

**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*