

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

# **EXHIBIT 1**

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STANDING ROCK SIOUX TRIBE,

Plaintiff,

and

CHEYENNE RIVER SIOUX TRIBE,

Plaintiff-Intervenor,

v.

U.S. ARMY CORPS OF ENGINEERS,

Defendant-Cross  
Defendant,

and

DAKOTA ACCESS, LLC,

Defendant-Intervenor-  
Cross Claimant.

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

**DECLARATION OF WILLIAM R. PERRY**

1. I am an attorney with Sonosky, Chambers, Sachse, Endreson & Perry, LLP.
2. I have served as outside counsel for the Standing Rock Sioux Tribe for over 35 years.

3. I have reviewed the declaration dated March 6, 2017, from Dakota Access's attorney, Robert Comer, submitted in this case (Docket Entry 159-1 at Ex. Z).

4. On or about March 1, 2016, Mr. Comer spoke with me and Dean DePountis, the Tribe's in-house counsel, by phone. Mr. Comer said that he wanted to explore the possibility of improving relations between Dakota Access and the Tribe by having the parties meet.

5. At that time, the Tribe was concerned about the NEPA review for the proposed pipeline because the Draft Environmental Assessment which had been released in December 2015 did not address the potential impact of the pipeline, including oil spills, on the Tribe and in fact even failed to identify the Standing Rock Sioux Reservation on any of the maps in the Draft EA. The Tribe had raised these concerns in comments on the Draft EA submitted to the Corps on January 8, 2016. As to oil spills or leaks, the Draft EA recited that Dakota Access would address any pipeline leaks pursuant to a Facility Response Plan which Dakota Access was then developing. Because the Tribe had been omitted from the Draft EA, the Tribe was concerned that the Tribe was also omitted from any response plan. It was in this context that I suggested to Mr. Comer that, if Dakota Access wanted to improve communications, it might be helpful if it would provide something to indicate its good faith—and along these lines I mentioned that providing a copy of the Facility Response Plan to the Tribe might be useful.

6. Shortly after our discussion, Mr. Comer provided to me a redacted version of a draft Facility Response Plan. The redactions prevented the Tribe from determining whether or how the Response Plan would address pipeline leaks affecting the Standing Rock Reservation.

7. In an email dated March 4 to Mr. Comer, I stated that "if Dakota Access is seeking to improve transparency, providing the unredacted version [of the Facility Response Plan] would be important." My email further expressed concerns regarding the redacted Facility

Response Plan, including that “while the Tribe has the most at stake if there is an oil spill at the Oahe crossing, the plan does not even mention the Tribe.”

8. On March 11, 2016, Mr. Comer provided a proposed confidentiality agreement under which Dakota Access would release an unredacted version of the Facility Response Plan. The proposed confidentiality agreement was highly restrictive, and would prevent the Tribe from communicating with the relevant federal agencies about spill response activities within the Reservation. Moreover, in my view, the proposed confidentiality agreement included terms that went well beyond protecting the records as confidential, but also would require the Tribe to waive its sovereign immunity and consent to be subject to suits for damages including attorney’s fees in the courts in Texas.

9. On March 15, I sent Mr. Comer an email expressing certain concerns about the proposed confidentiality agreement, including the issues identified immediately above. In my email and conversations with Mr. Comer, I indicated that the proposal from Dakota Access was too restrictive and the conditions too punitive.

10. Dakota Access refused to compromise on what I felt to be an overly restrictive confidentiality agreement that included terms that were potentially punitive to the Tribe, and the parties did not come to an agreement on the terms of the confidentiality agreement. Mr. Comer never provided me with a copy of the unredacted Facility Response Plan that the Tribe was seeking.

11. The discussions that Mr. Comer and I had about access to records were limited to the Facility Response Plan referenced in the Draft EA. At no time did Mr. Comer suggest that there were other documents—confidential or otherwise—which the company might share with the Tribe to address the Tribe’s concerns about the risk of oil spills.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 9<sup>th</sup> day of March, 2017.

  
\_\_\_\_\_  
William R. Perry