IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

STANDING ROCK SIOUX TRIBE,)
Plaintiff,)
v.) Case No. 1:16-cv-01534 (JEB)
UNITED STATES ARMY CORPS OF ENGINEERS,)))
Defendant.)))

UNITED STATES ARMY CORPS OF ENGINEERS' RESPONSE TO PLAINTIFF'S AND INTERVENOR-PLAINTIFF'S MOTIONS FOR TEMPORARY RESTRAINING ORDER

The United States Army Corps of Engineers ("Corps") does not oppose Plaintiff Standing Rock Sioux Tribe's and Intervenor-Plaintiff Cheyenne River Sioux Tribe's Motions for a Temporary Restraining Order as to any additional construction work on the pipeline within 20 miles on either side of Lake Oahe in North Dakota until this Court rules on Plaintiff's pending Motion for Preliminary Injunction.

As set forth in the Corps' Opposition to Plaintiff's Motion for Preliminary Injunction [ECF No. 21], Plaintiff is unlikely to prevail on the merits of its claims for lack of tribal consultation under Section 106 of the National Historic Preservation Act. The Corps fulfilled its statutory responsibilities for areas within the Corps' jurisdiction by engaging in national, regional, and site-specific consultation. Beyond Lake Oahe itself, there were no preconstruction notifications and thus no specific Corps authorizations within the area of the proposed temporary restraining order (i.e., 20 miles in either direction of Lake Oahe). The Corps therefore believes

that the majority of lands that would be the subject of the proposed temporary restraining order, including the site described in the Mentz declaration, are not within the Corps' jurisdiction.

Nonetheless, the Corps is aware that Dakota Access, LLC's work near Lake Oahe has been the subject of several recent confrontations. The Corps acknowledges that the public interest would be served by preserving peace near Lake Oahe until the Court can render its well-considered opinion on Plaintiff's Motion for Preliminary Injunction.¹ The Corps therefore does not oppose this short and discrete temporary restraining order.

Dated: September 5, 2016 Respectfully submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Natural Resources Division

By: /s/ Erica Zilioli

MATTHEW MARINELLI, IL Bar 6277967 U.S. Department of Justice

Natural Resources Section

P.O. Box 7611

Benjamin Franklin Station Washington, DC 20044 Phone: (202) 305-0293

Fax: (202) 353-2021

matthew.marinelli@usdoj.gov

ERICA M. ZILIOLI, D.C. Bar 488073

U.S. Department of Justice Environmental Defense Section

P.O. Box 7611

Washington, DC 20044 Phone: (202) 514-6390

Fax: (202) 514-8865 Erica.Zilioli@usdoj.gov

¹ Intervenor-Plaintiff Cheyenne River Sioux Tribe also moves for a temporary restraining order to prevent Dakota Access from "engaging with or antagonizing" protestors. ECF No. 31 at 1. Although this matter is outside the scope of this lawsuit, the Corps would not oppose a temporary restraining order on this basis in the interest of public safety.

Attorneys for the United States Army Corps of Engineers

OF COUNSEL:

MILTON BOYD MELANIE CASNER U.S. Army Corps of Engineers Office of Chief Counsel Washington, DC

CERTIFICATE OF SERVICE

I hereby certify that, on the 5th day of September, 2016, a copy of the foregoing was filed through the Court's CM/ECF management system and electronically served on counsel of record.

/s/ Erica Zilioli Erica M. Zilioli