

DISTRICT COURT, HOLT COUNTY, NEBRASKA

Byron Terry "Stix" Steskal and Diana)
Steskal, Allpress Brothers, LLC, Germaine)
G. Berry, Karen G. Berry, Cheri G. Blocher)
and Michael J. Blocher, L.A. Breiner and)
Sandra K. Breiner, Jerry Carpenter and)
Charlayne Carpenter, CHP 4 Farms, LLC,)
Larry D. Cleary and Wynona D. Cleary,)
Cottonwood Ridge, LLC, Jeanne Crumly and)
Ronald C. Crumly,)
Ken Dittrich, Lloyd Z. Hipke and Vencille)
M. Hipke, R. Wynn Hipke and Jill Hipke,)
Richard Kilmurry, Rosemary Kilmurry,)
Beverly Krutz and Robert Krutz, LJM Farm)
LLC, Carol Manganaro, Frankie Maughan)
and Sandra Maughan, Beverly Miller and)
Earl Miller, Edna Miller and Glen Miller,)
Milliron Ranch, LLC, Larry D. Mudloff, J.D.)
Mudloff, and Lori Mudloff, Nicholas Family)
Limited Partnership, Ann A. Pongratz and)
Richard J. Pongratz, Donald Rech,)
Schultz Brothers Farms, Inc, Connie Smith)
and Verdon Smith, Joshua R. Stelling,)
Richard Stelling and Darlene Stelling, Todd)
Stelling and Lisa Stelling, Arthur R.)
Tanderup and Helen J. Tanderup, TMAG)
Ranch, LLC, Tree Corners Farm, LLC, Dave)
Troester and Sharyn Troester, Judy M.)
Wagner n/k/a Judy M. Wagner-Olson,)
Gregory Walmer and Joanne Walmer, and)
Susan "Suz" Straka Heyden ,)

Plaintiffs,)

vs.)

TransCanada Keystone Pipeline, LP, and)
Andrew Craig,)

Defendants.)

No. CI 15-6
Judge: Mark D. Kozisek

TEMPORARY INJUNCTION
ORDER

HOLT COUNTY
NEBRASKA
FILED 1:45 P.M.

FEB 12 2015

JUNIOR YOUNG
CLERK OF THE DISTRICT COURT



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TEMPORARY INJUNCTION ORDER

THIS MATTER came before the Court on February 12, 2015 for hearing on the Plaintiffs' Motion for Temporary Injunction and for Temporary Restraining Order. Plaintiffs appeared by their attorneys David A. Domina and Brian E. Jorde of Domina Law Group, pc llo. Defendants TransCanada Keystone Pipeline, LP ("Keystone") and Andrew Craig appeared by their counsel James G. Powers and Patrick D. Pepper of McGrath North Mullin & Kratz, PC LLO. Blake Johnson and Ryan Post of the Attorney General's office also appeared.

Evidence was offered consisting of affidavits of Byron Terry Steskal, Richard E Stelling, Brian E. Jorde, James Murphy, Paul Blackburn, a joint exhibit of the parties listing the separate Keystone eminent domain proceedings in Nebraska against Plaintiffs, marked as Ex 1-6 respectively. Objections to certain of the exhibits were considered by the Court. After consideration of the objections, the Court received Exhibits 1,2,3,6,7 and 8 subject to rulings on objections. Pursuant to a Stipulation of the Parties made in open court, Plaintiffs withdrew the offers of exhibits 4 and 5. The Court also received and judicially noticed at the request of the parties Ex 7 & 8, the opinions of the Nebraska Supreme Court in *Thompson v Heineman*, 289 Neb 798 (2015) and the Amended Complaint in York County District Court Case No. 15-12, *Dunavan et al v TransCanada*.

Judicial notice was also taken upon request of the parties jointly, of the eminent domain proceedings identified in Exh 3, the affidavit of Brian E. Jorde and in Exh 6, the joint exhibit of the parties identifying all eminent domain proceedings filed by Defendant Keystone against Plaintiffs on or since January 20, 2015 for the purpose of acquiring interests in Nebraska real estate for construction of its proposed Keystone XL pipeline (the "Condemnation Proceedings").

The case is before the Court on the Plaintiffs' Second Amended Complaint and their Motions for a Temporary Restraining Order and a Temporary Injunction. Notice requirements for the hearing on the Motion for Temporary Injunction have been met; Defendants acknowledge adequate notice to proceed with the hearing on the Motion for Temporary Injunction has been given. The parties agree that this makes a hearing on the Motion for Temporary Restraining Order unnecessary; Plaintiffs withdrew the Motion for Temporary Restraining Order in open Court.

Plaintiffs' Motion for Temporary Injunction seeks an Order of this Court enjoining the Condemnation Proceedings. The Court was informed that a case similar to this one was filed in District Court, York County, Nebraska by the lawyers for the Plaintiffs in this case, but for landowners whose properties lie to the south, in Nebraska of those properties owned by landowners in this case. The parties stipulated in open Court that continuation of the Condemnation Proceedings would tend to make ineffective the relief sought in this case, and that the Condemnation Proceedings should be stayed and enjoined.

Keystone and Craig have not filed their responses to the ^{Second} Amended Complaint, and they specifically reserve the right to do so in accordance with the Nebraska Court Rules of Pleading in Civil Cases, and the parties stated and agreed in open Court that Defendants' stipulations, including the consent to this Order, and jointly offered exhibit did not, and do not constitute a waiver of any claims or defenses or an admission of any fact, allegation or legal conclusion. The Court acknowledges the Defendants' reservations of their rights to respond to the Amended Complaint in accord with the Court Rules. *W*

The Court has considered the evidence, Motion, stipulations of the parties, and circumstances. The Court has also considered the merits of Plaintiffs' claims, the likelihood for

success or failure, the benefits and harm to Plaintiffs and Defendant, the fact that Keystone has agreed to consent to an Order of this Court to direct a stay of the Condemnation Proceedings, and the impact on the public from granting or denying the requested Temporary Injunction. The Court finds, that upon consideration of these factors, the nature of the Condemnation Proceedings, and the evidence and stipulations, that a Temporary Injunction is necessary and proper to protect the status quo and to prevent any relief the Plaintiffs might recover from being rendered ineffectual.

It is therefore Ordered that:

1. Plaintiffs' Motion for a Temporary Injunction seeking to enjoin the Condemnation Proceedings is sustained as set forth in this Order. Upon stipulation of the parties, Defendants Keystone and Craig are restrained and enjoined from proceeding with the Condemnation Proceedings to acquire Nebraska real estate for the Keystone XL pipeline project until a Final Order is issued on Plaintiffs' claims asserted in their ^{Second} Amended Complaint. For purposes of this Temporary Injunction a "Final Order" shall mean the Judgment of this Court on the merits of Plaintiffs' claims if not timely appealed, and if timely appealed, the Judgment of this Court as affirmed, vacated, or modified following any timely appeal and return of the Appellate Court's mandate to this Court. Until a Final Order is issued on Plaintiffs' claims asserted in their ^{Second} Amended Complaint, the Condemnation Proceedings are stayed. If permissible under the Final Order, the temporary injunction shall dissolve, the stay of the Condemnation Proceedings shall be lifted, and Keystone shall be entitled to proceed with the Condemnation Proceedings. If the Final Order is a Permanent Injunction in favor of Plaintiffs, then the Temporary Injunction shall end when the Permanent Injunction becomes a Final Order as defined above.

2. The County Court in each of the Condemnation Proceedings in Nebraska is hereby enjoined from conducting hearings, swearing Appraisers or witnesses, receiving or filing Returns of Appraisers, or taking any actions or conducting any proceedings except for entering an Order staying the Condemnation Proceedings in each County Court case until further Order of this Court

3. Keystone shall file in each County Court case a certified copy of this Order within seven (7) days of this date and shall file in this Court certification signed by its counsel that it has done so within 10 days of this date.

4. Any party may apply for relief from this Order by filing an appropriate Motion, giving due notice, and notifying the opposing party(ies) in writing of the reasons for the requested relief.

5. No undertaking shall be required of Plaintiffs except the undertaking, under oath signed by at least one Plaintiff that this action shall be diligently prosecuted to Final Judgment. This Temporary Injunction shall be effective immediately upon its filing with the Clerk of this Court. Defendants have waived all requirements for any the filing of the required undertaking before this Temporary Injunction becomes effective and they have waived approval by the Clerk of the undertaking. Defendants also have waived service of this Temporary Injunction on either Defendant.

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6. This Temporary Injunction shall remain in effect until a Final Judgment on the merits of Plaintiffs' claims in their ^{Second} Amended Complaint unless modified or dissolved prior to that date by an Order of this Court.

7. The stipulations, consents, and findings reflected in this Order are only for the purposes of the hearing on the Plaintiffs' request for a Temporary Injunction, and they shall not

constitute admissions against interest or in any way prejudice either party's rights, claims, or defenses which may be asserted at the trial on the merits of this case.

BY THE COURT:



Mark D. Kozisek, District Court Judge

Approved: Form & Substance

151
Plaintiffs' Lawyer

151
Defendants' Lawyer

The Clerk of the Court is ordered to perform those acts checked below and to initial and date the spaces provided when completed.

1. Mail a copy of this order to all parties of record and/or to the attorney of record of each party.

Done on Feb. 12, 2015 by 15

2. Enter the judgement on the judgement record of the Court.

Done on _____ by _____

3. Mail a postcard or notice to each party or attorney of record within 3 days.

Done on _____ by _____

4. Note the decision on the trial docket of the Court by copying therein

Done on Feb. 12, 2015 by 15

DISTRICT JUDGE

copy to:
David Domina
James Powers
Nebr. Atty General

Undertaking

I, Byron Terry Steskal, one of the named Plaintiffs in the Amended Complaint in this case undertake and promise that I shall faithfully prosecute the Amended Complaint to a Final Judgment with due diligence.

February 12, 2015.

Byron Terry Steskal
Print: Byron Terry Steskal

Approval of Clerk of Court

The foregoing Undertaking is approved.

February 12, 2015.



Junior Young
Clerk of the District Court