

ENTERED

January 30, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRANSCANADA KEYSTONE PIPELINE, LP, <i>et al.</i> ,	§	
	§	
	§	
Plaintiffs,	§	
vs.	§	CIVIL ACTION NO. 4:16-cv-00036
	§	
JOHN F. KERRY, <i>et al.</i> ,	§	
	§	
	§	
Defendants.	§	

ORDER

The plaintiffs, TransCanada Keystone Pipeline, LP (“TransCanada”) and TC Oil Pipelines Operations, Inc. (collectively, the “plaintiffs”), filed this action for declaratory and injunctive relief, after Secretary of State, John F. Kerry, while exercising delegated authority pursuant to Executive Order 13337, issued an order purporting to prohibit the plaintiffs from constructing and/or operating cross-border facilities for the Keystone XL Pipeline. The defendants, John F. Kerry, Secretary of State, Loretta E. Lynch, Attorney General of the United States, Jeh Charles Johnson, Secretary of the Department of Homeland Security, and Sally Jewell, Secretary of the Department of the Interior (together, the “defendants”), have filed a motion to dismiss the complaint, or alternative, motion for summary judgment. (*See* Dkt. No. 42). The plaintiffs have filed a response in opposition to the defendants’ motion as well as a cross-motion for summary judgment. (*See* Dkt. Nos. 48 & 49).

On January 24, 2017, President Donald J. Trump issued a Presidential Memorandum Regarding Construction of the Keystone XL Pipeline setting forth, *inter alia*, the following: (i) inviting TransCanada “to promptly re-submit its application to the Department of State for a Presidential permit for the construction and operation of the Keystone XL Pipeline, a major

pipeline for the importation of petroleum from Canada to the United States”; and (ii) directing that the Secretary of State “shall . . . receive the application and take all actions necessary and appropriate to facilitate its expeditious review”, including “reach[ing] a final permitting determination, including a final decision as to any conditions on issuance of the permit that are necessary or appropriate to serve the national interest, within 60 days of TransCanada’s submission of the permit application.”

On January 26, 2017, TransCanada resubmitted its application to the Department of State seeking to obtain a permit for the construction and operation of the Keystone XL Pipeline. As such, the 60-day determination period set forth above ends on or about March 27, 2017. The Department of State’s decision has the potential to render the matters now before this Court moot.

Therefore, after having considered the parties’ motions, responses, replies, the applicable law and having been apprised of the recent Presidential action that has the potential to materially vary the contours of this litigation, this Court, in the interest of justice, fairness, and judicial economy, determines that an abatement of this case is appropriate. Accordingly, the Court hereby ORDERS as follows:

- (1). The defendants’ motion to dismiss is **DENIED**;
- (2). The plaintiffs’ motion for summary judgment is **DENIED**, without prejudice to reurging.
- (3). This case is hereby **ABATED** for 90 days, or until **Monday, May 1, 2017**, to afford the plaintiffs an opportunity to obtain a decision from the Department of State regarding their renewed permit application.
- (4). Upon the expiration of 90 days, the Court will reinstate this case and, thereafter, seek to adjudge the remaining issues, if any.

- (5). In the meantime, the plaintiffs are directed to file notice with the Court regarding any final decision issued by the Secretary of State on TransCanada's renewed permit application.

It is so **ORDERED**.

SIGNED on this 30th day of January, 2017.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge