

DISTRICT COURT, YORK COUNTY, NEBRASKA

FEB 26 2015

Susan Dunavan and William Dunavan,
Johnnie Bialas and Maxine Bialas,
Bonnie Brauer,
James Carlson and Christine Carlson,
Timothy Choat, Gary Choat Farms LLC, and
Shirley Choat Farms, LLC,
CRC, Inc.,
Daniel A. Graves and Joyce K. Graves,
Patricia A. Grosserode a/k/a Patricia A.
Knust,
Terri Harrington,
Donald C. Loseke and Wanda G. Loseke,
Arla Naber and Bryce Naber,
Mary Jane Nyberg,
Kenneth Prososki and Karen Prososki,
Edythe Sayer,
Dan Shotkoski and Clifford Shotkoski,
Leonard Skoglund and Joyce Skoglund,
John F. Small and Ginette M. Small,
Deborah Ann Stieren and Mary Lou Robak,
Jim Tarnick,
Terry J. Van Housen and Rebecca Lynn Van
Housen, and
Donald D. Widga

Plaintiffs,

v.

TransCanada Keystone Pipeline, LP, and
Andrew Craig,

Defendants.

No. CI 15-12

SHARILYN STEUBE
CLERK

Judge: Mary C. Gilbride

**Temporary Injunction
Order**

TEMPORARY INJUNCTION ORDER

THIS MATTER came before the Court on February 26, 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



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LLO. The Office of the Attorney General of Nebraska was also represented by Blake Johnson and Ryan Post.

Evidence was offered. Exhibits 1 – 3 were offered and received subject to rulings on objections. The Court received and judicially noticed at the request of the parties Ex 2 & Ex 3, the opinions of the Nebraska Supreme Court in *Thompson v Heineman*, 289 Neb 798 (2015) and the Temporary Injunction issued by the District Court of Holt County, Nebraska in *Steskal et al v TransCanada*, Case No CI 15-6, respectively. Judicial notice was also taken upon request of the parties jointly, of the eminent domain proceedings described in Ex , and in Ex 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”).

Pursuant to the Stipulation of the parties, Plaintiffs withdrew the Motion for Temporary Restraining Order and only the Motion for Temporary Injunction remains for decision.

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, Holt County, Nebraska by the lawyers for the Plaintiffs in this case, but for landowners whose properties lie to the north, in Nebraska of those properties owned by landowners in this case. The Court was made aware of the Temporary Injunction issued by the District Court of Holt County on February 12, 2015. The parties stipulated 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 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 Second Amended Complaint in accord with the Court Rules.

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

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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.

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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.

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.

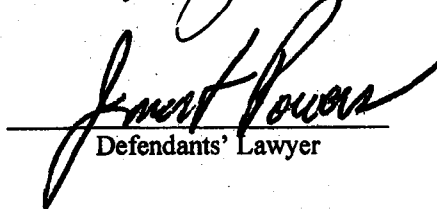
BY THE COURT:



Mary C. Gilbride, District Judge

Approved: Form & Substance

David A. Dominie #11043
Plaintiffs' Lawyer



Defendants' Lawyer

2/15 JTR

Undertaking

I, Susan Dunavan, 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 26 2015.

Susan C. Dunavan
Print: Susan Dunavan

Approval of Clerk of Court

The foregoing Undertaking is approved.

February 26, 2015.

Sharilyn Steube
Clerk of the District Court

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