

ENTERED

October 19, 2021

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

INDIGENOUS PEOPLES OF THE
COASTAL BEND; KARANKAWA
KADLA TRIBE OF THE TEXAS GULF
COAST; and INGLESIDE ON THE BAY
COASTAL WATCH ASSOCIATION,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; LIEUTENANT GENERAL
SCOTT A. SPELLMON in his official
capacity; BRIGADIER GENERAL
CHRISTOPHER G. BECK in his official
capacity; and COLONEL TIMOTHY R. VAIL
in his official capacity,

Defendants

and

ENBRIDGE INGLESIDE OIL TERMINAL,
LLC,

Intervenor-Defendant.

Case No. 2:21-CV-00161

ORDER

Pending before the Court is the Joint Motion for an Initial Scheduling Order and for Resetting of Scheduling Conference Currently Set for November 1. After reviewing the Motion, the record and the applicable law, the Court is of the opinion that it should be GRANTED.

This case, pending further order, will be controlled by the following schedule:

(1) December 3, 2021: Federal Defendants will file a certified list of the contents of the administrative record with the Court and provide a complete copy of the administrative

record to the Parties by electronic means. Due to the administrative record's likely voluminous nature, Federal Defendants will transmit the administrative record documents to the Parties on electronic media, such as DVDs, USB drives, or a file-sharing program, rather than in paper form or via ECF.

(2) December 17, 2021: Plaintiffs and Intervenor-Defendant will identify and communicate to Federal Defendants any issues regarding completeness of the administrative record and/or any requests concerning extra-record evidence. Plaintiffs and Intervenor-Defendant will reasonably promptly provide Federal Defendants with copies of any materials they seek to include in the administrative record and copies of any materials that they seek to admit as extra-record evidence (regardless of the party that identified the issue). The Parties will attempt in good faith to resolve any issues that are raised.

(3) January 14, 2021: If the Parties reach an agreement on any issues raised under paragraph (2), Federal Defendants will file a corrected certified list of the contents of the administrative record with the Court and provide a complete copy of the administrative record to the Parties by electronic means in the same manner described in paragraph (1).

(4) January 28, 2022:

(a) Plaintiffs and/or Intervenor-Defendant will file any motions concerning the adequacy of the record. The submission date, response deadline, and reply deadline will proceed under Judge Tipton's Court Procedure 15(e).

(b) If the Plaintiffs and Intervenor-Defendant do not file any motions concerning the adequacy of the record, summary judgment merits briefing will commence. The Parties reserve for future filings a joint proposal, or, failing agreement, separate

proposals, concerning the precise schedule and sequencing of this merits briefing.

Moreover, should a dispute arise that requires motions practice under paragraph (4)(a), summary judgment briefing shall be stayed until a decision on such motion from the Court, after which time the Parties would meet and confer to propose a schedule for summary judgment briefing.

Further, Intervenor-Defendant shall not commence causeway construction, dredging and other work in the West Basin related to construction of Berths 7, 8, and 9 prior to August 29, 2022. Intervenor-Defendant shall submit status reports on March 14, 2022 and June 6, 2022 with respect to the timing of causeway construction, dredging and other work in the West Basin relating to construction of Berths 7, 8, and 9. The reports shall either confirm the causeway construction, dredging and other work will not commence prior to August 29, 2022 or indicate if an earlier date is under active consideration, including a good faith estimate of when a request for an earlier date may be made as described below. If Intervenor-Defendant plans to commence causeway construction, dredging and other work in the West Basin relating to construction of Berths 7, 8, and 9 prior to August 29, 2022, it will provide 60 days' notice to the Court and the Parties.

Intervenor-Defendant has advised the Court and the Plaintiffs and Federal Defendants that it has other ongoing and future work. Based on the statements in the Joint Motion, this Order does not apply to work in the East Basin authorized by the May 3, 2021 Permit Amendment of SWG-1995-02221 that is the subject of Plaintiffs' Complaint, as well as other work previously authorized in both the East Basin and the West Basin (including without limitation dredging and slope stabilization work related to Berth 5).

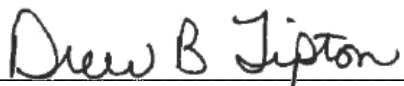
Further, Plaintiffs' Motions, ECF No. 15 and ECF No. 16, are abated, without prejudice

to them being re-urged, with all current submission or briefing dates cancelled.

The initial scheduling conference, currently set for November 1, 2021 (ECF No. 3), is reset until 12/6/2021 at 2:00 PM, with the Parties' Joint Discovery/Case Management Plan due 14 days prior to that date.

It is SO ORDERED.

Signed this 19th of October, 2021.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE