

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STANDING ROCK SIOUX TRIBE,

Plaintiff,

and

CHEYENNE RIVER SIOUX TRIBE,

Plaintiff-Intervenor,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS,

Defendant,

and

DAKOTA ACCESS, LLC,

Defendant-Intervenor.

Case Number: 16-cv-1534 (JEB)

**DEFENDANT-INTERVENOR DAKOTA ACCESS, LLC'S
MOTION TO EXPEDITE CONSIDERATION OF ITS CROSS-CLAIM**

Defendant-Intervenor Dakota Access, LLC respectfully moves the Court to expedite consideration and resolution of its cross-claim, filed today. *See* D.E. 57. Dakota Access, LLC notified the United States Army Corps of Engineers, Standing Rock Sioux Tribe, and Cheyenne River Sioux Tribe yesterday, November 14, 2016, of this motion and attempted to confer today, November 15, 2016, pursuant to Local Civil Rule 7(m), without response from the Standing Rock Sioux Tribe and the Cheyenne River Sioux Tribe. The United States Army Corps of Engineers opposes the motion.

Dakota Access's cross-claim against the Corps under the Declaratory Judgment Act seeks a declaration that Dakota Access has a legal right-of-way to build and operate an oil pipeline beneath federally owned land near Lake Oahe, North Dakota. As explained in the accompanying memorandum, expedited consideration of the cross-claim is needed to prevent additional irreparable harm to Dakota Access and third parties. The delay that this motion seeks to avoid would add tens of millions of dollars each month in costs, as well as other harms, to the more than \$450 million already lost due to the Corps's conduct. Those costs cannot be recovered. With important deadlines for the completion of the pipeline looming, prompt resolution of Dakota Access's cross-claim for a declaratory judgment is needed to remove the legal cloud over its right-of-way under the Mineral Leasing Act, thus allowing it to engage in construction at Lake Oahe without the risk of government legal action for doing so.

Dakota Access proposes the following schedule:

- Dakota Access's motion for summary judgment on its cross-claim due on December 5, 2016.
- Any opposition to that motion due on December 19, 2016.
- Dakota Access's reply in support of its motion for summary judgment due on December 27, 2016.
- A hearing on the motion held on or about January 3, 2017.

Dated: November 15, 2016

Kimberly H. Caine
William J. Leone (*Pro Hac Vice* granted)
Robert D. Comer (*Pro Hac Vice* granted)
NORTON ROSE FULBRIGHT US LLP
799 9th St. NW, Suite 1000
Washington, D.C. 20001-4501
(202) 662-0200

Edward V. A. Kussy
Robert D. Thornton
Alan M. Glen
NOSSAMAN LLP
1666 K Street, NW, Suite 500
Washington, DC 20006
202-887-1400

/s/ William S. Scherman
William S. Scherman
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
(202) 530-9557 (fax)
wscherman@gibsondunn.com

Counsel for Defendant-Intervenor Dakota Access, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2016, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court for the District of Columbia using the CM/ECF system. Service was accomplished by the CM/ECF system on the following counsel:

Patti A. Goldman
Jan E. Hasselman
EARTHJUSTICE
705 Second Avenue, Suite 203
Seattle, WA 98104
(206) 343-7340
pgoldman@earthjustice.org
jhasselman@earthjustice.org

*Counsel for Plaintiff Standing Rock Sioux
Tribe*

Nicole E. Ducheneaux,
FREDERICKS PEEBLES & MORGAN, LLP
3610 North 163rd Plaza
Omaha, NE 68116
(402) 333-4053
nducheneaux@ndnlaw.com

Conly J. Schulte
FREDERICKS PEEBLES & MORGAN, LLP
1900 Plaza Drive
Louisville, CO 80027
(303) 673-9600
cshulte@ndnlaw.com

*Counsel for Plaintiff-Intervenor Cheyenne
River Sioux Tribe*

Matthew M. Marinelli
Erica M. Zilioli
U.S. DEP'T OF JUSTICE
Environment & Natural Resources Division
P.O. Box 7415
Washington, D.C. 20044
(202) 514-2000
Matthew.Marinelli@usdoj.gov
Erica.zilioli@usdoj.gov

*Counsel for Defendant U.S. Army Corps of
Engineers*

/s/ William S. Scherman
William S. Scherman
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
wscherman@gibsondunn.com

*Counsel for Defendant-Intervenor Dakota
Access, LLC*