

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

PROPOSED ORDER

Plaintiff Standing Rock Sioux Tribe and Intervenor Cheyenne River Sioux Tribe (collectively, the “Tribes”) have requested the imposition of conditions on continued operations of the Dakota Access Pipeline (“DAPL”) during the U.S. Army Corps of Engineers (“Corps”) remand process to correct legal flaws identified by this Court in their environmental analysis. Having reviewed the parties’ pleadings, exhibits, and the entire record of this case, I find that the imposition of these conditions is within this Court’s authority and warranted under the circumstances. Accordingly, I hereby ORDER as follows:

1. Spill Response Planning: Within 10 days of entry of this Order, the Corps will initiate communications to set up an in-person meeting with representatives of the Tribes as well as DAPL to finalize oil spill response plans affecting Tribal resources and lands. At least 15 days prior at that meeting, defendants shall provide the Tribes with all documentation necessary to engage in meaningful spill response planning, including the most current unredacted drafts of applicable facility response plans and geographic response plans, as well as documentation for any spill-related assumptions embodied in those plans, and technical documents related to worst case spill discharges and detection of low-level leaks, spill models, and emergency operations such as valve shutoffs. Any information covered by this Court's protective order (ECF 282-1) will be treated as directed in that order. The Corps and DAPL are directed to work in good faith with the Tribes to provide requested information and address concerns related to spill response, and seek agreement on a final geographic response plan at Lake Oahe to be implemented prior to the conclusion of the remand process. If the parties are unable to reach agreement on a final plan, counsel are directed to submit a status report proposing a schedule for resolving any disputes.

2. Third Party Audit: Within 10 days of entry of this order, the Corps will initiate communications with the Tribes to agree on a process for jointly selecting a third party independent auditor to assess DAPL's compliance with all easement conditions and regulations as well as other integrity threats, as recommended by PHMSA at ESMT 1189-90. The third party auditor must meet at least once with the Tribes' technical advisors so that the Tribes may provide information to the auditors; however, the auditors will be independent and have final say over the contents of the audit. The final audit should be completed as quickly as practicable but no later than April 1, 2018, and be submitted to this Court and made available to the public. If

the parties are unable to agree on an auditor, they shall submit a status report to the Court proposing a schedule for resolution.

3 Public Reporting: Thirty days from entry of this Order, and every thirty days thereafter until the remand process is complete, DAPL shall submit to this Court a report that includes the following:

- a) The results of any [inline inspection] run or direct assessment results performed on the pipeline during the previous year;*
- b) The results of all internal corrosion management programs;*
- c) Any new integrity threats identified during the previous year;*
- d) Any encroachment in the right-of-way;*
- e) Any [high consequence area] changes during the previous year;*
- f) Any reportable incidents that occurred during the previous year;*
- g) Any leaks or ruptures on the pipeline that occurred during the previous year;*
- h) A list of all repairs on the pipeline made during the previous year;*
- i) On-going damage prevention initiatives on the pipeline and an evaluation of their success or failure;*
- j) Any changes in procedures used to assess and monitor the pipeline; and*
- k) Any company mergers, acquisitions, transfers of assets, or other events affecting the management of the pipeline segment.*

Any material subject to the Court's protective order can be filed under seal.

SO ORDERED.

Dated: _____

JAMES E. BOASBERG
United States District Judge