

SOAH DOCKET NO. 957-18-4985

IN RE THE APPLICATION	§	BEFORE THE STATE
	§	
OF ELECTRO PURIFICATION LLC	§	OFFICE OF
	§	
FOR AN HISTORIC PERMIT	§	ADMINISTRATIVE HEARINGS

APPLICANTS' FIRST MONTHLY ABATEMENT STATUS REPORT

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW Electro Purification, LLC (“Applicant” or “EP”) and files this its First Monthly Report during the abatement granted by the ALJs pursuant to Order No. 12, and would show the Administrative Law Judges as follows:

I.
Status Report

The purpose of this Monthly Abatement Report is to apprise the ALJs and the parties to the proceedings of the developments and status of EP’s efforts in connection with the pipeline since the granting of Order No. 12. On April 7, 2020, the ALJs granted Order No. 12 granting an abatement of these proceedings until July 17, 2020, in response to the ongoing efforts of EP to resolve the potential impairment of one or more of its wells and/or its ability to operate its wells pursuant to the Permit sought in these proceedings caused by the 428-mile proposed pipeline (the “PHP Pipeline”) to be constructed by KinderMorgan Texas Pipeline, LLC and Permian Highway Pipeline, LLC. The PHP Pipeline proposes to cross both of the groundwater leases on which EP’s 7 wells sought to be permitted herein are located.

As previously reported, EP secured Temporary Restraining Orders on March 12th, which precluded the pipelines from conducting any operations on either of the EP groundwater leases that could impair, damage or destroy the EP wells. Following the Executive Order of the Governor

and the Emergency Order of the Texas Supreme Court on March 13, 2020, related to the COVID-19 Pandemic, the Hays County Courts at Law Nos. 1 and 2 in which EP had secured the TROs, extended those TROs on March 23, 2020, until an undetermined date when a hearing could be conducted safely. In response to the extension of the TROs, the Pipelines filed mandamus actions in the Austin Court of Appeals on March 20, 2020. The Austin Court of Appeals ordered EP to file responses to the Pipelines' petitions for mandamus and request for emergency relief in the form of a stay of the TROs. EP filed its responses by April 1, 2020. On April 3, 2020, the Austin Court of Appeals issued two Orders (copies attached hereto as **Appendix "A" and "B"**) denying the relief requested by the Pipelines, but retaining the Petitions for Mandamus on a provisional basis after directing the Parties to coordinate with the Hays County Courts at Law, and report back to the Austin Court of Appeals by April 10, 2020, as to how and when the County Courts would conduct a hearing on the EP TROs and address the Motions filed by the Pipeline to dissolve the TROs.

On April 8, 2020, the Hays County Courts at Law Nos. 1 and 2 conducted a consolidated hearing in connection with the lawsuits filed by EP and considered the scheduling of a hearing on EP's application to convert the respective TROs to a Temporary Injunction and the Pipelines' motions to dissolve the TROs and dismiss the cases. The Courts scheduled a hearing on the Temporary Injunction applications and the Pipelines' motions for April 21, 2020.

On April 21-22, 2020, the Hays County Courts at Law conducted a remote hearing using ZOOM technology to consider EP's applications to convert the TROs to Temporary Injunctions and the Pipelines' motions to dissolve the TROs. Counsel for TESPAs, Mr. Adam Friedman, attended the ZOOM hearings on both days.

At the beginning of the second day of hearing on April 22, 2020, the proceedings were abated when counsel for the Pipelines announced the decision of the Pipelines to file an Answer that included an Alternative Counterclaim to Condemn the Interests in the EP Groundwater Leases to acquire rights necessary for the Pipelines to secure possession of the property and easements over the rights of EP in the Groundwater Leases necessary for the Pipelines to construct their project. The Pipelines requested the Courts abate the Temporary Injunction proceedings pending the Pipelines' filing of the described pleadings.

On April 25, 2020, the Pipelines filed duplicate pleadings in the two separate causes of action answering EP's lawsuits with a Verified General Denial, and in the alternative seeking to condemn the property rights of EP under the groundwater leases necessary for the Pipelines to secure an easement across the Odell and Bridges Properties for purposes of acquiring easements and constructing and operating their Pipeline.

The filing of the condemnation action by the Pipelines had the effect to dissolve the Temporary Restraining Orders, as well as moot the purpose for EP's applications for Temporary Injunction. Accordingly, the County Courts on April 28, 2020, issued the attached Orders dissolving the TROs and terminating the proceedings on the Applications for Temporary Injunction (*see Appendices "C" and "D"*).

The next steps in the process procedurally are for the Pipelines to seek a hearing requesting the Court to set an amount for "Security" to be paid into the Court in a dollar amount sufficient to protect and justly compensate EP for the damages to be incurred to its property rights in the separate Groundwater Leaseholds as a result of the condemnation proceedings. This requirement is mandated by Section 21.064 (b) of the Property Code. The Pipelines have not yet requested that hearing be scheduled, and no hearing date has been scheduled at this time.

In the interim, between now and the scheduling of the Section 21.064 (b) hearing on the Security, the Parties have agreed to engage in settlement discussions, including both informal settlement meetings and scheduling of a formal mediation with a trained, Texas qualified Mediator. The Parties are coordinating schedules with their respective principals for such meetings, as well as agreement on and scheduling of a formal Mediator for the proceedings. Those events have not yet been calendared.

II.
Conclusion

That concludes Applicant's First Monthly Status Report. EP will continue to apprise the ALJs and Parties of the developments in the Pipeline matter consistent with the ALJs' Order No. 12.

Respectfully submitted,

MCCARTHY & MCCARTHY, LLP

Edmond R. McCarthy, Jr.

State Bar No. 13367200

ed@ermlawfirm.com

Edmond R. McCarthy III

State Bar No. 24066795

eddie@ermlawfirm.com

1122 Colorado St., Suite 2399

Austin, Texas 78701

(512) 904-2313

(512) 692-2826 (telecopy)

By: /s/ Edmond R. McCarthy, Jr.

Edmond R. McCarthy, Jr.

State Bar No. 13367200

**ATTORNEYS FOR APPLICANT
ELECTRO PURIFICATION LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Status Report and Motion to Extend the Abatement Period has been e-filed with SOAH using the www.efile.txcourts.gov filing service and sent to all parties of record and persons or entities seeking party status or their Counsel via e-mail and/or U.S. Mail on this the 1st day of May, 2020, addressed as follows:

Name

Representing

Bill Dugat
Bickerstaff Heath Delgado Acosta, LLP
3711 S. MoPac Expressway
Bldg. One, Suite 300
Austin, TX 78746
512-472-8021
512-320-5638 (Fax)
bdugat@bickerstaff.com

General Manager, BSEACD

Jeff Mundy
The Mundy Firm, PLLC
4131 Spicewood Springs Rd.
Austin, TX 78759
512-750-5913
jeff@jmundy.com

Representing TESPA

Adam Friedman
McElroy Sullivan Miller & Weber, LLP
1201 Spyglass, Suite 200
Austin, TX 78746
512-327-8111
afriedman@msmtx.com

Representing TESPA

Eric Allmon
Frederick Perales Allmon & Rockwell, PC
1206 San Antonio St.
Austin, TX 78701
512-469-6000
512-482-9346 (Fax)
eallmon@lf-lawfirm.com

Hays County

J.D. Head
Fritz, Byrne, Head & Gilstrap, PLLC
221 West 6th Street, Suite 960
Austin, TX 78701
512-476-2020
512-477-5267 (Fax)
jhead@fbhg.law

Attorney for Donald F. Woods

Thomas and Irene Biggins
601 Buckskin Pass
Driftwood, TX 78619-8023
512-484-9865
TB78619@gmail.com

Appearing *Pro Se*

Chris Elliott, Susan Elliott
300 Buckskin Pass
Driftwood, TX 78619
805-801-9003
Chris@MYHKS.com

Appearing *Pro Se*

Dennis Pape
Dalton and Peggy Pape (Life Estate)
6790 FM 3237
Driftwood, TX 78619
512-847-1314
danapsalas@gmail.com

Appearing *Pro Se*

Dana Pape-Salas
1216 Mathias St.
Cedar Park, TX 78613
512-940-0429
danapsalas@gmail.com

Appearing *Pro Se*

Mary Louise Bond
Editor, TPWD
1200 Todo Lane
Driftwood, TX 78619
512-560-4877
secretwaterwarriorsociety@gmail.com

Appearing *Pro Se*

Jim Chisolm, Rancher
P.O. Box 2281
Wimberley, TX 78676
512-619-3815
Jimchis51@gmail.com

Appearing *Pro Se*

Judi Baskin
400 Limestone Lane
Driftwood, TX 78619
650-208-9245
Sissi@VintageOaksFarm.com

Appearing *Pro Se*

Patrick Cox, Ph.D., Historian/Author
570 River Mountain Rd.
Wimberley, TX 78676
512-217-2279
Patrickcox7@gmail.com

St. Stephen's Episcopal Church, Wimberley

William Webber
Headmaster
St. Stephen's Episcopal Church
6000 FM 3237
Wimberley, TX 78676
Will.Webber@ststeveschool.org

St. Stephen's Vestry & School Board

Chris and Cathy Heiney*
2201 FM 3237
Wimberley, TX 78676
Catheiney78676@gmail.com

Appearing *Pro Se*

Michael Gomez*
P.O. Box 2531
Wimberley, TX 78676
mhgomez2001@yahoo.com

Appearing *Pro Se*

Adrienne Evans-Stark*
P.O. Box 468
Terlingua, TX 79852
superluckygirl13@yahoo.com

Appearing *Pro Se*

Arturo Ramon, II*
200 Rolling Oaks Dr.
Driftwood, TX 78619
tribalmarx@hotmail.com

Appearing *Pro Se*

/s/ Edmond R. McCarthy, Jr.
Edmond R. McCarthy, Jr.

* Courtesy Copy

Appendix "A"

April 3, 2020, Austin Court of Appeals Order denying the relief
requested by the Pipelines in Cause No. 03-20-00214-CV

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-20-00214-CV

In re Permian Highway Pipelines LLC and Kinder Morgan Texas Pipeline LLC

ORIGINAL PROCEEDING FROM HAYS COUNTY

ORDER

PER CURIAM

Relators Permian Highway Pipelines LLC and Kinder Morgan Texas Pipeline LLC have filed a petition for writ of mandamus and an emergency motion for temporary relief. *See* Tex. R. App. P. 52.1, 52.10(a). The Court has received responses from the respondent trial court and real party in interest Electro Purification, LLC. The Court had specifically requested that respondent address relators' assertion that the trial court has refused to schedule a hearing by teleconference or videoconference on the temporary injunction, in contravention of the Texas Supreme Court's guidance that temporary restraining orders and temporary injunctions remain essential functions even during the current COVID-19 crisis, and instead has postponed the hearing indefinitely. *See* <https://www.txcourts.gov/media/coronavirus-covid-19-court-operation-guidance/> at Guidance Issued 3/5/2020, 3/12/2020, & 3/26/2020 (explaining that essential proceedings "that must occur in the first 7 days" include "temporary restraining orders/temporary injunctions" but recommending that in-person proceedings be delayed until at least May 8 and

that essential proceedings occur in person only if holding proceeding remotely is not possible or feasible).

In its response, the trial court has given assurances that it is working toward acquiring the technological capability to conduct an evidentiary hearing remotely, while adequately ensuring the parties' rights to a hearing that complies with the court's rules. We recognize that these are unprecedented circumstances and that the trial court may need additional time to put an appropriate system in place to successfully hold a remote evidentiary hearing involving multiple law firms and attorneys, numerous litigants, and the submission of evidence. See <https://www.txcourts.gov/media/coronavirus-covid-19-court-operation-guidance/> at Guidance Issued 4/2/2020, Recommendations & Tips on Holding Zoom Virtual Hearings (providing information available from the Office of Court Administration on Zoom licenses and other resources for help with conducting remote proceedings). We are also sympathetic to the trial court's concern that it not endanger essential staff who fall into the category of people who are most at risk from an in-person hearing. Our concern is that "mandamus is available to remedy a temporary restraining order that violates Rule 680's time limitations" and that the extension order at issue here violates Rule 680 by extending the temporary restraining order indefinitely. *In re Texas Nat. Res. Conservation Comm'n*, 85 S.W.3d 201, 207 (Tex. 2002) (holding trial court abused its discretion by granting extension of temporary restraining order for more than sole fourteen-day extension allowed by Texas Rule of Civil Procedure 680).

However, given the extenuating circumstances presented by the COVID-19 crisis and the trial court's assurance that it is not refusing to have the hearing but instead intends to have the hearing remotely as soon as it is technologically feasible, we cannot conclude that the trial court has abused its discretion at this point. We note that the trial court signed the initial

temporary restraining order on March 12, and only 22 days have passed since that date. Because the trial court's extension order does not provide a mechanism by which the parties may prompt a hearing when the trial court has acquired the necessary technological capabilities, the Court orders relators and real party in interest to confer with the trial court next week on the status of its technological capabilities and to file a joint status report providing the Court with an update (including an expected hearing date if one has been set) on or before April 10, 2020.

Relators' emergency motion and petition for writ of mandamus remain pending before the Court.

It is ordered on April 3, 2020.

Before Justices Goodwin, Kelly, and Smith

Appendix "B"

April 3, 2020, Austin Court of Appeals Order denying the relief
requested by the Pipelines in Cause No. 03-20-00215-CV

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-20-00215-CV

In Re Permian Highway Pipeline LLC and Kinder Morgan Texas Pipeline LLC

ORIGINAL PROCEEDING FROM HAYS COUNTY

ORDER

PER CURIAM

Relators Permian Highway Pipelines LLC and Kinder Morgan Texas Pipeline LLC have filed a petition for writ of mandamus and an emergency motion for temporary relief. *See* Tex. R. App. P. 52.1, 52.10(a). The Court has received responses from the respondent trial court and real party in interest Electro Purification, LLC. The Court had specifically requested that respondent address relators' assertion that the trial court has refused to schedule a hearing by teleconference or videoconference on the temporary injunction, in contravention of the Texas Supreme Court's guidance that temporary restraining orders and temporary injunctions remain essential functions even during the current COVID-19 crisis, and instead has postponed the hearing indefinitely. *See* <https://www.txcourts.gov/media/coronavirus-covid-19-court-operation-guidance/> at Guidance Issued 3/5/2020, 3/12/2020, & 3/26/2020 (explaining that essential proceedings "that must occur in the first 7 days" include "temporary restraining orders/temporary injunctions" but recommending that in-person proceedings be delayed until at least May 8 and

that essential proceedings occur in person only if holding proceeding remotely is not possible or feasible).

In its response, the trial court has given assurances that it is working toward acquiring the technological capability to conduct an evidentiary hearing remotely, while adequately ensuring the parties' rights to a hearing that complies with the court's rules. We recognize that these are unprecedented circumstances and that the trial court may need additional time to put an appropriate system in place to successfully hold a remote evidentiary hearing involving multiple law firms and attorneys, numerous litigants, and the submission of evidence. See <https://www.txcourts.gov/media/coronavirus-covid-19-court-operation-guidance/> at Guidance Issued 4/2/2020, Recommendations & Tips on Holding Zoom Virtual Hearings (providing information available from the Office of Court Administration on Zoom licenses and other resources for help with conducting remote proceedings). We are also sympathetic to the trial court's concern that it not endanger essential staff who fall into the category of people who are most at risk from an in-person hearing. Our concern is that "mandamus is available to remedy a temporary restraining order that violates Rule 680's time limitations" and that the extension order at issue here violates Rule 680 by extending the temporary restraining order indefinitely. *In re Texas Nat. Res. Conservation Comm'n*, 85 S.W.3d 201, 207 (Tex. 2002) (holding trial court abused its discretion by granting extension of temporary restraining order for more than sole fourteen-day extension allowed by Texas Rule of Civil Procedure 680).

However, given the extenuating circumstances presented by the COVID-19 crisis and the trial court's assurance that it is not refusing to have the hearing but instead intends to have the hearing remotely as soon as it is technologically feasible, we cannot conclude that the trial court has abused its discretion at this point. We note that the trial court signed the initial

temporary restraining order on March 12, and only 22 days have passed since that date. Because the trial court's extension order does not provide a mechanism by which the parties may prompt a hearing when the trial court has acquired the necessary technological capabilities, the Court orders relators and real party in interest to confer with the trial court next week on the status of its technological capabilities and to file a joint status report providing the Court with an update (including an expected hearing date if one has been set) on or before April 10, 2020.

Relators' emergency motion and petition for writ of mandamus remain pending before the Court.

It is ordered on April 3, 2020.

Before Justices Goodwin, Kelly, and Smith

Appendix "C"

April 28, 2020 Order Dissolving the TRO and Terminating the
Temporary Injunction Hearing in Cause No. 18-0896-C

CAUSE NO. 19-0896-C

PERMIAN HIGHWAY PIPELINE LLC,
Plaintiff

EMINENT DOMAIN PROCEEDING

vs.

BRIDGES BROTHERS FAMILY
LIMITED PARTNERSHIP NO. 1,
Defendants.

IN THE COUNTY COURT AT LAW
OF HAYS COUNTY, TEXAS

and,

ELECTRO PURIFICATION, LLC,
Intervenor

COUNTY COURT AT LAW NO. 2

CAUSE NO. 19-0896-C

ELECTRO PURIFICATION, LLC,
Cross-Plaintiff

IN THE COUNTY COURT AT LAW

vs.

PERMIAN HIGHWAY PIPELINE LLC,
and KINDER MORGAN TEXAS
PIPELINE LLC
Cross Defendants.

HAYS COUNTY, TEXAS

COUNTY COURT AT LAW NO. 2

**ORDER DISSOLVING TEMPORARY RESTRAINING ORDER AND
TERMINATING TEMPORARY INJUNCTION HEARING**

On this day, came on to be heard the Parties' Joint Request to dissolve the Court's March 12, 2020, temporary restraining order as extended March 23, 2020, and terminate the hearing on Electro Purification LLC's ("Electro's") application for temporary injunction. All parties have affixed their signature to this Order showing their agreement hereto.

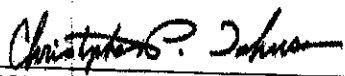
The parties previously requested the Court to adjourn the hearing on Electro's application for temporary injunction commenced on April 21, 2020, and leave the record open until Cross-Defendants Permian Highway Pipeline LLC and KinderMorgan Texas Pipeline LLC

("Permian") filed an answer and in the alternative counterclaim for condemnation against Electro relating to Electro's Groundwater Lease over, on and under the 924 acre tract, more or less, designated as Tract No. D-HA-738.000. Permian filed its answer and in the alternative counterclaim for condemnation against Electro on April 23, 2020, rendering this Court's March 12, 2020, temporary restraining order, as extended, a nullity.

IT IS THEREFORE ORDERED that the temporary restraining order issued against Permian on March 12, 2020, as extended in Cause No. 19-0986-C, having been nullified by the filing of Permian's answer and in the alternative counterclaim for condemnation against Electro, is hereby dissolved effective immediately. The Bond in the amount of \$1,000.00 posted by Electro is released, and the Clerk is direct to return said Bond amount, upon application, by check payable to Electro's counsel, McCarthy & McCarthy LLC.

IT IS FURTHER ORDERED that the currently adjourned hearing on Electro Purification LLC's application for temporary injunction be terminated.

SIGNED on April 28, 2020, at 11:55 a.m.


HON. CHRIS JOHNSON
JUDGE PRESIDING

AGREED:

MCCARTHY & MCCARTHY, LLP

By: /s/ Edmond R. McCarthy, Jr.
Edmond R. McCarthy, Jr.
Attorneys for Electro Purification, LLC

BRACEWELL, LLP

By: /s/ W. Stephen Benesh.
W. Stephen Benesh
Attorneys for Permian Highway Pipeline, LLC &
Kinder Morgan Texas Pipeline LLC

Appendix "D"

April 28, 2020 Order Dissolving the TRO and Terminating the
Temporary Injunction Hearing in Cause No. 18-1060-C

CAUSE NO. 19-1060-C

PERMIAN HIGHWAY PIPELINE LLC,
Plaintiff

vs.

**JUANITA M. LEINNEWEBER;
EDDIE RAY ODELL; ROY GENE
ODELL; DALLAS MTA, L.P. d/b/a
VERIZON WIRELESS; AND
ELECTRO PURIFICATION, LLC,**
Defendants.

§
§
§
§
§
§
§
§
§
§
§
§

EMINENT DOMAIN PROCEEDING

**IN THE COUNTY COURT AT LAW
OF HAYS COUNTY, TEXAS**

COUNTY COURT AT LAW NO. 1

CAUSE NO. 19-1060-C

ELECTRO PURIFICATION, LLC,
Cross-Plaintiff

vs.

**PERMIAN HIGHWAY PIPELINE LLC,
and KINDER MORGAN TEXAS
PIPELINE LLC**
Cross Defendants.

§
§
§
§
§
§
§
§
§
§
§
§

IN THE COUNTY COURT AT LAW

HAYS COUNTY, TEXAS

COUNTY COURT AT LAW NO. 1

**ORDER DISSOLVING TEMPORARY RESTRAINING ORDER AND
TERMINATING TEMPORARY INJUNCTION HEARING**

On this day, came on to be heard the Parties' Joint Request to dissolve the Court's March 12, 2020, temporary restraining order as extended March 23, 2020, and terminate the hearing on Electro Purification LLC's ("Electro's") application for temporary injunction. All parties have affixed their signature to this Order showing their agreement hereto.

The parties previously requested the Court to adjourn the hearing on Electro's application for temporary injunction commenced on April 21, 2020, and leave the record open until Cross-Defendants Permian Highway Pipeline LLC and KinderMorgan Texas Pipeline LLC ("Permian") filed an answer and in the alternative counterclaim for condemnation against Electro

relating to Electro's Groundwater Lease over, on and under the 457 acre tract, more or less, designated as Tract No. D-HA-734.000. Permian filed its answer and in the alternative counterclaim for condemnation against Electro on April 23, 2020, rendering this Court's March 12, 2020, temporary restraining order, as extended, a nullity.

IT IS THEREFORE ORDERED that the temporary restraining order issued against Permian on March 12, 2020, as extended in Cause No. 19-1060-C, having been nullified by the filing of Permian's answer and in the alternative counterclaim for condemnation against Electro, is hereby dissolved effective immediately. The Bond in the amount of \$1,000.00 posted by Electro is released, and the Clerk is direct to return said Bond amount, upon application, by check payable to Electro's counsel, McCarthy & McCarthy LLC.

IT IS FURTHER ORDERED that the currently adjourned hearing on Electro Purification LLC's application for temporary injunction be terminated.

SIGNED on April 28, 2020, at 11:55 a.m.


HON. ROBERT UPDEGROVE
JUDGE PRESIDING

AGREED:

MCCARTHY & MCCARTHY, LLP

By: /s/ Edmond R. McCarthy, Jr.
Edmond R. McCarthy, Jr.
Attorneys for Electro Purification, LLC

BRACEWELL, LLP

By: /s/ W. Stephen Benesh.
W. Stephen Benesh
Attorneys for Permian Highway Pipeline, LLC &
Kinder Morgan Texas Pipeline LLC