

Wesley James Furlong (MT Bar No. 42771409)  
NATIVE AMERICAN RIGHTS FUND  
745 West 4th Avenue, Suite 502  
Anchorage, AK 99501  
Tel. (907) 276-0680  
Fax (907) 276-2466  
wfurlong@narf.org

*Counsel for all Plaintiffs*  
*Additional Counsel Listed on Signature Page*

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

ROSEBUD SIOUX TRIBE *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT  
OF THE INTERIOR *et al.*,

Defendants.

Case No. 4:20-cv-00109-BMM

**NOTICE OF VOLUNTARY  
DISMISSAL WITHOUT  
PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiffs Rosebud Sioux Tribe and Fort Belknap Indian Community respectfully submit this notice voluntarily dismissing this action in its entirety against Defendants United States Department of the Interior, Debra A. Haaland, Bureau of Land Management (“BLM”), and Theresa M. Hanley without prejudice.

Rule 41 provides that a “plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer

or a motion for summary judgment[.]” Fed. R. Civ. P. 41(a)(1)(A)(i); *see Cordice v. Meagher Cnty.* No. CV 17-112-H-DLC-JTJ, 2018 WL 4696753, at \*1 (D. Mont. Oct. 1, 2018) (quoting *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997)) (“A plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.” (brackets omitted)). If none of the opposing parties have served an answer or motion for summary judgment, the plaintiff’s notice of voluntary dismissal automatically dismisses the case. *See Ritesman v. Pasha*, No. CV-19-71-H-BMM-JTJ, 2021 WL 2156975, at \*1 (D. Mont. May 27, 2021). “Unless the notice states otherwise, the dismissal is without prejudice.” *Lout v. Tuss*, No. CV 15-00055-H-DLC-JTJ, 2016 WL 8674589, at \*1 (D. Mont. May 27, 2016) (citing Fed. R. Civ. P. 41(a)(1)(B)).

Since President Joseph R. Biden revoked the 2019 presidential permit that purported to authorize the construction of the Keystone XL Pipeline (“KXL”) across the United States-Canada border, *see* Exec. Order No. 13,990, § 6(a), 86 Fed. Reg. 7,037, 7,041 (Jan. 20, 2021), TC Energy Corporation and TransCanada Keystone Pipeline, L.P., (together, “TC Energy”) have taken significant steps to wind down the KXL project, including relinquishing the temporary use permit (“TUP”) and right-of-way (“ROW”) at issue in this case, decommissioning (*i.e.*, removing) the pipeline segment constructed at the international border, and reclaiming (*i.e.*, revegetating) the affected lands. *See generally* Docs. 17, 19, 21. The BLM has

accepted TC Energy's relinquishment of the TUP and ROW, except for a .94-mile (or 19.49-acre) portion of the ROW at the United States-Canada where a segment of the pipeline was constructed to allow for the decommissioning and reclamation. Doc. 21, at 3. TC Energy completed decommissioning and reclamation work in November 2021. *Id.* at 3-4. Once the BLM has verified the success of the reclamation, it will accept TC Energy's relinquishment of the remaining ROW and TUP. *Id.* at 3.

In a January 27, 2022, memorandum to TC Energy, the BLM outlined a five-year monitoring plan to verify the success of the reclamation. Doc. 23-1, at 2-3. While TC Energy still retains a ROW for the border segment, the memorandum clarifies:

With respect to the 19.49 acres of BLM-managed lands at the [international border crossing] portion of the ROW, TC Energy's activities . . . are expressly limited to only those activities associated with termination of the ROW and TUP (i.e., the necessary steps to complete the decommissioning and reclamation plans . . . . No other construction activities, uses or rights other than the approved decommissioning and reclamation activities are authorized under [the ROW] and [the TUP] for the [international border crossing]. . . . The purpose of the partial relinquishment of the ROW and TUP is to maintain TC Energy's contractual obligations to complete the decommissioning and reclamation plans to the BLM's satisfaction[.]

*Id.* at 1-2.

Defendants have not served Plaintiffs either their answer or a motion for summary judgment. Accordingly, in light of these developments, Plaintiffs

voluntarily dismiss this action in its entirety against all Defendants without prejudice.

RESPECTFULLY SUBMITTED this 4th day of March, 2022.

*/s/ Wesley James Furlong*

Wesley James Furlong (MT Bar No. 42771409)  
NATIVE AMERICAN RIGHTS FUND

Matthew L. Campbell (*pro hac vice*)  
NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, CO 80302  
Tel. (303) 447-8760  
Fax (303) 443-7776  
mcampbell@narf.org

*Counsel for all Plaintiffs*

Daniel D. Belcourt (MT Bar No. 3914)  
BELCOURT LAW P.C.  
120 Woodworth Avenue  
Missoula, MT 59801  
Tel. (406) 265-0934  
Fax (406) 926-1041  
danbelcourt@aol.com

Ronni M. Flannery (MT Bar No. 5890)  
LAW OFFICE OF RONNIE M. FLANNERY  
936 South 2nd Street West  
Missoula, MT 59801  
Tel. (406) 214-5700  
rflannery@bresnan.net

*Counsel for Plaintiff Fort Belknap Indian  
Community*

## CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2022, I electronically filed the foregoing **NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE** with the Clerk of the Court for the United States District Court for the District of Montana be using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*/s/ Wesley James Furlong*

Wesley James Furlong (MT Bar No. 42771409)  
NATIVE AMERICAN RIGHTS FUND

*Counsel for all Plaintiffs*