

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

STANDING ROCK SIOUX TRIBE,

Plaintiff,

and

CHEYENNE RIVER SIOUX TRIBE,

Intervenor-Plaintiff,

v.

U.S. ARMY CORPS OF ENGINEERS,

Defendant,

and

DAKOTA ACCESS, LLP,

Intervenor-Defendant.

Case No. 1:16-cv-1534-JEB

STATUS REPORT

Plaintiff Standing Rock Sioux Tribe (“SRST”) and Plaintiff-Intervenor Cheyenne River Sioux Tribe (“CRST”) respectfully submit this Status Report in advance of the status conference scheduled for December 9, 2016. The purpose of this Status Report is to identify changed circumstances and propose a framework for moving forward with this litigation.

1. On December 4, 2016, Defendant U.S. Army Corps of Engineers (“Corps”) announced that it would not grant the easement sought by Defendant-Intervenor Dakota Access Pipeline, LLC (“DAPL”) at this time. *See* ECF 65-1. The Corps has announced an intention to consider route alternatives, as well as oil spill risk and other factors, through an environmental

impact statement (“EIS”) process. *Id.* at 3. At this time, no schedule has been proposed for initiating such review.

2. While the process announced on December 4, 2016 does not accord SRST and CRST complete relief on the claims brought in this lawsuit, the Plaintiff Tribes applaud the decision by the Corps and intend to work in good faith with the Corps through the EIS process in hopes that a resolution of its concerns can be achieved without the need for further proceedings in this Court. To the extent that the Corps will make a new decision about the Oahe crossing, based on a new administrative record, further litigation regarding the Corps’ permitting decisions to date can be postponed.

3. Accordingly, the Tribes propose that this litigation be stayed during the pendency of the EIS process. At the completion of the process, the Tribes will have the option of either voluntarily dismissing their claims, or amending their complaint to challenge a new final agency decision. The Tribes propose that the parties file quarterly status reports with this Court to update it on the progress of the EIS process.

4. The administrative record remains incomplete, as there are approximately 30 documents that still have not been produced. The Tribes stand ready to work with the other parties to resolve any outstanding disputes over confidentiality. Other than the withheld documents, the Tribes do not intend to seek supplementation of the record at this time.

5. Separately, DAPL has filed a cross-claim and a motion for summary judgment on that cross-claim. At this time, the Tribes intend to cross-move for summary judgment on (or, in the alternative, to dismiss) DAPL’s cross-claim. The Tribes will seek a modest extension of time in which to respond to DAPL’s motion, and object to DAPL’s suggestion that oral argument on its motion be heard during the Dec. 9, 2016 status conference. With respect to the record for this

motion, the Tribes believe that additional documents are relevant, but believe that they can be provided to the Court by the parties.

6 While the Tribes do not believe that DAPL's cross-claim has any merit, granting of DAPL's motion for summary judgment in some circumstances could effectively terminate the EIS process initiated on December 4, 2016, and result in immediate construction work to complete the project under Lake Oahe. The Tribes reserve their rights to make any argument, and seek any relief, to prevent the completion of the project while their original claims are litigated.

Dated: December 7, 2016

<p>CHEYENNE RIVER SIOUX TRIBE, Intervenor-Plaintiff,</p> <p>By: <u> /s/ Nicole E. Ducheneaux </u> Nicole E. Ducheneaux, <i>Pro Hac Vice</i> Fredericks Peebles & Morgan LLP 3610 North 163rd Plaza Omaha, NE 68116 Telephone: (402) 333-4053 Facsimile: (402) 333-4761 Email: nducheneaux@ndnlaw.com</p> <p>Conly J. Schulte FREDERICKS PEEBLES & MORGAN LLP 1900 Plaza Drive Louisville, CO 80027 Telephone: (303) 673-9600 Facsimile: (303) 673-9839 Email: cschulte@ndnlaw.com</p>	<p>STANDING ROCK SIOUX TRIBE, Plaintiff,</p> <p>By: <u> /s/ Jan E. Hasselman </u> Jan E. Hasselman, <i>Pro Hac Vice</i> Stephanie Tsosie, <i>Pro Hac Vice</i> Patti A. Goldman, DCBA #398565 Earthjustice 705 Second Avenue, Suite 203 Seattle, WA 98104 Telephone: (206) 343-7340 jhasselman@earthjustice.org stsosie@earthjustice.org pgoldman@earthjustice.org</p>
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