

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

STANDING ROCK SIOUX TRIBE;
YANKTON SIOUX TRIBE; ROBERT
FLYING HAWK; OGLALA SIOUX
TRIBE,

Plaintiffs,

and

CHEYENNE RIVER SIOUX TRIBE,

Intervenor Plaintiff,

v.

U.S. ARMY CORPS OF ENGINEERS,

Defendant,

and

DAKOTA ACCESS LLC,

Intervenor Defendant.

Case No. 1:16-cv-01534-JEB

**DAKOTA ACCESS, LLC'S UNOPPOSED MOTION TO INTERVENE
IN SUPPORT OF DEFENDANT**

Dakota Access, LLC seeks leave to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) or permissively pursuant to Rule 24(b)(1)(B), in support of the Defendant in this action in response to claims raised by Plaintiff Oglala Sioux Tribe. Plaintiff and Defendant do not oppose this motion.

Oglala Sioux Tribe has filed a complaint against the U.S. Army Corps of Engineers claiming violations of NEPA, the APA, and the Mineral Leasing Act, along with breaches of treaty and trust rights. The Tribe's claims substantially overlap with those in *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, No. 1:16-cv-1534-JEB (D.D.C.) and in *Yankton Sioux Tribe v.*

U.S. Army Corps of Engineers, No. 1:16-cv-1796-JEB (D.D.C), in which Dakota Access has intervened in support of the same Defendant. The Court has consolidated all three cases. Each complaint, at bottom, involves substantially the same underlying facts, similar legal challenges to the Corps's authorization of construction and operation of the Dakota Access Pipeline, or both.

Intervention of Right. Rule 24 says that “[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless the existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). Each requirement is satisfied here.

1. A motion to intervene is generally timely when it is brought at the early stages of the litigation. *See, e.g., Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (“less than two months after the plaintiffs filed their complaint and before the defendants filed an answer”); *100Reporters LLC v. Dep’t of Justice*, 307 F.R.D. 269, 275 (D.D.C. 2014) (intervention is timely when defendant filed responsive pleading “only days before” the motion to intervene and “no substantive progress has occurred in [the] action”). Here, Plaintiff’s complaint was filed on February 11, 2017, and the action was consolidated into this action on March 16, 2017. The Corps filed its answer on April 28, 2017, and the case has not moved beyond the pleadings. Hence there can be no doubt that Dakota Access’s motion is timely.

2. Dakota Access plainly has “an interest relating to the property or transaction that is the subject of” Oglala Sioux Tribe’s claims. Fed. R. Civ. P. 24(a)(2). “An intervenor’s interest is obvious when he asserts a claim to property that is the subject matter of the suit.” *Foster v. Gueory*, 655 F.2d 1319, 1324 (D.C. Cir. 1981). And so it is here, where Dakota Access is the owner and holder of the federal permits, authorizations, easements, verifications that the Tribe challenges.

3. Disposition of this action will impair Dakota Access's ability to protect its interests. In analyzing this factor, the Court must "loo[k] to the practical consequences of denying intervention." *NRDC v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (citation omitted). Here, Plaintiff seeks to invalidate the federal authorizations, permits, and verifications that allow construction and operation of the pipeline. Plainly, disposition of Plaintiff's claim would impair Dakota Access's ability to protect its interests in the pipeline. *County of San Miguel v. MacDonald*, 244 F.R.D. 36, 47 (D.D.C. 2007) (showing an "imminent threat of lost earnings" in actions challenging agency determination is sufficient to show a threat of impairment).

4. Finally, Dakota Access's "interests are not adequately represented by the existing parties." *Foster*, 655 F.2d at 1325. As a general matter, "governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc.*, 322 F.3d at 736 n.9 (collecting cases); *Dimond v. Dist. Of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986) (noting that the government defendant "would face a potential conflict of interest were it to represent both the general interests of its citizens and the financial interests of" the proposed intervenor). Here, the Corps cannot adequately represent Dakota Access because it will necessarily pursue broader, public interests than Dakota Access's specific, private interest in operating the pipeline. Moreover, in the event of an adverse outcome, Dakota Access could suffer significant economic harm where the Corps would not.

Permissive Intervention. Alternatively, this Court should grant permissive intervention under Rule 24(b)(1)(B), which applies when the movant has "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Rule 24 is construed "liberally" in favor of intervention. *In re Vitamins Antitrust Litigation*, No. 99-197, MDL 1285, 2001 WL 34088808, at *3 (D.D.C. Mar. 19, 2001). Here, Dakota Access seeks to

assert defenses to claims that necessarily involve overlapping questions of fact and law. In addition, this motion is timely as it would not “unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Dakota Access is therefore entitled to permissive intervention.

For these reasons, Dakota Access respectfully requests that this Court grant its unopposed motion to intervene.

Dated: May 17, 2017

Kimberly H. Caine
William J. Leone
Robert D. Comer
NORTON ROSE FULBRIGHT US LLP
799 9th St. NW, Suite 1000
Washington, D.C. 20001-4501
(202) 662-0200

Respectfully submitted,

/s/ William S. Scherman
William S. Scherman
David Debold
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2017, I electronically filed the foregoing document using the CM/ECF system. Service was accomplished by the CM/ECF system.

/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 Dakota Access, LLC