

**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–Cross Defendant,

and

DAKOTA ACCESS, LLC,
Defendant–Intervenor–Cross Claimant.

Case Number: 16-cv-1534 (JEB)

**CROSS-CLAIMANT DAKOTA ACCESS, LLC’S NOTICE OF SUPPLEMENTAL
AUTHORITY SUPPORTING MOTION UNDER THE ALL WRITS ACT TO
PREVENT PUBLICATION OF ENVIRONMENTAL-IMPACT-STATEMENT
NOTICE IN FEDERAL REGISTER, AND EMERGENCY MOTION FOR
INTERIM RELIEF THROUGH A TEMPORARY RESTRAINING ORDER**

Dakota Access, LLC hereby submits additional authority to supplement its Motion filed yesterday under the All Writs Act for preliminary injunctive relief and a temporary restraining order. D.E. 80. This morning, the Department of the Army released the attached notice, stating that the notice is scheduled to be published in the Federal Register tomorrow (January 18, 2017). This new document establishes with certainty what was alleged in the Motion filed yesterday. It is a “Notice of Intent to Prepare an Environmental Impact Statement in Connection with Dakota Access, LLC’s Request for an Easement to Cross Lake Oahe, North Dakota.” For all of the

reasons stated in Dakota Access's Motion, the Court should immediately restrain the publication of the notice in the Federal Register, through a temporary restraining order issued today, and schedule briefing and a prompt hearing as previously requested.

Respectfully Submitted,

Dated: January 17, 2017

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BILLING CODE: 5001-03

DEPARTMENT OF THE ARMY

Notice of Intent to Prepare an Environmental Impact Statement in Connection with Dakota Access, LLC's Request for an Easement to Cross Lake Oahe, North Dakota

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: This notice advises the public that the Department of the Army (Army), as lead agency, is gathering information necessary to prepare an environmental impact statement (EIS) in connection with Dakota Access, LLC's request to grant an easement to cross Lake Oahe, which is on the Missouri River and owned by the US Army Corps of Engineers (Corps). This notice opens the public scoping phase and invites interested parties to identify potential issues, concerns, and reasonable alternatives that should be considered in an EIS.

DATES: To ensure consideration during the development of an EIS, written comments on the scope of an EIS should be sent no later than February 20, 2017. The date of all public scoping meetings will be announced at least 15 days in advance through a notice to be published in the local North Dakota newspaper (The Bismarck Tribune) and online at <https://www.army.mil/asacw>.

ADDRESSES: You may mail or hand deliver written comments to Mr. Gib Owen, Office of the Assistant Secretary of the Army for Civil Works, 108 Army Pentagon,

Washington, DC 20310-0108. Advance arrangements will need to be made to hand deliver comments. Please include your name, return address, and “NOI Comments, Dakota Access Pipeline Crossing” on the first page of your written comments.

Comments may also be submitted via email to Mr. Gib Owen, at *gib.a.owen.civ@mail.mil*. If emailing comments, please use “NOI Comments, Dakota Access Pipeline Crossing” as the subject of your email.

The location of all public scoping meetings will be announced at least 15 days in advance through a notice to be published in the local North Dakota newspaper (The Bismarck Tribune) and online at <https://www.army.mil/asacw>.

FOR FURTHER INFORMATION CONTACT: Mr. Gib Owen, Water Resources Policy and Legislation, Office of the Assistant Secretary of the Army for Civil Works, Washington, DC 20310-0108; telephone: (703) 695-6791; email: *gib.a.owen.civ@mail.mil*.

SUPPLEMENTARY INFORMATION: The proposed crossing of Lake Oahe by Dakota Access, LLC is approximately 0.5 miles upstream of the northern boundary of the Standing Rock Sioux Tribe’s reservation. The Tribe protests the crossing primarily because it relies on Lake Oahe for water for a variety of purposes, the Tribe’s reservation boundaries encompass portions of Lake Oahe downstream from the proposed crossing, and the Tribe retains water, treaty fishing, and hunting rights in the Lake.

The proposed crossing of Corps property requires the granting of a right-of-way (easement) under the Mineral Leasing Act (MLA), 30 USC 185. To date, the Army has not made a final decision on whether to grant the easement pursuant to the MLA. The

Army intends to prepare an EIS to consider any potential impacts to the human environment that the grant of an easement may cause.

Specifically, input is desired on the following three scoping concerns:

- 1) Alternative locations for the pipeline crossing the Missouri River;
- 2) Potential risks and impacts of an oil spill, and potential impacts to Lake Oahe, the Standing Rock Sioux Tribe's water intakes, and the Tribe's water, treaty fishing, and hunting rights; and
- 3) Information on the extent and location of the Tribe's treaty rights in Lake Oahe.

On July 25, 2016, the Corps granted permission to applicant Dakota Access, LLC, under Section 14 of the Rivers and Harbors Act of 1899, 33 USC 408 (408 permission), for a proposed pipeline crossing of Lake Oahe. Lake Oahe is on the Missouri River and owned by the Corps. The approximate 1,172-mile pipeline connects the Bakken and Three Forks oil production areas in North Dakota to an existing crude oil market near Patoka, Illinois. The pipeline is 30 inches in diameter and is projected to transport approximately 570,000 barrels per day.

The 408 permission was accompanied by a Finding of No Significant Impact based on an Environmental Assessment (EA), as contemplated under the National Environmental Policy Act (NEPA). The EA included a brief description and characterization of factors used in evaluating a potential alternative crossing location that was considered and eliminated during the analysis phase. The alternative route,

which was eliminated, would cross the Missouri River approximately 10 miles north of Bismarck, ND.

On December 4, 2016, the Army determined that a decision on whether to authorize the pipeline to cross Lake Oahe at the proposed location merits additional analysis, more rigorous exploration and evaluation of reasonable siting alternatives, and greater public and tribal participation and comments as contemplated in the Council on Environmental Quality's (CEQ's) NEPA implementing regulations, 40 CFR 1502.14 and 1503.1. Currently, the Corps is developing a plan to implement the Army's December 4, 2016 direction. This notice of public scoping should be integrated into the Corps' plan of action.

Consistent with CEQ's NEPA implementing regulations, an EIS will analyze, at a minimum:

- 1) Alternative locations for the pipeline crossing the Missouri River;
- 2) Potential risks and impacts of an oil spill, and potential impacts to Lake Oahe, the Standing Rock Sioux Tribe's water intakes, and the Tribe's water, treaty fishing, and hunting rights; and

- 3) Information on the extent and location of the Tribe's treaty rights in Lake Oahe.

The range of issues, alternatives, and potential impacts may be expanded based on comments received in response to this notice and at public scoping meetings.

Public Comment Availability: Before including your address, telephone number, email address, or other personal identifying information in your comment, you

should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the Army cannot guarantee that this will occur.

Authority: This notice is published in accordance with sections 1503.1 and 1506.6 of the CEQ's Regulations (40 CFR parts 1500-1508) implementing the procedural requirements of NEPA, as amended (42 USC 4321 *et seq.*), and the Army and Corps' NEPA implementation policies (32 CFR part 651 and 33 CFR part 230), and exercises the authority delegated to the Assistant Secretary of the Army (Civil Works) by General Orders No. 2017-1, January 5, 2017.

Brenda S. Bowen
Army Federal Register Liaison Officer
[FR Doc. 2017-00937 Filed: 1/17/2017 8:45 am; Publication Date: 1/18/2017]

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2017, 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:

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