

NO. 16-5259

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

STANDING ROCK SIOUX TRIBE,  
*Plaintiff-Appellant,*  
and  
CHEYENNE RIVER SIOUX TRIBE,  
*Intervenor for Plaintiff-Appellant*

v.

U.S. ARMY CORPS OF ENGINEERS,  
*Defendant-Appellee,*  
and  
DAKOTA ACCESS, LLC,  
*Intervenor for Defendant-Appellee.*

---

**DECLARATION OF JOEY MAHMOUD IN SUPPORT OF  
MOTION BY DAKOTA ACCESS, LLC TO DISMISS APPEAL AS MOOT OR FOR  
SUMMARY AFFIRMANCE IN THE ALTERNATIVE**

1. My name is Joey Mahmoud. I am over 21 years of age, of sound mind, and duly qualified to make this declaration. I make this declaration based upon my personal knowledge, including without limitation (1) my personal involvement with the business dealings of Dakota Access, LLC (“Dakota Access”) and the Dakota Access Pipeline (“DAPL”); (ii) my personal involvement in the application, authorization, verification, other permitting procedures, and construction of DAPL; and (iii) my position as Vice President of Dakota Access and Executive Vice President of Engineering & Construction of Energy Transfer Partners, L.P., a beneficial owner of Dakota Access.

2. I have reviewed Dakota Access's Motion to Dismiss Appeal as Moot or for Summary Affirmance in the Alternative, and I attest to the veracity of the facts set forth by Dakota Access in support of this Motion.
3. As of November 20, 2016, for the entire length of the pipeline route, Dakota Access has completed 100% of the following: clearing, grading and trenching of land, and stringing of the pipe. In addition, approximately 99.3% of all pipe has been placed in the ditch and backfilled, and less than 1 mile across the entire pipeline remains to be installed. The primary construction activity remaining includes horizontal directional drilling ("HDD") more than 90 feet below the bed of Lake Oahe in North Dakota and completing a few remaining work items in Iowa and Illinois. At Lake Oahe, the drill equipment will create a tunnel deep beneath the shores of the lake and the bed of the lake itself. This method of drilling extends to depths too great for sacred or cultural sites to exist because those depths predate human occupation.
4. Dakota Access has sought to address tribal and state historic preservation concerns in the planning stages as well as during construction. For example, in the planning stages, Dakota Access modified the pipeline route 140 times in North Dakota alone in response to cultural or tribal concerns. In addition, Dakota Access implemented two Unanticipated Discovery Plans (or UDPs). One UDP was developed in coordination with the U.S. Army Corps of Engineers (Corps), participating tribes and the State Historic Preservation Offices. It dealt with unanticipated discoveries of potential cultural resources within the jurisdiction of the Corps. In non-jurisdictional or state-only jurisdictional areas, DAPL implemented a second UDP with different notification criteria based upon state-law (North Dakota Public Service Commission) specifications.

5. After this Court issued its Order on October 9, 2016, Dakota Access voluntarily employed on-site cultural and tribal monitors for all grading and trenching activities within 20 miles west of Lake Oahe. Additionally, Dakota Access agreed in October to allow third-party tribal monitors, mutually agreed upon with the Standing Rock Sioux Tribe (“Standing Rock”), to be present during construction of portions of the DAPL Right-of-Way (“ROW”) within 5 miles west of Lake Oahe. Dr. Kelly Morgan, Standing Rock’s Tribal Archeologist, and John Eagle, Standing Rock’s Tribal Historic Preservation Officer, coordinated the now-complete monitoring process with Dakota Access. Those tribal representatives elected, with Dakota Access’s concurrence, the Bismarck, North Dakota third-party firm “InSitu” to conduct the monitoring. DAPL paid for the tribal monitors as a good faith gesture of cooperation.

6. These various monitoring efforts were effective in avoiding the disturbance of potential cultural resources during construction within the 20-mile section west of Lake Oahe as no cultural materials, human remains or active American sites were disturbed and only one site was even observed. In addition, on October 17, 2016, potential cultural materials were discovered at station 4443+00 in Morton County, North Dakota, *outside* of any federal jurisdiction areas. Dakota Access performed an investigation of the identified site and decided to reroute the pipeline in order to avoid it. On October 18, 2016, Dakota Access issued a notice of the observance and issued a proposed modification to DAPL’s route. The State Historical Society of North Dakota (“SHSND”) approved the routing modification, and Dakota Access modified the route to avoid the identified site. The Notification is attached hereto as Exhibit 1, and the SHSND’s letter approving the route modification is attached hereto as Exhibit 2.

7. Dakota Access does not anticipate any further need for either monitoring the ROW or applying an unanticipated discovery plan now that clearing and grading along DAPL's route is complete.

8. Dakota Access took other steps in October to address issues raised by tribes including Standing Rock. For example, on October 20, 2016, Dakota Access facilitated and participated in a visit to the ROW near Lake Oahe for the purpose of assessing potential cultural resource sites identified by Dr. Thomas Mentz. In attendance were representatives of DAPL, local law enforcement, the U.S. Army Corps of Engineers, the Standing Rock and the Cheyenne River Sioux Tribe, the North Dakota State Historical Preservation Office, the North Dakota Governor's Office, and members of and staff of the North Dakota U.S. congressional delegation. Select photos documenting the site visit and attendees are attached hereto as Exhibit 3. During that visit, no cultural resources were identified within the ROW. For two potential tribal sites identified just outside and abutting the ROW, DAPL implemented mitigation measures, including fencing and the absence of trenching and deep grading, to help ensure that those potential sites were not disturbed. It was also tentatively agreed that during pipeline restoration work near those two sites, tribal monitoring will be allowed using the Arizona specialty firm, Northland Research, Inc. This firm was selected by the Standing Rock and agreed upon by DAPL. DAPL agreed to pay for the additional monitoring. This additional monitoring is subject to the condition that the area remain safe from protesting, trespassers and other violations of the law.

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

Executed on this 23 day of November, 2016

A handwritten signature in black ink, appearing to read 'Joey Mahmoud', written over a horizontal line.

Joey Mahmoud