confidentiality of a particular document before withholding it”<sup>28</sup> specific to each denial. If access to the records I am requesting will take longer than a “reasonable” amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records. If this request could be restructured to minimize the demands on your department’s resources, I would be willing to discuss alternatives with you. Similarly, should you have any questions regarding the information sought in this request, please call me directly at 406.443.8590.

The ACLU of Montana was founded in 1972 and is a nonprofit and nonpartisan organization dedicated to fighting for racial justice and protecting civil rights in Montana. The ACLU of Montana also engages with Montanans to educate and help communities organize when dealing with issues of equality, racial justice, and civil rights. The ACLU of Montana provides newsletters, news briefings, and other materials that are widely disseminated to the Montana public. These materials are made available via website (<https://www.aclumontana.org>) to everyone—including tax-exempt organizations, non-profit groups, students and faculty.

Please contact me should you have any questions regarding this request. We look forward to your response and thank you for your prompt attention to this matter. Please furnish all documents to the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Rate". The signature is fluid and cursive, with the first name "Alex" and last name "Rate" clearly distinguishable.

Alex Rate  
Legal Director  
ACLU of Montana  
P.O. Box 9138  
Missoula, MT 59807

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<sup>28</sup> *Great Falls Tribune v. Montana Pub. Serv. Comm'n.* 2003 MT 359; 319 Mont. 38; 82 P.3d 876.