

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CITY OF AUSTIN,
CITY OF SAN MARCOS,
TRAVIS COUNTY,
HAYS COUNTY,
BARTON SPRINGS EDWARDS
AQUIFER CONSERVATION
DISTRICT,
LARRY BECKER, ARLENE BECKER,
JONNA MURCHISON, AND
MARK WEILER

Plaintiffs,

VS.

CASE NO. 1:20-cv-00138-RP

KINDER MORGAN TEXAS PIPELINE,
LLC, PERMIAN HIGHWAY PIPELINE,
LLC, UNITED STATES DEPARTMENT
OF INTERIOR, DAVID BERNHARDT,
in his Official Capacity as Secretary of
Interior, UNITED STATES FISH AND
WILDLIFE SERVICE and AURELIA
SKIPWITH, in her Official Capacity as
Director of the U.S. Fish and Wildlife
Service,

Defendants

PLAINTIFF’S MOTION REQUESTING EMERGENCY HEARING

COME NOW, Plaintiffs City of Austin, City of San Marcos, Travis County, Hays County, Barton Springs Edwards Aquifer Conservation District, Larry Becker, Arlene Becker, Jonna Murchison and Mark Weiler (“Plaintiffs”), and file this Motion Requesting Emergency Hearing on Plaintiffs’ Application for Preliminary Injunction as follows:

1) This lawsuit seeks injunctive relief to prevent the clearing of Golden Cheek Warbler (“GCW”) habitat unless and until a valid Incidental Take Permit (“ITP”) is issued. On February 5, 2020, Plaintiffs were first provided a copy of the U.S. Fish & Wildlife Service (the “Service”) biological opinion dated February 3, 2020 that was issued in consultation with the U.S. Army Corps of Engineers (the “Corps”) regarding the Permian Highway Pipeline. Accordingly, the claims in this lawsuit regarding the validity of the biological opinion were not ripe until such document existed. Kinder Morgan reports that they expect to receive approval from the Corps for their activities by February 15, 2020 and that they expect to immediately begin clearing GCW habitat in order to clear all affected habitat prior to March 1, 2020 when GCW return Texas. Kinder Morgan currently has trucks and equipment staged in place along the GCW habitat and have informed landowners that they intend to begin removing fences and gates from their property on Monday, February 10, 2020 so that they can rush to clear the GCW habitat as soon as the Corps issues its approval.

2) Based on the foregoing, the compressed time schedule regarding the need for a hearing and protection of the GCW habitat is due to actions that are outside of the control of the Plaintiffs. Plaintiffs respectfully request that the Court issue an order setting a hearing of not more than 3 hours duration prior to February 15, 2020 on Plaintiffs’ Application for Preliminary Injunction.

3) Counsel for Plaintiffs has conferred with Counsel for Kinder Morgan and informed opposing counsel that this request for an emergency hearing is being submitted. Kinder Morgan opposes this request for an emergency hearing.

Respectfully submitted,

/s/ Clark Richards

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CERTIFICATE OF CONFERENCE

I certify that on February 7, 2020, I conferred with counsel for Defendants Kinder Morgan Texas Pipeline, LLC and Permian Highway Pipeline, LLC, about the relief being sought in this motion and Defendants do oppose this motion.

/s/ Clark Richards
CLARK RICHARDS

CERTIFICATE OF SERVICE

This is to certify that on February 7, 2020, a true and correct copy of the above and foregoing document was filed via the Court's ECF/CM system and will be served as follows:

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/s/ Clark Richards

CLARK RICHARDS

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SKIPWITH, in her Official Capacity as §
Director of the U.S. Fish and Wildlife §
Service, §

Defendants §

ORDER ON MOTION REQUESTING EMERGENCY HEARING

The Court has considered, and hereby grants, the Plaintiffs’ Motion Requesting Emergency Hearing on Plaintiffs’ Application for Preliminary Injunction. A hearing will be held on the _____ day of February 2020 at _____ (am/pm). Kinder Morgan Texas Pipeline, LLC and Permian Highway Pipeline, LLC are ordered to appear at the hearing and show cause why a preliminary injunction should not issue.

Signed this _____ day of February 2020.

THE HONORABLE ROBERT PITMAN
U.S. DISTRICT JUDGE