

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 11 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NORTHERN PLAINS RESOURCE
COUNCIL; et al.,

Plaintiffs-Appellees,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; SCOTT A. SPELLMON, In
his official capacity and U.S. Army Chief of
Engineers and Commanding General of the
U.S. Army Corps of Engineers,

Defendants-Appellants,

and

TRANSCANADA KEYSTONE PIPELINE,
LP; et al.,

Intervenor-Defendants.

No. 20-35412

D.C. No. 4:19-cv-00044-BMM
District of Montana,
Great Falls

ORDER

NORTHERN PLAINS RESOURCE
COUNCIL; et al.,

Plaintiffs-Appellees,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; SCOTT A. SPELLMON, In
his official capacity and U.S. Army Chief of
Engineers and Commanding General of the
U.S. Army Corps of Engineers,

No. 20-35414

D.C. No. 4:19-cv-00044-BMM

Defendants,

TRANSCANADA KEYSTONE PIPELINE,
LP; et al.,

Intervenor-Defendants,

and

AMERICAN GAS ASSOCIATION; et al.,

Intervenor-Defendants-
Appellants.

NORTHERN PLAINS RESOURCE
COUNCIL; et al.,

Plaintiffs-Appellees,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; SCOTT A. SPELLMON, In
his official capacity and U.S. Army Chief of
Engineers and Commanding General of the
U.S. Army Corps of Engineers,

Defendants,

STATE OF MONTANA; et al.,

Intervenor-Defendants,

and

TRANSCANADA KEYSTONE PIPELINE,
LP; TC ENERGY CORPORATION,

No. 20-35415

D.C. No. 4:19-cv-00044-BMM

Intervenor-Defendants-
Appellants.

NORTHERN PLAINS RESOURCE
COUNCIL; et al.,

Plaintiffs-Appellees,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; SCOTT A. SPELLMON, In
his official capacity and U.S. Army Chief of
Engineers and Commanding General of the
U.S. Army Corps of Engineers,

Defendants,

TRANSCANADA KEYSTONE PIPELINE,
LP; et al.,

Intervenor-Defendants,

and

STATE OF MONTANA,

Intervenor-Defendant-
Appellant.

No. 20-35432

D.C. No. 4:19-cv-00044-BMM

Before: SCHROEDER, TASHIMA, and HURWITZ, Circuit Judges.

Federal Appellants' motion to vacate the decisions below (Docket Entry No. 150 in 20-35412) is granted in part. The U.S. Army Corps of Engineers' issuance of a new nationwide permit supersedes the agency action that is the subject of

these appeals. Therefore, these interlocutory appeals and the underlying claim that is the subject of these appeals are moot. *See American Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir.1997) (“If an event occurs that prevents the court from granting effective relief, the claim is moot and must be dismissed.”). These appeals are dismissed for lack of jurisdiction, and we remand with instructions to dismiss the underlying claim. However, we take no position on whether the underlying cases are moot in their entirety and leave that determination to the district court in the first instance.

We decline to vacate any of the district court’s decisions. On remand, the district court shall consider whether appellants are entitled to vacatur. *See Dilley v. Gunn*, 64 F.3d 1365, 1370-71 (9th Cir. 1995) (explaining that vacatur is not automatic when an appellant’s own action moots the appeal).

All pending motions are denied as moot.

DISMISSED AND REMANDED.