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

OPPOSITION OF DAKOTA ACCESS, LLC TO STANDING ROCK SIOUX TRIBE'S AND CHEYENNE RIVER SIOUX TRIBE'S MOTIONS TO AMEND COMPLAINTS

Kimberley Caine
William J. Leone
Robert D. Comer
NORTON ROSE FULBRIGHT US LLP
799 9th St. NW, Suite 1000
Washington, D.C. 20001-4501
(202) 662-0200

William S. Scherman
David Debold
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
wscherman@gibsondunn.com

Counsel for Dakota Access, LLC

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Rules

Regulations

INTRODUCTION

Plaintiffs, Standing Rock Sioux Tribe and Cheyenne River Sioux Tribe, each seek leave to amend their complaints by adding new allegations and claims. Some of what they seek to add is not objectionable: *i.e.*, updates to their complaints with facts (and, in some instances, resulting claims) that could not have been alleged earlier because the underlying events had not yet occurred. Dakota Access *does* object, however, to the Tribes' requests to amend their complaints to add allegations and claims they could have made far earlier in these proceedings. To allow these tardy amendments would only add delay and complications to a case that has already had more than its fair share of each.

Specifically, Dakota Access does not object to the addition of the allegations and claims based on two events that have occurred after each Tribe filed its current operative complaint: the Corps's decision to withdraw its notice of intent to prepare an environmental impact statement ("EIS") and the Corps's decision to issue the easement. *See* D.E. 106-1 (Standing Rock Proposed Amended Complaint) ¶¶ 4, 14-24, 33-36, 90, 147-158, 273-285; D.E. 97-1 (Cheyenne River Proposed Second Amended Complaint) ¶¶ 3, 7-23, 31-36, 125, 169-176, 186-190, 199, 271-277, 308-310, 314, 321-347, 359-366.

On the other hand, Dakota Access objects to adding allegations and claims that could have (and should have) been brought earlier in this proceeding, such as: (1) the Tribes' allegations that the pipeline project could interfere with the religious practices of some of their members and that this alleged interference gives rise to claims under the Religious Freedom Restoration Act ("RFRA") and the Free Exercise Clause of the First Amendment, *see* D.E. 106-1 (Standing Rock Proposed Amended Complaint) ¶¶ 5, 55-60, 146, 159-167, 286-297; D.E. 97-1 (Cheyenne River Proposed Second Amended Complaint) ¶¶ 1, 25, 30, 75-79, 87, 119, 177-183, 348-358; (2) Standing Rock's claim that the Corps acted arbitrarily and capriciously in issuing its Finding of

No Significant Impact ("FONSI"), *see* D.E. 106-1 (Standing Rock Proposed Amended Complaint) ¶¶ 219-223; and (3) Standing Rock's claim that the Corps's Environmental Assessment ("EA") environmental-justice analysis was arbitrary, capricious and contrary to law, *see* D.E. 106-1 (Standing Rock Proposed Amended Complaint) ¶¶ 239-246 (collectively, the "Untimely Claims").

The Court should reject the Tribes' requests for leave to add these Untimely Claims to their complaints. Allowing amendment would reward the Tribes for their delay in presenting allegations and claims that could have been raised earlier. Standing Rock and Cheyenne River have failed to offer any excuse (much less one that is reasonable) for their delay in filing their RFRA claims. Standing Rock has similarly failed to offer any reason why it could not have presented earlier its claims challenging the reasonableness of the Corps's FONSI and the environmental-justice conclusions in the EA. The inequity that would result from rewarding the Tribes for their unjustified delay would be especially acute given the prejudice that delay has already imposed on Dakota Access. The amendments would also be futile. This Court should therefore deny the Tribes' motions with respect to the Untimely Claims.

BACKGROUND

Standing Rock filed this lawsuit eight months ago, and Cheyenne River intervened soon thereafter. Well before the lawsuit was filed, both Tribes participated in—and turned down even more opportunities to participate in—a lengthy administrative process that began in 2014. And both participated in an unprecedented continuation of the administrative process that they themselves engineered after litigation was well underway. Both Tribes have known every fact giving rise to their RFRA and Free Exercise Clause claims for more than two years and could have included such claims in their original complaints. Similarly, Standing Rock could have easily included any claims related to the Corps's FONSI and EA in its original complaint.

The administrative process here was lengthy and robust. Dakota Access took the initial steps for obtaining regulatory approval for the Dakota Access Pipeline in 2014. Soon thereafter, Standing Rock and Cheyenne River were invited to participate in that process. When each Tribe elected to respond, it made a number of requests and objections. For example, both argued that an EIS was "require[d]," January 8, 2016 Standing Rock Letter, AR 66766 (Ex. A), and should "be completed" to address the risk of an oil leak or spill, May 2, 2016 Cheyenne River Letter, AR 68221 (Ex. B). Standing Rock also went to great lengths articulating ways in which it believed the Corps's environmental-justice analysis "fail[ed] to properly apply the Environmental Justice Doctrine." See AR 66778 (Ex. A).

On July 25, 2016, the Corps issued its final EA along with a finding that the pipeline would not significantly impact the environment. *See* AR 71225-26 (Ex. C). The Corps noted, in response to the Tribes' concerns, that there was no need for an EIS given the lack of significant impact on the environment. AR 71300 (Ex. C). The Corps also concluded, "[b]ased on [its] analysis, there is no concern regarding environmental justice to minority populations." AR 71308-309 (Ex. C). Two days later, Standing Rock sued the Corps for declaratory and injunctive relief. D.E. 1.

Shortly thereafter, on August 10, 2016, Cheyenne River intervened and filed a complaint of its own to "protect its interests under" the National Historic Preservation Act ("NHPA"), the Clean Water Act, the Rivers and Harbors Act, and the National Environmental Policy Act ("NEPA"). D.E. 11, at 10.

The following month, on September 8, 2016, Cheyenne River filed an amended complaint again asserting claims under each of those statutes. D.E. 37 ¶¶ 154-254. This Court initially struck the amended complaint, Sept. 12, 2016 Minute Order, but then granted leave on October 19, 2016 after reconsideration, D.E. 48.

On September 9, 2016—one day after Cheyenne River filed its first amended complaint—the Departments of Justice, the Army, and the Interior jointly announced that "the Army will not authorize constructing the Dakota Access pipeline … until it can determine whether it will need to reconsider any of its previous decisions … under [NEPA] or other federal laws." D.E. 42-1 (Ex. D), at 1.

On November 14, the Army notified Dakota Access by letter that it had "completed [its] review." D.E. 56-1 (Ex. E), at 1. After thorough consideration, the Army "concluded that its previous decisions comported with legal requirements." D.E. 65-1 (Ex. F) ¶ 8. Nonetheless, rather than confirm that Dakota Access therefore had a right-of-way to proceed beneath federal land at Lake Oahe, the Corps invited "additional discussion" with the Tribes concerning, among other things, "[p]otential conditions in an easement for the pipeline crossing" that would reduce environmental risks. D.E. 56-1 (Ex. E), at 2.

On December 4, 2016, the Assistant Secretary of the Army for Civil Works issued a memorandum stating that she had made a "policy decision" to have the Corps engage in "additional analysis" of alternative locations for the pipeline to cross the Missouri River, expressing her "judgment" that this would be "best accomplished … by preparing an Environmental Impact Statement." D.E. 65-1 (Ex. F) ¶¶ 12, 15. The Assistant Secretary did not direct the Corps to initiate an EIS, however. *Id.* ¶ 13. In fact, the Corps had already concluded that an EIS was not warranted for this project. AR 71179 (Ex. G) (Finding of No Significant Impact, July 25, 2016). And the December 4 memorandum cited no new facts to alter that conclusion. To the contrary, the memorandum maintained the Corps's prior position that "the Corps' prior reviews and actions"—which includes the decision that an EIS was unnecessary—"comported with legal requirements." D.E. 65-1 (Ex. F) ¶ 15.

Although the Corps and the Army consistently maintained that all decisions complied with all applicable laws, more than a month after the December 4 announcement—and just two days before the new Administration took office—the Army published a notice of intent to prepare an EIS. *See* 82 Fed. Reg. 5,543 (Jan. 18, 2017).

On January 24, 2017, the President directed the Secretary of the Army to instruct the new Assistant Secretary of the Army for Civil Works and the Corps to "take all actions necessary and appropriate" to "review and approve in an expedited manner, to the extent permitted by law and as warranted, and with such conditions as are necessary or appropriate, requests for approval to construct and operate the" Dakota Access Pipeline, "including easements or rights-of-way to cross Federal areas." D.E. 89-1 (Ex. H) § 2.

This Court held a status conference on February 6, 2017 in light of the Presidential Memorandum. At that conference, Standing Rock and Cheyenne River both stated that if the easement issued without an EIS, they would challenge that action as unlawful "under tribal treaties, under NEPA, [and] under the Clean Water Act." D.E. 104 (Ex. I), at 8-9. Neither Tribe suggested that they might raise wholly new claims related to RFRA or religion more generally. *Id.* This Court thus summarized the "two central" claims: (1) the original environmental review process "violated NEPA"; and (2) the government could not "grant the easement" after deciding "to go forward with an EIS." *Id.* at 15.

The next day, February 7, 2017, the Army informed the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources that it intended to grant a right-of-way to Dakota Access. D.E. 95-1 (Ex. J). The Army's letters to Congress explained that because the Corps had "already prepared" an Environmental Assessment there was "no cause for completing any additional environmental analysis." D.E. 95-2 (Ex. K), at 2. The Army therefore

withdrew the January 18, 2017 notice of intent to prepare an EIS. D.E. 95-3 (Ex. L). The Corps and Dakota Access executed the easement on February 8, 2017, and construction resumed later that day.

On February 9, 2017, Cheyenne River filed a motion to amend its first amended complaint to, among other things, belatedly raise claims under RFRA. D.E. 97. Cheyenne River's sole excuse for waiting until February 9, 2017 to present this claim was that it "was informed" that the recently terminated EIS process "would be the vehicle by which [it] could express [its] concerns" about religious free exercise. D.E. 97, at 3.

The following day Standing Rock filed a motion to amend its complaint too. D.E. 106. Standing Rock explained that amendment of its complaint is necessary because "there have been numerous developments that have changed the underlying circumstances, given rise to new legal claims, and spurred the Tribe to present claims challenging violations of its rights as a Tribe." *Id.* at 2. Standing Rock's proposed amended complaint presents claims challenging the lawfulness of the easement, adds breach of trust responsibility claims, includes new arbitrary and capricious challenges to the Corps's FONSI and EA environmental-justice analysis, and appends claims under RFRA and the Free Exercise Clause. *Id.* at 2-3; D.E. 106-1.

ARGUMENT

Although this Court may grant leave to amend a complaint "when justice so requires," Fed. R. Civ. P. 15(a)(2), it undermines the interests of justice to give leave when, among other things, the movant engages in "undue delay," when the amendment would be "futil[e]," and when the amendment threatens "undue prejudice to the opposing party." *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Court should deny the Tribes' requests to add RFRA and Free Exercise Clause claims to their complaints. It should also reject Standing Rock's request to add new arbitrary-and-

capricious challenges to the Corps's July 25, 2016 FONSI and EA environmental-justice analysis. These claims would prejudice Dakota Access. They are also untimely and futile.

I. The Addition of Cheyenne River's and Standing Rock's Untimely Claims Would Unduly Prejudice Dakota Access.

Of the factors courts weigh in deciding whether justice requires permitting an amendment to a complaint, "courts generally consider the 'most important factor' to be 'the possibility of prejudice to the opposing party.'" *Butler v. White*, 67 F. Supp. 3d 59, 67 (D.D.C. 2014) (quoting *Djourabchi v. Self*, 240 F.R.D. 5, 13 (D.D.C. 2006)). Here, the Untimely Claims would prejudice Dakota Access. Dakota Access has undeniably suffered economic harm as a result of delay so far, and additional delay, as well as the costs of researching and litigating newly raised legal issues, will only add to that sum. In addition, any lawsuit challenging a $4 billion project inevitably casts uncertainty over that project, to the detriment of its investors and others, making it prejudicial to prolong the proceeding even if the project goes forward in the interim.

As explained below, the Tribes have both failed to justify their delay in bringing these claims and have failed to show that these claims are anything other than futile. The Tribes have not come close to demonstrating that whatever miniscule chance of success their claims have outweighs Dakota Access's interests in finality. It is the very definition of prejudice to subject Dakota Access to the risk of further delay and potential "rerouting" of the pipeline—in which Dakota Access has invested billions of dollars—so that the Tribes can add new claims they could have brought far earlier.

II. The Tribes' Religious-Liberty Claims Are Untimely And Futile.

The Tribes' allegations concerning the religious practices of some of their members and their accompanying claims under RFRA and the Free Exercise Clause could—and should—have

been raised far earlier in this litigation, to say nothing of raising these objections during the multiyear administrative process that dates back to 2014.

Any concerns about religious free-exercise could have been identified—and raised with the Corps—during the Corps's Tribal Consultation process, in which both Tribes were allowed to participate. Starting in 2014, the Corps engaged in extensive consultations with various tribes on matters of historic, cultural, and religious importance, see D.E. 39, at 48, and specifically requested comments from tribal authorities, including Standing Rock and Cheyenne River, on its draft EA. *See, e.g.*, D.E. 39, at 26; AR 69187 (Ex. M) (letter inviting Standing Rock to consultation meeting in Sioux Falls, South Dakota); AR 64300 (Ex. N) (letter to Cheyenne River requesting meeting with Tribe); AR 69755 (Ex. O) (letter inviting Standing Rock to participate in consultation process); AR 66383 (Ex. P) (letter responding to Standing Rock's comments and extending invitation to additional consultation meeting); AR 64062 (Ex. Q) (letter replying to Cheyenne River's comments and inviting further questions); AR 64120 (Ex. R) (letters responding to Cheyenne River's comments); AR 64075 (Ex. S) (letter confirming receipt of Standing Rock's comments and providing question-and-answer summary); AR 66820 (Ex. T) (letter advising Cheyenne River of consultation meeting in Sioux Falls, South Dakota); AR 86333 (Ex. U) (email inviting Cheyenne River to participate in tribal monitoring during construction).

Despite these many opportunities, neither Standing Rock nor Cheyenne River ever asserted that the government's action or the route of the pipeline might substantially burden any person's religious exercise as forbidden by RFRA or the First Amendment. Nor did they allege that the pipeline's *operation*, in and of itself—*i.e.*, the mere flow of oil absent a spill or leak—would impose any burden on anyone's exercise of religion. The only comments the Tribes made regarding religious concerns involved (1) potential harm to cultural or religious artifacts that might

be disturbed by construction due to being in the path of the pipeline; and (2) possible harm to sacred waters from *a leak or spill of oil*. AR 67924 (Ex. V); AR 68220 (Ex. B); AR 69815 (Ex. W); AR 64139 (Ex. X). Not once did they say that any harm might result from the mere presence of oil in a pipeline a hundred feet below the waters of Lake Oahe. D.E. 158 at 13 ("For more than two years . . . Cheyenne River remained silent as to the Black Snake prophecy and its concerns about the presence of oil in the pipeline under Lake Oahe absent any issue of rupture, as well as about the possible applicability of RFRA.").

The Tribes were fully aware of the scope of the pipeline project and had every opportunity to voice religious concerns. Yet when Standing Rock's and Cheyenne River's complaints alleged that the Corps failed to consider the pipeline's supposed effects on "sites of great historic, religious, and cultural significance," D.E. 1 ¶ 1; D.E. 37 ¶ 1, the Tribes made no reference to any Black Snake prophecy or any burden on the exercise of religion from the mere presence of oil in a pipeline beneath Lake Oahe. Not one mention.

Standing Rock offers no excuse for failing to raise its RFRA and Free Exercise Clause claims earlier. Its motion to amend its complaint simply states that the issuance of the easement "authorized activities under Lake Oahe that will substantially burden the Tribe's free exercise of religious rituals[.]" D.E. 106, at 2. Standing Rock does not attempt to explain why, if that were the case, the Corps's earlier authorizations and permissions did not also give rise to RFRA and Free Exercise Clause claims, or at least warrant raising these claims at a time when something—anything—could have been done to address them. Standing Rock simply does not and cannot explain why it also failed to raise these concerns in its comments to the Corps.

Cheyenne River, for its part, has two invalid excuses. First, it says that it did "not seek amendment sooner" because it anticipated raising its RFRA concerns in the supplemental

environmental review process that the Corps terminated on February 7, 2017. D.E. 97, at 3. But that excuse makes no sense. The supplemental process was not announced until January 18, 2017, and the Army did not even preview it until December 4, 2016. Even the government's September 9 announcement cannot give Cheyenne River cover here, because both its original and first amended complaint pre-dated it. Indeed, in July 2016, all parties understood—and rightly so—that the administrative decisions they now challenge (the FONSI and EA) were the culmination and completion of the environmental and NHPA review process for the Lake Oahe crossing. It is nonsensical that anyone would think it was too soon to raise religious-exercise concerns on August 10, when the Tribe filed its complaint, or on September 8, when it amended the complaint.

This excuse also fails to explain why the Tribe would fail to raise these concerns during the administrative process that it had *already* participated in, culminating in the July 25, 2016 FONSI. The Tribe had every opportunity to tell the Corps then that the mere presence of oil in the pipeline would make it impossible for its members to exercise their religion; instead, every reference Cheyenne River made to religious issues was linked in some way to the potential of an *oil spill into the water* or the potential desecration of sacred sites in the pipeline's right-of-way.

Cheyenne River's second excuse is both unacceptable and inconsistent with the one just discussed (*i.e.*, that the Tribe held back on its religious-exercise claim because it thought it had more time to speak up). In this second excuse, the Tribe says the Court should instead find that the Tribe *did* try to raise the Black Snake prophecy earlier but somehow failed to express the burden on religious exercise using words the Corps would understand. According to Cheyenne River, "[t]he Tribal members who participated in the administrative process were laypersons and could not have been expected to speak in the necessary legalese required to give notice of a specific RFRA claim." CRST Reply Brief on Motion for Emergency Injunction D.C. Cir. No. 17-5043,

Doc # 1666603 (Mar. 17, 2017) at 2. Apart from the obvious problem that lawyers—not laypersons—filed the original and amended complaints, no "legalese" or "magic words" (*id.*) were needed for any member of the Tribe to assert in a timely fashion that the mere flow of oil through this pipeline would fulfill a Black Snake prophecy, thus allegedly making it impossible to use the waters of Lake Oahe in religious ceremonies.

Steven Vance, the Tribe's Historic Preservation Officer, had no trouble finding the words to articulate such a concern in January 2017 when he signed a declaration in support of a temporary restraining order and preliminary injunction. D.E. 98-1 (Ex. Y) ¶¶ 5-20. And for years now multiple other tribes and their members have had no difficulty invoking the Black Snake prophecy to oppose *other* pipelines and all manner of infrastructure projects in several locations.[1] Thus, when this Court and the D.C. Circuit reasoned, in the context of laches, that Tribe members should have uttered those words much earlier in the pipeline approval process, they did not "display[] institutional bias against Native religious adherents," or hold Tribe members to a standard that "a mainstream American Christian" need not meet. CRST D.C. Circuit Reply Brief at 3. Both Tribes' RFRA and First Amendment claims are inexcusably untimely.

In addition to being untimely, Standing Rock's and Cheyenne River's religious-liberty claims are, as this Court has already determined, futile. In ruling on Cheyenne River's request for

[1] Even before this project was announced, tribes have been quick to proclaim the fulfillment of the Black Snake prophecy in response to other infrastructure projects—not just pipelines, and not just at particular water crossings. APTN News, "Keystone XL 'Black Snake' Pipeline to Face 'Epic' Opposition from Native American Alliance," http://aptnnews.ca/2014/01/31/keystone-xl-black-snake-pipeline-face-epic-opposition-native-american-alliance/ (Jan. 31, 2014) (noting that Black Snake prophecies also "have been linked to construction of highways and railways"); New Brunswick Media, "The Energy East Pipeline and the Black Snake Prophecy," http://nbmediacoop.org/2014/11/14/the-energy-east-pipeline-and-the-black-snake-prophecy/ (Nov. 14, 2014) (eastern Canada pipeline); The Circle News, "Black Snake-Enbridge Returns, Tribes Take Action," http://thecirclenews.org/index.php?Itemid=1&id=1433&option=com_content&task=view (Feb. 8, 2017) (Minnesota pipeline).

a preliminary injunction pursuant to RFRA, this Court determined that Cheyenne River "failed to demonstrate a likelihood of success on the merits of its RFRA claim," D.E. 158 at 15, because Cheyenne River failed to show that the Corps's issuance of the easement effected a "substantial burden" on religious exercise, *id.* at 21. No substantial burden exists because the issuance of the easement does not " put 'substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" *Id.* (quoting *Kaemmerling v. Lappin*, 553 F.3d 669, 678 (D.C. Cir. 2008)). This Court concluded that the Supreme Court's decision in *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988) forecloses the Tribes' argument that a substantial burden exists because the purported effect of the easement is to prevent some individuals from performing certain religious sacraments. D.E. 158 at 22. Cheyenne River's attempts to distinguish and cast doubt on *Lyng* is unpersuasive for reasons this Court, Dakota Access, and the Corps have already explained. *Id.* 24-37. *See* D.E. 124 (Dakota Access opposition to Cheyenne River motion for preliminary injunction), at 17-24. *See also* Order Denying Injunction Pending Appeal, D.C. Circuit No. 17-5043 (March 18, 2017).

III. Standing Rock's Challenges To The FONSI Are Untimely And Futile.

In its motion, Standing Rock does not even attempt to apply the relevant factors for amendment to its other proposed new claims, which challenge the Corps's FONSI as arbitrary and capricious and challenge the Corps's environmental-justice analysis in the EA. *See* D.E. 106. *Compare* D.E. 1 ¶¶ 179-193 *with* D.E. 106-1 ¶¶ 219-223. That failure is reason enough to deny leave to add these new claims. In any event, even if Standing Rock tried it could not refute that these new challenges to the FONSI and EA, like the Tribes' religious-liberty claims, are untimely and futile.

These claims are unduly dilatory because Standing Rock could have raised them in its original complaint, which it filed eight months ago—and in which it raised claims challenging the

July 25 FONSI and EA in several other respects. D.E. 1. The Tribe offers no explanation why it raised those challenges, yet left out the claims that it seeks to add now. The delay is particularly inexcusable because the Tribe *did* make similar challenges before July 25, 2016, during the Corps's approval and consultation process. *See* AR 66778 (Ex. A) (devoting multiple pages to identifying the ways in which the Corps's EA environmental-justice analysis purportedly "fail[ed] to properly apply the Environmental Justice Doctrine"). The Corps's delayed issuance of *the easement* is no excuse. Standing Rock's belated claims challenge the reasonableness of issuing the FONSI and the accompanying EA environmental-justice analysis, not the easement. Indeed, Standing Rock has failed to identify any event that has transpired since it filed its original complaint that is relevant to these particular claims. Its delay in raising them is therefore entirely unjustified.

These claims are also futile for the reasons explained in Dakota Access's response to Standing Rock's motion for summary judgment: The Corps's FONSI carefully considered each factor identified by the Council on Environmental Quality as relevant in determining whether a proposed action will have a significant impact on the environment. D.E. 159, at 16-25. Moreover, environmental-justice analyses are not reviewable and, the Corps faithfully applied the Council on Environmental Quality's guidance in conducting its environmental-justice analysis in any case. D.E. 159, at 28-30.

CONCLUSION

The Court should deny Standing Rock's and Cheyenne River's motions to amend their complaints to the extent their proposed amendments add allegations and claims related to RFRA and the Free Exercise Clause. It should also deny Standing Rock's motion to add new allegations and new claims challenging the Corps's FONSI and the EA's environmental-justice analysis.

Dated: March 27, 2017

Respectfully submitted,

/s/ William S. Scherman

William S. Scherman
David Debold
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
wscherman@gibsondunn.com

Kimberley Caine
William J. Leone
Robert D. Comer
NORTON ROSE FULBRIGHT US LLP
799 9th St. NW, Suite 1000
Washington, D.C. 20001-4501
(202) 662-0200

Counsel for Dakota Access, LLC

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.

/s/ William S. Scherman
William S. Scherman
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
wscherman@gibsondunn.com

Counsel for Dakota Access, LLC