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**ATTORNEYS FOR DEFENDANTS/
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

**AMERICAN CIVIL LIBERTIES
UNION, AMERICAN CIVIL
LIBERTIES UNION FOUNDATION,
and AMERICAN CIVIL LIBERTIES
UNION OF MONTANA
FOUNDATION, INC.,**

Plaintiffs,

vs.

**DEPARTMENT OF DEFENSE,
DEPARTMENT OF HOMELAND
SECURITY, DEPARTMENT OF
THE INTERIOR, and
DEPARTMENT OF JUSTICE,**

Defendants.

CV 18-154-M-DWM

**SECOND SUPPLEMENTAL
DECLARATON OF MICHELLE
BARTLETT**

I, Michelle Bartlett, make the following declaration pursuant to 28 U.S.C. § 1746:

1. This declaration supplements my Amended Declaration dated April 11, 2019 (Doc. 30), and elaborates on details of the USACE's search for information responsive to Plaintiffs' FOIA requests.

2. USACE focused its records search on Insider Threat Operations within the Operational Protection Division and Civil Works because those offices are the only places at Headquarters USACE that would possess records responsive to ACLU's FOIA request. Headquarters USACE contains the following additional organizational directorates/offices, none of which are responsible for protest related security issues and would therefore not receive or possess information responsive to ACLU's FOIA request: Contracting, Corporate Information (Information Technology), Cost Engineering, Counsel, Emergency Operations, Engineer Inspector General, Engineering and Construction, Environment, Equal Employment Opportunity, History, Human Resources, Logistics, Military Missions, Real Estate, Research and Development, Reserve Components, Resource Management, Safety & Occupational Health, Small Business, and Strategy and Integration.

The Insider Threat Operations office is part of the Operational Protection Division (OPD) which serves as the primary advisor to the USACE Commanding General for protection in order to maximize the security of the USACE workforce

and infrastructure. The Civil Works Directorate of USACE is charged with management of infrastructure projects, including the Keystone XL pipeline.

The record custodians for Insider Threat Operations (Chief of Operational Protections Division, David R. Paravecchia) and Civil Works (Deputy for Civil Works, Steven Kopecky) performed their searches as follows:

Insider Threat Operations is set up so that the Chief of the Operational Protection Division (Mr. Paravechia) receives, or is aware of, all information regarding potential security concerns involving USACE infrastructure and improvements. Mr. Paravechia knew that neither he nor the Insider Threat Operations staff were involved in any events or activities that would produce documents or email communication responsive to ACLU's FOIA request except as detailed below. He also knew that Insider Threat Operations had received no information pertaining to Keystone XL protests or planning for security except as detailed below. Nevertheless, he searched his email and computer files and confirmed they did not contain any responsive documents beyond those produced. All documents are preserved through his email vault and/or electronic files.

Mr. Kopecky confirmed the sole source of potentially responsive records in Civil Works was email and notes from coordination meetings. He searched those sources using terms likely to capture responsive information, including the following:

- Keystone
- Security
- Law enforcement
- Consultation

These searches yielded no documents responsive to ACLU's request. The material searched by Mr. Kopecky is preserved through his email vault and/or electronic files.

3. In response to the request for "legal and policy analysis relating to funding and staffing for law enforcement around the pipeline protests," Mr. Paravecchia and Mr. Kopecky determined there was no such funding and staffing. USACE is prohibited from executing laws within the United States, and USACE personnel cannot engage in search, seizure, arrest, "or other similar activity." 18 U.S.C. § 1385, 10 U.S.C. § 275. Thus, USACE cannot and does not serve in any "law enforcement" capacity, conducted no legal or policy analysis surrounding such law enforcement, and possessed no documents pertaining to such analyses.

Moreover, USACE's lack of responsive documents is consistent with its very limited role in Keystone XL and in pipelines in general. USACE authorities governing river and stream crossings and modifications to civil works projects (Clean Water Act §§ 404, 408) are oriented toward controlling flooding and water pollution – they do not extend to protest activity or planning for security or law enforcement connected to such activity.

4. In response to the request for documents pertaining to "travel to speaking engagements, conferences and the like on the subject of preparation for oil pipeline protests," Mr. Paravecchia and Mr. Kopecky advised there were no such documents because there was no such travel. No USACE personnel were

invited to or involved in any speaking engagements or conferences on the subject of oil pipeline protests. The interagency team meeting mentioned in emails dated June 1 and 8, 2017, never came to fruition. USACE never participated in any meetings regarding Keystone XL security or law enforcement. The Department of State is the lead on Keystone XL NEPA and Tribal consultation, and contacted USACE merely to coordinate regulatory functions. This explains the lack of documents pertaining to travel to speaking arrangements, etc., on the subject of oil pipeline protests.

5. ACLU requested “meeting agendas, pamphlets and other distributed matter at speaking engagements” or other meetings “where federal employees are present to discuss preparation for oil pipeline protests and/or cooperation with private corporations in furtherance thereof.” As noted above, however, no USACE personnel were ever invited to, or participated in, any speaking engagements or meetings regarding oil pipeline protests. USACE therefore possesses no records responsive to this request.

6. ACLU requested “communications between federal employees and state or local law enforcement entities or employees thereof, and between federal employees and private securities companies, discussing cooperation in preparation for oil pipeline protests.” In response, USACE produced email communications between Mr. Paravecchia and Bureau of Land Management personnel. Mr. Paravecchia and Mr. Kopecky searched all other USACE document repositories,

and these emails were the only documents responsive to ACLU's request. Mr. Paravecchia and Mr. Kopecky opine this paucity of records stems from the fact that Keystone XL has not yet cleared permitting, so discussions about security are premature.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED this 26 day of April, 2019.



Michelle Bartlett, Assistant Counsel
United States Army Corps of Engineers