

**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  
(and Consolidated Case Nos.  
16-cv-1796 and 17-cv-267)**

**CHEYENNE RIVER SIOUX TRIBE’S RESPONSE TO UNITED STATES ARMY  
CORPS OF ENGINEERS’ FEBRUARY 1, 2018 STATUS REPORT REGARDING  
REMAND AND REQUEST FOR MEANINGFUL CONSULTATION ON REMAND**

Plaintiff Cheyenne River Sioux Tribe (“Tribe”) hereby submits this response to the United States Army Corps of Engineers’ (“Corps”) February 1, 2018 Status Report Regarding Remand.

The Corps’ Response claims that it is actively “reviewing multiple letters from Plaintiff Tribes. . . [that] generally concern the scope, timing, and format of the Corps’ prior information requests instead of responding with the actual information requested by the Corps.” ECF 326 at 2. The Corps further states that it has “followed-up with the Tribes about [its] request for

information that will inform the remand analysis,” noting further that it has not yet received “the substantive information requested from the Tribes. . .” ECF 326 at 2.

This narrative obscures the fact that the Corps has been almost completely non-responsive to requests from the Cheyenne River Sioux Tribe to engage in active discussion about the ongoing remand process or any of the Tribe’s substantive requests. Further, the February 1, 2018 Status Report Regarding Remand confirms the fact that the Corps is actively engaging with *Defendant Dakota Access, LLC* (“Dakota Access”) to prepare a remand document, including allowing Dakota Access’s schedule to dictate the proposed remand timeline. This disparity puts the Tribe at a distinct disadvantage.

On July 7, 2017, the Tribe transmitted correspondence to Colonel John Henderson and Acting Assistant Secretary for Civil Works, Douglas Lamont, in which the Tribe (1) resubmitted to the Corps numerous technical materials related to the substance of the remand, (2) requested to participate in the remand process as a Cooperating Agency pursuant to 40 C.F.R. § 1501.6, and (3) specifically requested government-to-government consultation on the remand process and substance. *See* Ducheneaux Declaration (“Ducheneaux Decl.”) **Exhibit A**.

On August 15, 2017, having received no response, the Tribe elevated its request to Ryan McCarthy, the Acting United States Secretary of the Army, and Douglas Lamont with a carbon copy to Colonel Hudson, forwarding the prior correspondence and reiterating the prior requests, including requests for pre-decisional consultation. *See* Ducheneaux Decl., **Exhibit B**. On September 8, 2017, still having received no response, the Tribe sent a third letter to the Corps forwarding prior correspondence and requesting a response from the Corps. *See* Ducheneaux Decl., **Exhibit C**.

On **September 11, 2017**, the Tribe finally received a response that acknowledged the Tribe's request for consultation, but did not substantially address consultation. *See* Ducheneaux Decl., **Exhibit D**. On **September 25, 2017**, the Tribe received the Corps' correspondence requesting remand information to be submitted within 30 days of that date. *See* Ducheneaux Decl., **Exhibit E**.

On **October 6, 2017**, the Corps advised this Court that it had consulted with the Defendant Dakota Access concerning *Dakota Access's* substantive submissions for the remand and that the Corps' remand decision would be delayed in light of Dakota Access's timeline for submission of additional spill modeling. ECF 281.

On **October 24, 2017**, the Tribe responded to the September 25, 2017 letter advising that 30 days was too short for the Tribe to meaningfully respond to its questions and further requested adjustment of the proposed timeline to allow the Tribe to receive and evaluate Dakota Access's new spill modeling data, as that data is critical to the Tribe's ability to assess impacts on its Treaty and other rights. *See* Ducheneaux Decl., **Exhibit F**. On **November 27, 2017**, the Corps responded to the Tribe's October 24, 2017 correspondence. However, instead of answering the request from the Tribe concerning Cooperating Agency Status, government-to-government consultation, or access to spill modeling data, the Corps simply advised that it would require the Tribe's submissions by December 20, 2017. *See* Ducheneaux Decl. **Exhibit G**.

The Tribe again requested substantive responses to its prior inquiries, including the Corps' position on providing spill modeling data to the Tribe in correspondence dated **December 18, 2017**. *See* Ducheneaux Decl., **Exhibit H**. Finally, on **January 30, 2018**, having never received a response from the Corps on the many issues that are relevant to a meaningful remand process, the Tribe sent its latest correspondence to the Corps addressing the agency's failure to respond or even

acknowledge these substantive questions and concerns. As set forth in that correspondence “[i]n this process, which is so critical to the Tribe’s interest and in light of the government-to-government relationship, [the Corps’] failure to respond is not only unprofessional, but disrespectful to the special relationship between [the] two governments and the integrity of the remand process.” The correspondence has requested again a prompt, substantive response to all of the Tribe’s pending requests and inquiries. *See* Ducheneaux Decl., **Exhibit I**.

In view of the almost completely one-sided remand relationship between the Tribe and the Corps, characterized by the Corps’ failure to engage in meaningful discussion or dialog with the Tribe on critical issues, the Tribe is concerned that the most recent Status Report notes that the Corps has had two in-person meetings with Defendant Dakota Access. The Tribe is likewise concerned that this Status Report suggests that the Tribe has been non-responsive concerning the remand process. The Tribe submits that lack of meaningful communication between some or all of the parties is unlikely to produce an adequate remand result.

The Tribe will produce to the Corps additional information and responses to the Corps’ request for information no later than **March 2, 2018**, notwithstanding the Corps’ failure to engage meaningfully with the Tribe. However, these materials will be incomplete as the Tribe has not been permitted to access the spill modeling data produced by Dakota Access. The Tribe reserves its right to submit supplemental materials.

In light of the foregoing, the Tribe requests that the Court require the Corps to engage in meaningful consultation by responding to the Tribe’s numerous substantive requests for information. Thus far, all Tribal efforts to engage in meaningful consultation with the Corps on remand have been ignored. As a result, the Tribe has been excluded from the remand process and has been denied the opportunity to provide meaningful information relevant to the remand.

Dated: February 7, 2018

CHEYENNE RIVER SIOUX TRIBE,  
Intervenor-Plaintiff,

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