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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>JOINT STATUS REPORT</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 August 31, 2021 Order, ECF No. 168, and request that the case be stayed for an additional sixty days.¹

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). In addition, TC Energy announced the termination of the Keystone XL Pipeline Project on June 9, 2021. *See TC Energy Corp. and TransCanada Keystone Pipeline, LP’s Notice Regarding Termination of Keystone XL Pipeline, Indigenous Env’tl. Network v. Trump*, No. 4:19-cv-28-BMM, ECF No. 167 (“June 9, 2021 Notice”).

Since its announcement regarding the termination of the project, TC Energy has taken significant steps to wind down authorizations that the company obtained or sought from federal agencies. As previously reported, TC Energy has relinquished an incidental take permit authorized by the U.S. Fish and Wildlife

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

Service pursuant to section 10 of the Endangered Species Act. *See* August 6, 2021 Status Report at 1-2, ECF No. 17. Further, at the end of August, BLM accepted TC Energy's relinquishment of a temporary use permit for an access road to the pipeline right-of-way and approved TC Energy's decommissioning plan for the international border segment of the pipeline. *See* Defs.' Reply in Supp. of Sixth Mot. for an Extension of Time to File a Resp. to Pls.' Compl. at 2, *Indigenous Environmental Network v. U.S. Bureau of Land Mgmt.*, No. 4:20-cv-115-BMM, ECF No. 19. And on September 1, 2021, BLM accepted TC Energy's relinquishment of the right-of-way, except for the border segment. *Id.* at 2-3.

Subsequently, the Montana Department of Environmental Quality also approved TC Energy's decommissioning plans for the border segment of the pipeline. *See* TC Energy Corp. and TransCanada Keystone Pipeline, LP's Status Report at 1, *Indigenous Env'tl. Network v. Trump*, No. 4:19-cv-28-BMM (Sept. 17, 2021), ECF No. 176. TC Energy began work on the removal of the pipeline on September 22, 2021. *See id.* at 1-2. On October 19, 2021, TC Energy announced that it had completed the removal of the pipe within the border segment. *See* TC Energy Corp. and TransCanada Keystone Pipeline, LP's Status Report at 1-2, *Indigenous Env'tl. Network v. Trump*, No. 4:19-cv-28-BMM (Oct. 19, 2020), ECF No. 176. TC Energy has also completed stabilization and reclamation of the disturbed areas. *Id.* at 2. Consistent with the approved decommissioning plan,

BLM will accept TC Energy's relinquishment of the remaining portion of the right-of-way once BLM deems the reclamation is successful.

Defendants request this extension of the response deadline in order to allow BLM to ensure that the remediation of the area where the pipe has been removed has been conducted properly. Once BLM deems reclamation successful and relinquishes TC Energy's remaining authorization relating to the right-of-way for the border segment, which is the right to conduct activities relating to termination, Defendants will confer with Plaintiffs to discuss whether any further proceedings are necessary.

The requested extension of the stay will not prejudice any party because TC Energy has announced that it has no plans to construct the pipeline "now or at any time in the future," June 9, 2021 Notice at 3, and it has now removed the pipe that was previously installed. Moreover, Energy has relinquished, or is in the process of relinquishing, the federal permits that would allow it to construct the pipeline. Further, Defendants and TC Energy remain obligated to provide the parties and the Court with sixty days' notice in advance of any theoretical construction of the main pipeline or new pump stations.

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 1st day of November, 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 November 1, 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