

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

STATE OF TEXAS, et al.,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official
capacity as President of the United
States, et al.,

Defendants.

No. 3:21-cv-00065

**DEFENDANTS' CONSENT MOTION FOR EXTENSION OF
TIME TO RESPOND TO THE FIRST AMENDED COMPLAINT**

Defendants, the President of the United States, the Attorney General of the United States, the Secretaries of the Departments of State, Homeland Security, the Interior, Energy, Agriculture, and Transportation, the Administrator of the Environmental Protection Agency, the Commanding General of the U.S. Army Corps of Engineers, the Acting Chairman of the Advisory Council on Historic Preservation, and the United States of America, respectfully request a two-week extension of time, from June 29, 2021, to July 13, 2021, to respond to the First Amended Complaint. In support of this motion, Defendants state as follows:

1. This suit is brought by 23 States seeking to challenge President Biden's decision to revoke the cross-border permit for the Keystone XL Pipeline issued by President Trump. Plaintiffs assert that the revocation violates separation-of-powers

principles and the non-delegation doctrine, and that Defendants' purported implementation of the revocation violates the Administrative Procedure Act.

2. On June 1, 2021, Plaintiffs filed the First Amended Complaint, ECF No. 71, which made June 15, 2021, Defendants' deadline to respond, *see* Fed. R. Civ. P. 15(a)(3). Defendants had intended to move to dismiss the First Amended Complaint by that deadline.

3. On June 9, 2021, TC Energy, the company that had sought to build and operate the Keystone XL Pipeline, announced that "it has definitively terminated the Keystone XL Project" and that "as a result, [it] will not pursue any permits for the Project, nor will it perform any construction activities in furtherance of the Project now or at any time in the future." *Indigenous Env'tl. Network v. Biden*, 4:19-cv-00028-BMM (D. Mont.), Status Report at 3, ECF No. 167; *id.* ("No President will unilaterally issue another permit for the Keystone XL Project, which no longer exists."); *see also* Press Release, *TC Energy Confirms Termination of the Keystone XL Project*, <https://www.tcenergy.com/announcements/2021-06-09-tc-energy-confirms-termination-of-keystone-xl-pipeline-project/>.

4. Defendants' position is that TC Energy's termination of the Keystone XL Project has rendered this case moot. Because Plaintiffs' counsel indicated that Plaintiffs need time to evaluate TC Energy's announcement, Defendants have twice moved for extension of time to file their motion to dismiss. This Court granted those consent motions on June 14 and June 21, 2021, respectively. ECF Nos. 89, 93.

5. On June 22, 2021, undersigned counsel asked Plaintiffs' counsel whether

Plaintiffs have decided how they want to proceed in the case. Plaintiffs' counsel indicated that Plaintiffs are still evaluating the issue but consent to an additional two-week extension of Defendants' deadline to respond to the First Amended Complaint.

6. Accordingly, Defendants respectfully request a two-week extension of time from June 29, 2021, to July 13, 2021, to file their motion to dismiss. Defendants submit that the extension will help conserve the Court's and the parties' resources.

WHEREFORE, Defendants respectfully request that the Court extend their time to file their motion to dismiss to July 13, 2021.

Dated: June 23, 2021

Respectfully submitted

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/s/Jean Lin
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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1 and Rule of Practice 5(d), I certify that I conferred by email with counsel for Plaintiffs on June 22, 2021, regarding the relief sought in this motion. Counsel for Plaintiffs indicated that they consent to the relief request in this motion.

/s/ Jean Lin

JEAN LIN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants' Consent Motion for Extension of Time to Respond to the First Amendment Complaint has been sent via first class mail or electronic mail via ECF on June 23, 2021, to all counsel of record.

/s/ Jean Lin

JEAN LIN