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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

<p>ROSEBUD SIOUX TRIBE, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>U.S. DEPARTMENT OF THE INTERIOR, <i>et al.</i>,</p> <p>Defendants.</p>	<p>CV 20-109-GF-BMM</p> <p><b>JOINT STATUS REPORT</b></p>
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Defendants U.S. Department of the Interior *et al.* (“Defendants”) and Plaintiffs Rosebud Sioux Tribe *et al.* hereby submit this joint status report pursuant to the Court’s February 4, 2021 Order, ECF No. 12, and request that the case be stayed for an additional sixty days.<sup>1</sup>

This case involves the U.S. Bureau of Land Management’s (“BLM”) approval of a right-of-way for the Keystone XL Pipeline. The case has been stayed following President Biden’s revocation of the 2019 Presidential Permit allowing the pipeline to cross the border. *See* Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7,037, 7,041 (Jan. 20, 2021).

Since the filing of the last status report, the Corps has administratively withdrawn TC Energy’s application for an individual permit under the Clean Water Act section 404, 33 U.S.C. § 1344(a), and Rivers and Harbors Act section 10, 33 U.S.C. § 403. *See* May 4, 2021 Letter, attached as Ex. 1. Without the individual permit, TC Energy currently does not have all of the permits it needs to construct segments of the pipeline that cross federal land in Montana. And until TC Energy has all of the requisite permits for the applicable pipeline segments, BLM will not approve a notice to proceed across federal land. To date, no such application has

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<sup>1</sup> The project proponent, TC Energy, has not yet moved to intervene in this case, but it supports this request.

been submitted, and if an application is submitted, Defendants will notify the Court.

Defendants request the additional extension to allow new officials within the U.S. Department of the Interior and other applicable agencies to continue to evaluate the previously issued authorizations for the pipeline in light of the President's action revoking the Presidential Permit. There are a number of legal and factual matters for the Department of the Interior to consider, and it likely will take several more weeks until the agency is prepared to make a decision regarding the prior authorizations.

The requested stay will not prejudice any party because, as discussed above, TC Energy does not currently have the permits that it needs to construct the pipeline within the BLM right-of-way. Further, TC Energy does not intend to do any further construction of the pipeline or construct new pump stations over the next sixty days. *See* Jt. Status Report, *Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation*, No. 4:20-cv-44-BMM, ECF No. 80. TC Energy is continuing its consideration of the impact of the President's decision on the project and does not intend to move forward with pipeline construction while it conducts that evaluation. When TC Energy makes a decision regarding the project, it will notify the Court of those plans. If TC Energy decides to move forward with any part of the project, it will notify the Court sixty days in advance of moving ahead

with construction. Such notice does not apply to actions taken by TC Energy in response to an order from the government, dismantling facilities or movement of equipment, or required environmental protection measures. Additionally, TC Energy does not need to provide notice of other security or maintenance activities for existing infrastructure.

In light of these developments, the parties respectfully request that the Court continue the stay of the litigation deadlines for sixty days, so that the parties may determine what further proceedings may be necessary in this case. *See Landis v. N. American Co.*, 299 U.S. 248, 254 (1936) (a court has inherent authority to stay litigation). At the end of the sixty-day period, the parties will advise the Court whether further proceedings are necessary and, if so, propose a revised briefing schedule. If the parties need additional time to discuss potential further proceedings, the parties will submit a status report and request additional time to continue their discussions.

Respectfully submitted this 7th day of June, 2021,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(d)(2)(E), the foregoing is proportionately spaced, has a typeface of 14 points, and contains 635 words, excluding the tables, caption, signature, certificate of compliance, and certificate of service.

/s/ Luther L. Hajek  
LUTHER L. HAJEK  
U.S. Department of Justice

**CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 2021, a copy of the foregoing Joint Status Report was served on all counsel of record via the Court's CM/ECF system.

*/s/ Luther L. Hajek* \_\_\_\_\_  
LUTHER L. HAJEK  
U.S. Department of Justice