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

REPLY OF DAKOTA ACCESS, LLC TO STEVE VANCE'S RESPONSE TO THE COURT'S MARCH 13, 2017 MINUTE ORDER

Defendant-Intervenor Dakota Access, LLC ("Dakota Access") respectfully submits this Reply to the Response filed by Steve Vance pursuant to this Court's March 13, 2017 Minute Order, D.E. 177. As explained below, and consistent with the reasons set forth in Dakota Access's opposition filing, D.E. 142, the company continues to oppose Vance's motion to intervene, D.E. 111.

Dakota Access's February 25, 2017 filing gave three reasons why the Court should not permit Vance—the Historic Preservation Officer for Cheyenne River Sioux Tribe—to intervene

in this litigation, either as of right under Federal Rule of Civil Procedure 24(a) or permissively under Rule 24(b). *First*, Vance's motion is untimely, which is fatal to both types of intervention. He extensively participated on behalf of Cheyenne River in the regulatory approval process for the Dakota Access Pipeline ("DAPL"). Under the unique circumstances here, that agency process continued for several months *after* this lawsuit was filed. Vance participated in the lawsuit too—from the very beginning—filing declarations on Cheyenne River's behalf. Yet in all of his many communications with the Corps, and in his participation in this lawsuit, he never mentioned the Black Snack prophecy that forms the basis of his proposed RFRA claim, nor did he ever express a desire, much less a need, to join this litigation for any purpose. *Second*, Vance cannot intervene as of right because intervention is not necessary to protect his interests. *Third*, he cannot intervene permissively because doing so would unnecessarily complicate the litigation. Vance wants to intervene because there is a chance that the Court will deny Cheyenne River's motion to add a RFRA claim. In making that argument Vance concedes that he would be adding complexity to the litigation if he intervenes, because the Court would need to decide a claim that, but for his intervention, would not be part of the case.

On March 13, 2017, this Court entered a minute order directing Vance to file a supplemental pleading "indicating whether [he] still wish[es] to intervene and, if so, why [his] claims are not sufficiently represented by the existing Plaintiffs."

None of the points raised in Vance's new pleading alter Dakota Access's position that Vance cannot intervene as of right or permissively. Indeed, Vance does not even address the arguments that Dakota Access made in its February 25 Opposition.

1. Vance first observes that Dakota Access contests the Tribe's standing to assert RFRA claims, and he believes Dakota Access might do so again in future filings. Thus, he does

not believe Cheyenne River can adequately represent him. D.E. 177 at 1. It may well be true that Vance and Cheyenne River have divergent interests that call for different legal strategies. And while that raises a host of *different* concerns—all stemming from the fact that the same lawyers want to represent clients with divergent interests—Dakota Access has not opposed intervention on the grounds of adequacy. Thus, if anything, Vance's first point gives the Court a new reason to be wary of intervention.

2. Vance then argues that this Court's laches analysis does not necessarily govern any future request by him involving his RFRA claim because Vance is not "a federally recognized tribe," but instead "is a person." D.E. 177 at 2. Of course, Vance does not explain why this distinction matters for purposes of laches, which in no way turns on whether Vance is a person. It remains the case that Vance never mentioned the Black Snake prophecy during the two-year-plus period in which he represented Cheyenne River in communications to the Corps and filed declarations on the Tribe's behalf. *See, e.g.*, D.E. 11-1 (Ex. A); AR 69815 (Ex. B) (August 17, 2015 Letter to Corps); AR 64357 (Ex. C) (May 2, 2016 Letter to Corps); AR 64221 (Ex. D) (May 19, 2016 Letter to Corps). Whether couched as "laches," "untimeliness," "undue delay," or something else, the fact remains that Vance is in the same boat as the Tribe by simply waiting too long to bring these claims.

3. Finally, Vance notes that the D.C. Circuit might rule against Cheyenne River on an issue peculiar to it, such as laches or standing. D.E. 177 at 2–3. But that is merely a variation on the arguments just addressed. Those arguments are no different (and certainly no stronger) at the court of appeals level.

* * *

Vance has presented no excuse for his extreme delay in raising religious objections to DAPL, and he fails to refute the additional flaws that Dakota Access raised in its original opposition to Vance's motion to intervene. This Court should accordingly deny Vance's motion.

Dated: March 27, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2017, I electronically filed the foregoing document using the CM/ECF system. Service was accomplished by the CM/ECF system.

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