

UNITED STATES DISTRICT COURT
FOR MIDDLE DISTRICT OF LOUISIANA

ATCHAFALAYA BASINKEEPER, LOUISIANA
CRAWFISH PRODUCERS ASSOCIATION-WEST,
GULF RESTORATION NETWORK,
WATERKEEPER ALLIANCE, and SIERRA CLUB
and its DELTA CHAPTER,

Plaintiff,

v.

U.S. ARMY CORPS OF ENGINEERS

Defendant.

Civ. No. 3:18-cv-00023-SDD-EWD

MOTION FOR A TEMPORARY
RESTRAINING ORDER

Pursuant to Fed. R. Civ. P 65(b), plaintiffs Atchafalaya Basinkeeper, Louisiana Crawfish Producers Association-West, Gulf Restoration Network, Waterkeeper Alliance, and Sierra Club and its Delta Chapter, hereby move for a temporary restraining order preserving the status quo and preventing irreparable harm pending resolution of the contemporaneously filed motion for a preliminary injunction. Specifically, plaintiffs ask this Court to enjoin defendant U.S. Army Corps of Engineers (“Corps”) to withdraw Permit MVN-2015-02295-WII for the Bayou Bridge crude oil pipeline project, as applied to the entirety of the Atchafalaya Basin, until the preliminary injunction motion is decided. This motion is supported the declaration of Jan E. Hasselman, as well as materials filed in support of plaintiffs’ motion for a preliminary injunction.

A party requesting a TRO must establish: (1) a substantial likelihood of success on the merits; (2) a substantial threat that failure to grant the injunction will result in irreparable injury; (3) the threatened injury outweighs any damage that the injunction will cause the adverse party; and (4) the injunction will not adversely affect the public interest. *Janvey v. Alguire*, 647 F.3d

585, 595 (5th Cir. 2011); *Randolph v. Osc-Management, Inc.*, 2017 WL 657350, *4 (M.D. La., 2017). To prove likelihood of success on the merits, an applicant is “not required to prove [its] entitlement to summary judgment,” nor must it “assure the Court that it will be successful in its suit.” *New River Shopping Center, LLC. v. Villenurve*, 2017 WL 1821108, *2 (M.D. La., 2017). Rather, “[a]ll courts agree that plaintiff must present a prima facie case but need not show that he is certain to win.” *Id.*, citing *Janvey*, 647 F.3d at 596.

Plaintiffs satisfy these four factors, for the reasons laid out in its Memorandum in Support of a Motion for Preliminary Injunction (filed Jan. 29, 2018) and accompanying exhibits and declarations. Those materials lay out plaintiffs’ *prima facie* case that the U.S. Army Corps of Engineers violated federal environmental statutes in issuing permits for the Bayou Bridge pipeline, and why imminent and ongoing construction will irreparably harm the unique environment of the Atchafalaya Basin, as well as the people who rely on it. The materials further explain why the balance of harms weighs in plaintiffs’ favor, and why the public interest will not be harmed by a short-term delay in construction in one part of the pipeline route while the preliminary injunction is resolved.

Construction of the Bayou Bridge pipeline in the Atchafalaya Basin commenced a few days ago. An immediate temporary restraining order preserving the status quo is necessary because the irreparable harm that plaintiffs seek to enjoin—destruction of mature and even ancient trees in the project’s 75-foot right of way through the Atchafalaya Basin and creation of a new open channel—will be complete in a matter of weeks. *See* Declaration of Jan Hasselman in Support of Motion for Temporary Restraining Order. There is insufficient time to brief and decide the issues presented in plaintiffs’ motion for a preliminary injunction before this stage of construction is complete and this portion of the requested relief rendered moot. Moreover, to the

extent that the project proponent has refused to agree to suspend construction even for a few days to provide time to respond to this motion, plaintiffs request that the Court grant this motion immediately. This Court should issue the temporary restraining order effectively enjoining construction in the Atchafalaya Basin, and direct the parties to propose an expedited schedule for briefing and argument on the accompanying motion for a preliminary injunction.

Under Fed. R. Civ. P. 65(c), a court may issue preliminary injunctive relief if “the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” However, “the Fifth Circuit has acknowledged that the amount of the security is within the discretion of the district court, who can elect to impose no security at all.” *New Orleans Home for Incurables, Inc. v. Greenstein*, 911 F. Supp. 2d 386, 412–13 (E.D. La. 2012); accord *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (“[W]e have ruled that the court may elect to require no security at all.”).

In *City of Atlanta v. Metropolitan Atlanta Rapid Transit Authority*, 636 F.2d 1084, 1094 (5th Cir. 1981), the Fifth Circuit upheld the district court’s decision to set no bond where: 1) “plaintiffs were engaged in public-interest litigation, an area in which the courts have recognized an exception to the Rule 65 security requirement;” 2) “the court could reasonably have concluded that the parties to this action were financially unable to post [a large bond];” and, 3) “[t]he short duration of the restraining order minimized the risk of serious harm to [the defendant].” *Id.* These criteria are easily met here. Plaintiffs bring this case to protect the public interest in a unique and special place, the Atchafalaya Basin. *Id.*; *Advocacy Ctr. for Elderly & Disabled v. Louisiana Dep’t of Health & Hosps.*, 731 F. Supp. 2d 603, 626 (E.D. La. 2010) (recognizing exception for bond requirement where plaintiffs are engaged in “public

interest” litigation). Further, plaintiffs are nonprofit organizations that have limited financial resources with which to pay a substantial bond. *Beverly Myers, Inc. v. Sanderson Farms, Inc.*, 2012 WL 12874577, *1 (S.D. Miss. 2012) (no bond required where “[p]laintiffs lack the financial means to provide any security under Rule 65(c) ... [and] requiring security would defeat the purpose of the preliminary injunction”). Finally, the requested injunction is limited in scope and in time. Plaintiffs only seek a temporary restraining order on a limited portion of the pipeline as a whole, and only pending resolution of the accompanying preliminary injunction motion, the schedule for responding to which is within the defendants’ control. Plaintiffs are willing to work with defendants and the Court to expedite resolution of that motion, so that any temporary restraining order is of short duration.

Accordingly, plaintiffs respectfully request that the Court issue the requested temporary restraining order immediately and direct the parties to propose a briefing and argument schedule for resolution of plaintiffs’ motion for a preliminary injunction.

Respectfully submitted this 29th day of January, 2018.



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