

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

PARADIGM ENERGY PARTNERS,
LLC,

Plaintiff,

VS.

MARK FOX, in his official capacity as Chairman of the Tribal Business Council of the Mandan, Hidatsa & Arikara Nation; and CHIEF NELSON HEART, in his official capacity as Chief of Police for the Mandan, Hidatsa & Arikara Nation,

Defendants.

Case No. _____

COMPLAINT

Plaintiff Paradigm Energy Partners, LLC (“Paradigm”), by and through its attorneys,
hereby states and alleges as follows:

THE PARTIES

1. Paradigm is a Delaware limited liability company organized and registered pursuant to the laws of the State of Delaware with its principal place of business in Irving, Texas. No person or entity having an ownership interest in Paradigm Energy Partners, LLC is a resident or citizen of the State of North Dakota.

2. Mark Fox is the Chairman of the Tribal Business Council of the Mandan, Hidatsa & Arikara Nation (“Nation”), and resides in and is a citizen of the State of North Dakota.

3. Chief Nelson Heart is the Chief of Police for the Nation and resides in and is a citizen of the State of North Dakota.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises under federal law.

5. The Court has diversity jurisdiction under 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties to this action, as required by 28 U.S.C. § 1332(a), in that all of the Plaintiffs are citizens of different states than Defendants.

6. The amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs. Therefore, the requisite amount in controversy exists to support federal jurisdiction under 28 U.S.C. § 1332(a).

7. The Court is further authorized to issue a declaratory judgment and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and Fed. R. Civ. P. 57 and 65.

8. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) because the claims that are the subject of this complaint arose in this district.

9. This Complaint does not implicate the Nation's sovereign immunity. Defendants are properly before this Court because they "have acted outside the amount of authority that the [tribal] sovereign is capable of bestowing." *N. States Power Co. v. Prairie Island Mdewakanton Sioux Indian Cmty.*, 991 F.2d 458, 460 (8th Cir. 1993) (internal citation omitted); *Vann v. U.S. Dep't of Interior*, 701 F.3d 927, 929 (D.C. Cir. 2012).

NATURE OF THE ACTION

10. This case raises the purely legal issue of whether Defendants have the jurisdiction and authority to halt a federally approved pipeline project on land owned by the United States.

11. Ten days ago, Defendants served a Cease and Desist Order (“Order”) on Paradigm and its contractors ordering them to stop drilling operations for the Natural Gas Pipeline. A true and correct copy is attached as Exhibit 1.

12. Defendants have no legal basis for the Order, and therefore it has no legal effect.

13. Paradigm has obtained all the federal permits and approvals required by the Army Corps of Engineers (“Corps”) and Bureau of Indian Affairs (“BIA”) granting it the authority to complete its pipelines. Paradigm also has the full support of the North Dakota Congressional Delegation.

14. If drilling does not resume by Monday August 22, 2016, then the Natural Gas Pipeline project will collapse, Paradigm will be irreparably harmed and face likely financial ruin, and North Dakota’s public interest will suffer.

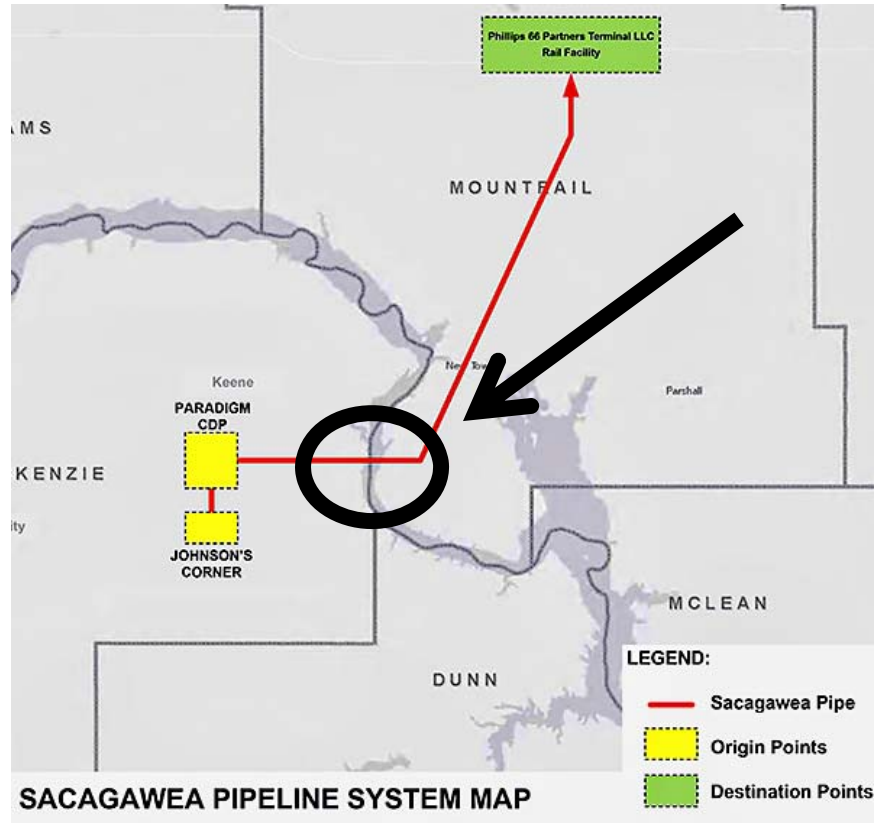
FACTUAL BACKGROUND

I. The Sacagawea Pipelines.

15. Before the Order was issued, Paradigm was constructing two pipelines that run underneath Lake Sakakawea in McKenzie and Mountrail Counties, North Dakota (collectively, the “Sacagawea Pipelines”). One pipeline will transport natural gas (the “Natural Gas Pipeline”) and one will transport crude oil (the “Oil Pipeline”). When completed, the Sacagawea Pipelines will run 70 miles to transport natural gas and oil to a collection point in Mountrail County for delivery to interstate carriers.

16. The Sacagawea Pipelines cross (a) the Fort Berthold Indian Reservation, (b) lands held in trust by the United States for the Nation, (c) lands owned by the federal government, and (d) lands owned by private parties. Paradigm obtained all necessary rights-of-way and approvals, including approvals from the Corps, allottees, private parties, and the Nation.

17. At issue in this case, is the approximately 8,980 feet of the pipeline that passes through the subsurface of Lake Sakakawea. This segment is known as the “Lake Sakakawea Segment.”



18. Lake Sakakawea is located within the Fort Berthold Indian Reservation, but both the Lake and its subsurface are owned by the United States and administered by the Corps. *See* Pub. L. 81-437, 63 Stat. 1026 (1949); 33 C.F.R. §§ 222.5(d)(1), (o), 222.5 App. E.

II. The Federal Permit.

19. The Mineral Leasing Act (“MLA”) Right-of-Way provision (30 U.S.C. § 185) required Paradigm to obtain an easement from the Corps before beginning construction.

20. As required by federal law, Paradigm sought and obtained a right-of-way from the Corps.

21. The Corps began its review by analyzing an environmental assessment (“EA”) and Finding of No Significant Impact (“FONSI”) that the BIA had issued on August 28, 2015. The BIA undertook that review pursuant to the National Environmental Policy Act (“NEPA”) and analyzed the impact the Sacagawea Pipelines would have on the lands held in trust for the Nation. The BIA found that “Environmental Justice for the project had been fully considered” and that “the proposed project would improve the socio-economic condition of the affected Indian community.” The BIA also identified the Corps as the only agency with the authority to permit the Lake Sakakawea Segment.

22. The Corps conducted a supplemental EA to analyze the environmental impacts of the Lake Sakakawea Segment on both the Lake and its subsurface.

23. The Corps requested public comment as part of this assessment, as required by NEPA. Neither Defendants, nor any member of the Tribal Business Council or the Nation, submitted comments regarding the Corps’ jurisdiction over the Lake Sakakawea Segment, or otherwise asserted any right to consent to the easement.

24. The Corps issued an Environmental Assessment Addendum and Mitigated Finding of No Significant Impact on April 15, 2016 (“Corps EA and FONSI”). This document concluded that “there will be no undue or unnecessary environmental impacts to the environment caused by construction, reclamation, operation and maintenance or abandonment of” the Lake Sakakawea Segment.

25. On June 1, 2016, the Corps executed its Easement entitled “Easement for Fuel Carrying Pipeline Right-of-Way” (the “Corps Easement”), which authorizes Paradigm to construct the Lake Sakakawea Segment of the Sacagawea Pipelines.

26. The Corps Easement contains a temporary easement that allows Paradigm to engage in construction activities. This easement for the bore is 30 feet in width underneath the lakebed of Lake Sakakawea.

27. The temporary easement is effective for a period of one year from June 1, 2016 to June 1, 2017.

28. At no point during the Corps' analysis did Defendants or the Nation assert that the Nation's consent was required for this easement.

III. Construction of the Pipeline.

29. After receiving the Corps Easement, Paradigm began constructing the Lake Sakakawea Segment in early June 2016. The Sacagawea Pipelines operations on Lake Sakakawea were open and obvious such that Defendants knew or should have known that a pipeline was under construction.

30. Nevertheless, Defendants did not interfere with or otherwise try to prevent the construction of the pipelines up until the issuance of the Order.

31. On August 8, 2016, Defendants issued the Cease and Desist Order. The Order was addressed directly to Paradigm and required immediate cessation of all pipeline construction on the Lake Sakakawea Segment.

32. The Order states that, pursuant to the Indian Right-of-Way Act, the "subsurface under Lake Sakakawea is held in trust by the United States for the benefit of the MHA Nation" and that Paradigm must obtain the Nation's consent pursuant to 25 U.S.C. §§ 323-324 before beginning construction. *See Exhibit 1* at 1.

33. The Order further states that because Paradigm failed to obtain consent, it must cease all construction of the Lake Sakakawea Segment "effective immediately" and that non-

compliance will result in “such enforcement action as is necessary to protect [the Nation’s] rights and resources.” *Id.* at 2.

34. After the Order was issued, Defendants and their agents showed up at the Lake Sakakawea Segment construction site and informed Paradigm’s construction contractors that they would be arrested if they continued work on the Lake Sakakawea Segment.

35. Defendants and their agents also approached Paradigm’s construction contractors working on other, unrelated, segments of the Sacagawea Pipelines and ordered them to cease work under threat of arrest. Defendants subsequently withdrew these orders and allowed construction to proceed on these other segments of the Sacagawea Pipelines.

36. However, Defendants still refuse to allow construction to proceed on the Lake Sakakawea Segment.

IV. Construction Stops Under Threat of Arrest.

37. On August 9, 2016, Paradigm and the Sacagawea Company instructed their contractors to stop work.

38. Construction for the Oil Pipeline that runs underneath the Lake Sakakawea Segment is largely complete. Essentially, the only work remaining for the Oil Pipeline under the Lake Sakakawea Segment is adding a block valve.

39. Construction for the Natural Gas Pipeline is intended to run underneath the Lake Sakakawea Segment and has just started. If construction of this pipeline does not resume by Monday, August 22, 2016, the Natural Gas Pipeline will fail.

40. Construction must resume on August 22, 2016 so that construction and cleanup can be completed by November 1, 2016.

41. This deadline is based on a critical right of way agreement with a major landowner (“Landowner”) that by its terms prevents Paradigm from using the right of way area for its construction activities after November 1, 2016. Paradigm has contacted the Landowner, but he has refused to extend the deadline.

42. If Paradigm cannot complete the Natural Gas Pipeline by November 1, it will lose its anchor natural gas customer, leaving the Paradigm gas project without an anchor shipper to justify the cost of the pipeline (the cost expended and to be expended).

43. Additionally, the pipelines are designed to cross the Lake and to connect rail and storage facilities so that product can be moved between them. Without the Natural Gas Pipeline, the facilities, on which \$253 million was spent, will lose most of their value because Paradigm will be left with unconnected disparate assets.

44. Pursuant to the Order, Paradigm requested a hearing before the Tribal Business Council. The hearing has been set for August 31, 2016. Paradigm cannot wait for this date because its construction window will have closed, and Paradigm will not be able to meet its contractual obligation with its anchor natural gas customer. *See supra* at ¶¶ 39-43.

V. Paradigm Will Be Irreparably Harmed If Construction Does Not Resume Immediately.

45. The Sacagawea Pipelines serve the public interest and are supported by North Dakota’s three congressman, because they help to alleviate North Dakota’s critical need for additional pipeline capacity, which will consequently help reduce flaring.

46. The Sacagawea Pipelines are in the best interest of the Nation. On April 16, 2015, Defendant Fox signed Tribal Resolution No. 15-065, through which the Nation approved all segments of the Pipeline that crossed lands held in trust for the benefit of the Nation. A true and correct copy is attached as Exhibit 2. This Resolution states that “it is in the best interest of

the MHA Nation to authorize and grant consent for right-of-way” over all lands held in trust.

See id. The Nation reaffirmed this Resolution in June 2016. A true and correct copy is attached as part of Exhibit 2.

47. The Nation has openly supported the Sacagawea Pipelines through public statements and public petitions.

48. If construction does not resume, Paradigm will undoubtedly suffer irreparable harm due to the failure of the pipeline projects. Paradigm will be unable to meet its contractual obligations, and will suffer devastating financial loss. *See supra* at ¶¶ 39-43. Given these losses, it is very probable that Paradigm would not survive.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment regarding Validity of Corps’ Right of Way Permit)

49. Paradigm incorporates by reference the allegations and statements set forth in paragraphs 1 through 48 above.

50. Lake Sakakawea and its subsurface are federal lands owned by the federal government. The Corps operates Lake Sakakawea. The Lake Sakakawea Segment is therefore subject to the exclusive jurisdiction of the Corps.

51. The Corps has issued a valid and binding easement permitting Paradigm to construct the Lake Sakakawea Segment of the Sacagawea Pipelines.

52. Federal law requires no other authorization to construct the Lake Sakakawea Segment.

53. Paradigm seeks a declaration from this Court that the Corps Easement provides Paradigm with the only authorization necessary to construct and operate the pipeline, and that tribal consent is not required or necessary.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment regarding Invalidity of Cease and Desist Order)

54. Paradigm incorporates by reference the allegations and statements set forth in paragraphs 1 through 53 above.

55. Defendants are actively engaged in the process of delaying, impeding, preventing and serving as an obstacle to Paradigm's lawful efforts to timely construct and place in operation pipelines as authorized in the Corps Easement.

56. The Corps has exclusive jurisdiction over the Lake Sakakawea Segment and validly issued the Corps Easement over this federal land.

57. Neither Defendant Fox, nor his agents, nor any other member of any governmental body of the Nation has jurisdiction to issue a Cease and Desist Order, or take any other action to prevent Paradigm from constructing and operating the lawfully authorized Sacagawea Pipelines on lands subject to the Corps Easement.

58. Defendants do not have the authority to issue a Cease and Desist Order, or take any other action to prevent Paradigm from constructing and operating the lawfully authorized Sacagawea Pipelines on lands subject to the Corps Easement.

THIRD CLAIM FOR RELIEF
(Injunctive Relief)

59. Paradigm incorporates by reference the allegations and statements set forth in paragraphs 1 through 58 above.

60. Paradigm is likely to succeed on the merits because under the applicable statutes, laws, and regulations, it has the right to construct the Lake Sakakawea Segment pursuant to the Corps Easement.

61. Defendants are interfering with that right by delaying, impeding, preventing and serving as an obstacle to Paradigm's efforts to timely construct and place in operation pipelines authorized in the Corps Easement.

62. Defendants are further interfering with Paradigm's right by threatening to take enforcement action and arrest Paradigm's employees and contractors if they engage in the legally-permitted construction activities.

63. Paradigm will suffer irreparable harm unless an injunction issues by Monday August 22, 2016.

64. Defendants will not be harmed by an injunction because they have no legal right to regulate Lake Sakakawea, or to interfere with Paradigm's drilling operations.

65. The public interest weighs in favor of issuing an injunction because the Sacagawea Pipelines will greatly benefit the State of North Dakota by providing needed natural gas transportation infrastructure and aiding in the reduction of flaring.

66. Paradigm has no adequate remedy at law because unless the pipelines are completed, Paradigm faces financial ruin and the threat of otherwise unrecoverable loss.

67. Paradigm seeks an order from this Court enjoining Defendants from enforcing the Cease and Desist Order or otherwise preventing or interfering with Paradigm's construction and operation of the Lake Sakakawea Segment of the Sacagawea Pipelines.

PRAYER FOR RELIEF

WHEREFORE, Paradigm prays as follows:

A. Enter a judgment pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that the June 1, 2016 Corps Easement is valid and binding and provides Paradigm with exclusive authority to

construct and operate a crude oil and natural gas pipeline under Lake Sakakawea pursuant to the terms and conditions of the Corps Easement.

B. Enter a judgment pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that Defendants have no jurisdiction over the Lake Sakakawea Segment of the Sacagawea Pipelines and have no authority to prevent Paradigm from constructing the Lake Sakakawea Segment pursuant to the terms and conditions of the Corps Easement.

C. Enter a judgment, pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that the August 8, 2016 Cease and Desist Order is null and void.

D. Enter preliminary and permanent injunctive relief enjoining Defendants from enforcing the Cease and Desist Order or otherwise preventing or interfering with Paradigm's construction and operation of the Lake Sakakawea Segment of the Sacagawea Pipelines.

E. Grant such additional relief as the Court deems just and proper.

Dated August 18, 2016.

Respectfully submitted,

s/ Anthony J. Shaheen

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