

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

**MOTION FOR LEAVE TO FILE DECLARATION**

Plaintiff Standing Rock Sioux Tribe (“Tribe”) hereby requests leave to file the attached declaration from William Perry, who serves as outside counsel to the Tribe, in support of its opposition to the motion for a protective order (ECF 149). In its reply brief on the protective

order motion, defendant Dakota Access LLC (“DAPL”) erroneously claims that the Tribe “turned down an opportunity” to see the confidential documents that are the subject of this motion. Opp. at 2 (ECF 161). In making that argument, DAPL mischaracterizes a declaration filed earlier this week by one of DAPL’s attorneys in connection with the pending summary judgment motions. *Id.* (citing Comer Decl., Ex Z to ECF 159-1). Because of the way in which DAPL’s reply brief mischaracterizes the facts and recent submission of the Comer declaration, the Tribe seeks an opportunity to correct the record.

As Mr. Perry’s declaration explains, the offer to share confidential documents extended only to a single Facility Response Plan, not to the various Geographic Response Plans or the spill model documents that are the subject of DAPL’s protective order. Perry Decl. ¶ 11. A redacted version of the Facility Response Plan was included as App. L to the Final EA and is not at issue in this motion. AR 71779. DAPL’s assertion that the Tribe was offered the opportunity to review the documents that are the subject of the protective order is not correct.

Moreover, Mr. Perry further explains that the Tribe did not “turn down the opportunity” to review this document, but that DAPL sought to impose unacceptable terms by conditioning access on signing an overly restrictive confidentiality agreement before these documents would be shared. Perry Decl. ¶ 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...”). DAPL’s over-reaching, including its insistence that the Tribe waive sovereign immunity, stood in the way of reaching agreement around the Tribe’s access to the Facility Response Plan.

Undersigned counsel has conferred with other parties to this litigation on this motion. Defendant Army Corps does not oppose the motion. Counsel for DAPL stated that it “will not

be filing a response in opposition.”

Dated: March 10, 2017

Respectfully submitted,

/s/ Jan E. Hasselman

Patti A. Goldman, DCB # 398565  
Jan E. Hasselman, WSBA # 29107  
(Admitted Pro Hac Vice)  
Stephanie Tsosie, WSBA # 49840  
(Admitted Pro Hac Vice)  
Earthjustice  
705 Second Avenue, Suite 203  
Seattle, WA 98104  
Telephone: (206) 343-7340  
pgoldman@earthjustice.org  
jhasselman@earthjustice.org  
stosie@earthjustice.org

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 10, 2017, I electronically filed the foregoing *MOTION FOR LEAVE TO FILE DECLARATION* with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Jan E. Hasselman

Jan E. Hasselman