

**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 – Cross-  
Defendant.**

**and**

**DAKOTA ACCESS, LLP,**

**Intervenor-Defendant  
Cross-Claimant.**

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

**INTERVENOR-PLAINTIFF STEVE VANCE’S COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Intervenor-Plaintiff Steve Vance seeks declaratory and injunctive relief against Defendant and, in support thereof, states as follows:

**INTRODUCTION**

1. This is a complaint for declaratory and injunctive relief. Steve Vance (“Vance”) brings this action in connection with federal actions relating to the Dakota Access Pipeline (“DAPL”), a 1,168-mile-long crude oil pipeline running from North Dakota to Illinois owned by

the oil company, Dakota Access LLP (“Dakota Access”). Vance is a member of the Cheyenne River Sioux Tribe (“Tribe”). He is the Tribe’s Tribal Historic Preservation Officer and brings this case against Defendant U.S. Army Corps of Engineers (“Corps”), whose withdrawal of its Notice of Intent to perform an Environmental Impact Study and granting of a right-of-way for Dakota Access to drill under the Missouri River at Lake Oahe constitutes a substantial burden of his free exercise of his religion. The disturbance of the Earth under the Missouri River and Lake Oahe creates a substantial burden on the practice of the Lakota religion. The sanctity of these waters is a central tenet of their religion and the placement of the pipeline itself, apart from any rupture and oil spill, is a desecration of these waters.

2. The waters of the Missouri River, or *Mni Šoše*, are *sacred* to the Lakota people of the Cheyenne River Sioux Tribe and constitute the lifeblood of Lakota religion.

3. The waters of the Missouri river are used in numerous Lakota religious ceremonies and must be kept pure and sacred in order to be used in the religious ceremonies.

4. In particular, the waters are used in the Inipi ceremony. This ceremony is among the most important in the Lakota religion. The sacred purity of the waters of the Missouri River and Lake Oahe are an absolute necessity to perform the Inipi ceremony. It cannot be performed without the pure unsullied water.

5. Mr. Vance lives near Takini, South Dakota on his family property on the Cheyenne River Sioux Reservation. In his community, he speaks Lakota daily and practices Lakota ways in everyday life. ECF No. 99-4.

6. Mr. Vance is a sincere practitioner of the traditional Lakota faith. Mr. Vance believes that the siting of the Dakota Access Pipeline under Lake Oahe will desecrate the waters

such that they will be rendered unsuitable for use in the sacraments required by his religious faith, in particular the Inipi ceremony.

7. On December 4, 2016, the Corps issued a Memorandum subject: *Proposed Dakota Access Pipeline Crossing At Lake Oahe, North Dakota* (“December 4 Memo”). The December 4 Memo highlighted the important points: “(1) no right-of-way had yet been granted pursuant to 30 U.S.C. § 185 for any water crossing at Lake Oahe; (2) the Corps needed to engage in further considerations of reasonable alternatives to any right-of-way under NEPA; and (3) the Corps’ EA had failed to take into consideration essential information which included at a minimum: 1a) more detailed information on the alternative crossing that was considered roughly ten miles north of Bismarck; b) detailed discussion of potential risk of an oil spill, and potential impacts to Lake Oahe, the Standing Rock Sioux Tribe’s water intakes, and the Tribe’s water rights as well as treaty fishing and hunting rights; and 3) additional information on the extent and location of the Tribe’s treaty rights in Lake Oahe.”

8. On January 18, 2017, the Corps caused to be published in the Federal Register *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*. 82 Fed. Reg. 5543 (“EIS Notice”). The EIS Notice invited interested parties to submit information to the Corps relevant to its inquiry under NEPA and set forth that public scoping meetings and notices thereof would be forthcoming. The Corps informed the Tribe that it should submit its comments on the process for government-to-government consultation and concerns through the EIS Notice.

9. Mr. Vance anticipated being able to contribute to and participate in the EIS process with his thoughts on how the placement of the pipeline impacted the sacredness and ritual purity of the water and the free exercise of the Lakota religion.

10. On January 24, 2017, the newly-inaugurated President Trump issued a Presidential Memorandum that in essence directed the Secretary of the Army to instruct the Assistant Secretary of the Army for Civil Works and the Corps to expeditiously review and approve the pending easement across Lake Oahe for the DAPL project, and directed the Corps to proceed with its legal obligations expeditiously and to consider withdrawing the EIS Notice.

11. On February 6, 2017, the Department of Justice informed this Court the Corps had completed its decision-making process and the Secretary of the Army was now in the decision-making process on the easement.

12. On February 7, 2017, the Corps notified Congress of its intent to grant an easement, and its intent not to comply with the 14-day waiting period and instead to issue the easement 24 hours after the notice was delivered to Congress, or on February 8, 2017. ECF No. 95-1. The Corps filed with this Court a Congressional Notice of Intent to Issue an Easement, the Army's Memorandum regarding Compliance with the January 23, 2017 Presidential Memorandum, and the Army's proposed Federal Register Notice of Termination of the Intent to Prepare an Environmental Impact Statement in Connection with Dakota Access, LLC's Request for an Easement to Cross Lake Oahe, North Dakota all dated February 7, 2017, repudiating its already-stated position that an EIS is required for the Corps to discharge its duties under NEPA in regard to the right-of-way. ECF Nos. 95, 95-1, 95-2 and 95-3.

13. On February 8, 2017, the Corps granted the easement ending the EIS process.

14. Now that the right-of-way is granted and the EIS process over, other than litigation, Mr. Vance will have no opportunity to express his concerns about his religious rights and have them considered under the law.

### **JURISDICTION AND VENUE**

15. This Complaint arises under the Constitution and laws of the United States, including the U.S. Constitution First Amendment Right to Free Exercise of Religion and the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb *et seq.* (“RFRA”) for declaratory and injunctive relief. Mr. Vance brings these claims to protect his free exercise of religion.

16. Jurisdiction arises under 28 U.S.C. § 2201 (declaratory relief); § 2202 (injunctive relief).

17. Venue in this district is appropriate under 28 U.S.C. § 1391(e) because it is the district in which the Defendant resides and in which “a substantial part of the events or omissions giving rise to the claim occurred.

### **PARTIES**

18. Steve Vance, an individual, is a member of the Cheyenne River Sioux Tribe and lives on the Tribe’s reservation located within the exterior boundaries of the State of South Dakota. He is a sincere adherent of the Tribe’s religion and the Tribe’s Tribal Historic Preservation Officer.

19. Intervenor-Plaintiff The Cheyenne River Sioux Tribe is a federally-recognized Indian tribe with a governing body recognized by the Secretary of the Interior. The Tribe is a member of the *Oceti Šakowin* (“Seven Council Fires,” also known as the Great Sioux Nation), which includes the Lakota, Dakota, and Nakota people. The Tribe is comprised of four of the seven bands of Lakota (*Itazipco*, *Minnicoujou*, *Oohenumpa*, and *Siha Sapa*) and is a party to the 1851 Fort Laramie Treaty and the 1868 Sioux Nation Treaty.

20. Plaintiff Standing Rock Sioux Tribe (“SRST”) is a federally-recognized Indian Tribe, a member of the Great Sioux Nation and a party to the to the 1851 Fort Laramie Treaty and the 1868 Sioux Nation Treaty. SRST’s reservation is located within the exterior boundaries of the

States of North and South Dakota.

21. Intervenor-Defendant Dakota Access, LLC is a limited liability company formed to construct and own Dakota Access Pipeline. Energy Transfer Partners, L.P., Sunoco Logistics Partners, L.P., and Phillips 66 are the beneficial owners of Dakota Access, LLC.

22. Defendant U.S. Army Corps of Engineers is an agency of the United States government and a division of the U.S. Army, part of the U.S. Department of Defense.

### **FACTS AND PERTINENT LAWS**

23. The Tribe is native to this land and the river; they have lived here since time immemorial. The waters of the Missouri River are sacred pursuant to the Tribe's ancient religion and play a central role in the practice of the religion.

24. In addition to a spill, the mere presence of the oil flowing under the sacred waters of Lake Oahe is a desecration of these waters. It would render them unsacred and ritually unpure. These waters must remain sacred in order for the Lakota to enjoy free exercise of their religion. Placement of the pipeline as proposed constitutes a substantial burden on their ability to exercise their religion.

25. The waters play a special role generally in the practice of the Lakota religion. They are particularly important to the Inipi ceremony. This ceremony is central to the Lakota religion.

26. The Inipi ceremony requires that the waters be ritually pure and sacred. Without this purity and sacredness, the ceremony cannot be performed.

**I. THE FIRST AMENDMENT FREE EXERCISE AND RELIGIOUS FREEDOM RESTORATION ACT**

27. The First Amendment to the United States Constitution prevents the government from burdening the free exercise of religion.

28. Under RFRA any government action that creates a substantial burden on the free exercise of religion must serve a compelling government interest and the action must be the least restrictive means for meeting the compelling government interest.

29. To fall under RFRA's protection, a religious belief must be sincerely held by the adherent; courts are not to second guess the reasonableness of an adherent's beliefs so long as they are sincere.

30. Once a party makes a prima facie case that the government action creates a substantial burden on the free exercise of religion, the burden shifts to the government to prove that its action is necessary to meet a compelling government interest and the action is the least restrictive way to meet the interest.

31. The least restrictive means standard is exceptionally demanding, and it requires the government to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party.

**I. FIRST CLAIM FOR RELIEF**  
**VIOLATION OF THE RELIGIOUS FREEDOM RESTORATION ACT**

32. Intervenor-Plaintiff Vance reincorporates the allegations in all preceding paragraphs.

33. Under RFRA, any government action that creates a substantial burden on the free exercise of religion must serve a compelling government interest, and the action must be the least restrictive means for meeting the compelling government interest.

34. To fall under RFRA's protection, a religious belief must be sincerely held by the adherent; courts are not to second guess the reasonableness of an adherent's beliefs so long as they are sincere.

35. The least restrictive means standard is exceptionally demanding, and it requires the government to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party.

36. Intervenor-Plaintiff Vance sincerely believes that the waters of the Missouri River and Lake Oahe are sacred and that disturbing the Earth under those waters will disrupt their sacred nature and render them unsuited for use in his religion practice.

37. This would substantially burden his ability to practice his religion. In particular, the Inipi ceremony, which is central to the practice of his faith.

38. The federal government has destroyed all sources of sacred water that could be used in the Inipi ceremony creating a substantial burden on the practice of his faith.

39. The Defendant does not have a compelling government interest in granting the right-of-way to Dakota Access to complete the pipeline.

40. Should the Defendant prove that it has a compelling government interest in granting Dakota Access a right-of-way to complete the pipeline, granting the right-of-way at the current proposed location is not the least restrictive means of achieving this interest.

**SECOND CLAIM FOR RELIEF**  
**VIOLATION OF THE FIRST AMENDMENT FREE EXERCISE CLAUSE**

41. Intervenor-Plaintiff Vance reincorporates the allegations in all preceding paragraphs.

42. The First Amendment to the United States Constitution prevents the government from interfering with persons' free Exercise of religion.



43. Intervenor-Plaintiff Vance sincerely believes that the waters of the Missouri River and Lake Oahe are sacred and that disturbing the Earth under those waters will disrupt their sacred nature and render them unsuited for use in their religious practice. This would substantially burden his ability to practice his religion.

44. The granting of the easement is not a government act of general applicability. The Tribe's land is on the Missouri River. It is this river that is sacred to the Tribe. There is no replacing these waters once sullied. The granting of the easement is a specific act substantially burdening the free exercise of the Lakota religion.

#### **PRAYER FOR RELIEF**

1. A declaration that granting the right-of-way and construction of the pipeline under Lake Oahe is a violation of Intervenor-Plaintiff Vance's rights to free exercise of religion under both the First Amendment to the U.S. Constitution and the Religious Freedom Restoration Act;

2. Permanently enjoin construction of the pipeline at Lake Oahe;

3. Retain jurisdiction over this matter to ensure that the Corps complies with the law;

4. Award Intervenor-Plaintiff Vance its reasonable fees, costs, expenses, and disbursements, including attorneys' fees, associated with this litigation; and

5. Grant Intervenor-Plaintiff Vance such further and additional relief as the Court may deem just and proper.

Dated: February 11, 2017

STEVE VANCE,  
Intervenor-Plaintiff,

By: /s/ Joseph V. Messineo  
Joseph V. Messineo  
Nicole E. Ducheneaux  
Fredericks Peebles & Morgan LLP  
3610 North 163<sup>rd</sup> Plaza  
Omaha, NE 68116  
Telephone: (402) 333-4053  
Facsimile: (402) 333-4761  
Email: [jmessineo@ndnlaw.com](mailto:jmessineo@ndnlaw.com)  
[nducheneaux@ndnlaw.com](mailto:nducheneaux@ndnlaw.com)

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](mailto:cschulte@ndnlaw.com)

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of February, 2017, a copy of the foregoing was filed electronically with the Clerk of the Court. The electronic filing prompted automatic service of the filing to all counsel of record in this case who have obtained CM/ECF passwords.

/s/ Joseph V. Messineo