

GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION

Mailing Address: US Post Office Box 988, Rapid City, SD 57701

Physical Address: 321 Kansas City Street, Rapid City, SD 57701

Phone: (605) 721-6168 - Fax: (605) 721-6174

January 11, 2015

The Honorable Barack Obama
President
United States of America
1600 Pennsylvania Avenue NW
Washington, DC 20500

RE: Veto Legislation to Approve the Keystone XL Pipeline and DO NOT Approve a Permit for the Pipeline.

Dear President Obama:

The Great Plains Tribal Chairman's Association (GPTCA) is made up of the 16 Sovereign American Indian Tribes in the States of North Dakota, South Dakota and Nebraska. All of our Tribes have signed Treaties with the United States in which the United States pledged to protect Indian Tribes, guarantee the right to Self-Government and obligated itself to undertake Trust Responsibility. The Great Plains Tribal Chairman's Association stands in solidarity with the First Nations of Canada and with Tribal Nations in the United States in opposing the Keystone XL pipeline

We are writing to alert you that TransCanada Keystone Pipeline, LP (TransCanada) is in the midst of the recertification process of its 2010 permit from the South Dakota Public Utilities (SDPUC) for the Keystone XL pipeline. While we are aware the Nebraska Supreme Court issued a decision to vacate a lower court decision that held a Nebraska statute concerning the Keystone XL pipeline unconstitutional, we write to urge you to consider the fact that TransCanada's permit to traverse South Dakota is still under review and does not authorize construction of the project in South Dakota unless and until the SD PUC grants certification.

Four Federally Recognized Tribes have signed on as Party Intervenors in the SD PUC proceedings as well as numerous Native and nonnative concerned citizens. The Tribes include the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe and the Yankton Sioux Tribe. Other Great Plains Tribes are poised to comment and are monitoring the proceedings. The pipeline is planned to traverse through our homelands that still possess substantial treaty obligations, cultural and natural resources and

water rights for all the Great Plains tribes. These are also the homelands of numerous animals, birds and fish including several endangered species.

Under South Dakota law, TransCanada must declare that the conditions under which the permit was issued in 2010 remain the same despite submitting along with its application a matrix of 30 Changed Conditions. These 30 Changed Conditions show that significant design and construction changes are planned for the pipeline that make it substantially different in our eyes. The 2010 permit was also issued with 50 Special Permit Conditions that TransCanada also must prove it still meets before it can legally commence construction of the project. While there is an evidentiary hearing currently set for May 2015, it is unclear when a final decision will be issued in that case.

We therefore urge you, consistent with your stance on the previously pending Nebraska litigation, to refrain from making any decision regarding whether the Keystone XL pipeline would be in the national interest until you have all the necessary facts before you. Tribal leaders request you deny the permit as contrary to the national interest.

It is the position of the GPTCA that your administration does in fact have incontrovertible evidence that the proposed Keystone XL pipeline would be a detriment to the American public and the national interest regardless of whether the SD PUC ultimately authorizes construction under TransCanada's 2010 permit due to the risks the project poses regardless of the particular route through South Dakota. The GPTCA urges you to deny the Presidential Permit for the reasons set forth in the attached GPTCA Resolution among others. However, should you have reservations about denying the Presidential Permit at this time, please grant South Dakota the same respect you accorded Nebraska and refrain from making your decision until after the legal processes regarding the South Dakota permit have been resolved.

We strongly urge you to veto any legislation passed by Congress that mandates the issuance of a presidential permit to TransCanada. We believe, consistent with federal separation of powers, that a decision to deny TransCanada a federal permit must be made by your Executive branch and it is not appropriate for legislation.

We further assert that construction of any pipeline violates the Fort Laramie Treaties of 1851 and 1868, which impact the greater population of the Oceti Sakowin or the Seven Council Fires of the Lakota, Dakota and Nakota Tribes. We are known to many as the Great Sioux Nation and are the keepers of the sacred, cultural and natural resources located in the KXL corridor. Literally, thousands of sacred and cultural resources that are important to our life-ways and for our future generations will potentially be destroyed or compromised by the pipeline construction. Many of these sacred sites have not been surveyed by outsiders less they be looted or plundered but are known to those designated by our people considered to be sacred keepers of this knowledge. The Programmatic agreement entered into for compliance with the National Historic Preservation Act acknowledges that construction of the pipeline would cause destruction to many sacred and cultural sites.

With regards to our tribal federally reserved water rights in the Great Plains Basin, the pollution risk via benzene and other carcinogens from the tar sands sludge spilling into the tributaries that lead into the Missouri River or leaching into the Oglala Aquifer, should a pipeline break occur, is too great. The Missouri River is the source of drinking water for many communities along the Missouri River mainstem. The Oglala Aquifer supplies drinking water throughout the Great Plains region. All of this development further impacts reserved rights of our Oceti Sakowin which were unceded by treaties, including the right to live in a safe manner and be in control of our human, cultural and natural resources as outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Consultation has not occurred in a manner that recognizes free, prior and informed consent for the

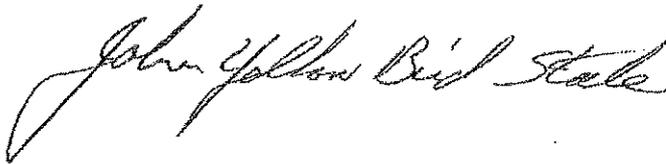
construction of this pipeline. We believe it is our Human Right to live safely on our homelands with clean water and lands.

Very importantly, the KXL Pipeline and the continued development of the Alberta tar sands will increase the carbon footprint in our sacred lands for the enrichment of foreign countries and oil companies. As you know, climate change will impact and affect all of us including the generations to come unless we do something to stop it now. The Oceti Sakowin tribes are making important strides toward renewable energy with the Oceti Sakowin Power Project (OSPP) that recognizes fossil fuels are relics that contribute to phenomenal climate change. The OSPP leaders met with the White House representatives in our effort to turn the tide against global warming through solar and wind development on our lands. We do not have to be held prisoners of fossil fuels but can create stories of redemption for Mother Earth through exciting renewals development, not in the future but now.

Because of the dire concerns outlined above, we request an emergency meeting with Department of Interior Secretary Sally Jewell, who as our Trustee, has a responsibility to hear directly from tribal leaders in a government-to-government meeting. We are prepared to put forth our concerns for inclusion in the forthcoming Final Environmental Impact Statement (FEIS) regarding the impacts the Keystone XL pipeline may have on Tribal homelands as well as our sacred sites, cultural resources, natural resources and water rights protected by treaty and other agreements.

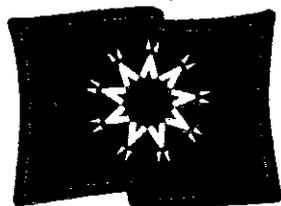
The Executive Director of the GPTCA, Ms. Gay Kingman-Wapato, is the contact for the GPTCA and is empowered to work with your administration staff to coordinate a meeting at Secretary Jewell's earliest convenience. She can be reached at Cell: 605-484-3036 or e-mail, Kingmanwapato@rushmore.com

Sincerely,

A handwritten signature in cursive script that reads "John Steele". The signature is written in black ink and is positioned above the typed name and title.

John Steele
President, Oglala Sioux Tribe
Chairman, Great Plains Tribal Chairman's Association

cc: Interior Dept. Secretary Sally Jewell
State Dept. Secretary John Kerry
Senator John Thune (R-SD)
Senator Michael Rounds (R-SD)
Congresswoman Kristi Noemi (R-SD)
Senator Lisa Murkowski (R-AK)
Senator Heidi Heitkamp (D-ND)
Senator John Hoeven (R-ND)
Congressman Kevin Cramer (R-ND)
Senator Deb Fisher (R-NE)
Senator Ben Sasse (R-NE)
Congressman Jeff Fortenberry (R-NE)
Congressman Brad Ashford (D-NE)
Congressman Adrian Smith (R-NE)
Ms. Jodi Gillette
GPTCA member Tribes



Oglala Sioux Tribe

Office of the President

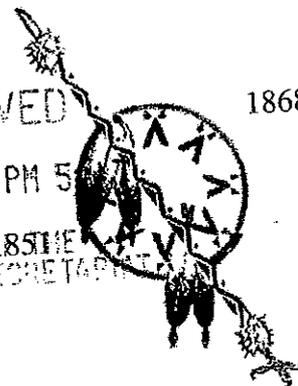
50780 Box 2070
Pine Ridge, SD 57770
Phone: 605.867.5821
Fax 605.867.6076

RECEIVED

2115 JAN 21 PM 5

OFFICE OF THE
EXECUTIVE SECRETARY

1868



January 20, 2015

The Honorable Sally Jewell
Secretary of the Interior
1849 C Street, N.W.
Washington DC 20240

RE: Contamination of Mni Wiconi Project Water
Source by Keystone XL or Other Activities

Dear Secretary Jewell:

The Oglala Sioux Tribe has corresponded with the Bureau of Reclamation (Reclamation) previously on the concerns we have with the TransCanada Keystone XL Pipeline (Keystone XL) and its potential impact on the core pipelines of the Oglala Sioux Rural Water Supply System (OSRWSS) and the people we serve on the Pine Ridge Indian Reservation and throughout the Mni Wiconi Project.

The authorizing legislation of the Mni Wiconi Project (PL 100-516, as amended) contains statutory provisions on the trust responsibility of the United States to ensure a safe and adequate water supply for the project beneficiaries:

...the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Pine Ridge Indian Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation;

The Oglala Sioux Tribe, through a 638 cooperative agreement with Reclamation, operates pumping and treatment facilities located along the Missouri River near Fort Pierre, South Dakota, pipelines extending from the Missouri River to the Pine Ridge Indian Reservation and facilities to allow for interconnections with the West River Rural Water System, Lyman-Jones Rural Water System, Rosebud Sioux Rural Water System and Lower Brule Rural Water System in addition to distribution and treatment facilities to serve the needs of the Pine Ridge Indian Reservation. The facilities listed above are known as the OSRWSS, and title to those facilities is held in trust by the United States on behalf of the Oglala Sioux Tribe.

The construction of all Mni Wiconi Project facilities, including OSRWSS and the Indian and non-Indian rural water systems that are interconnected, will be completed in FY 2015 at a federal cost of \$488 million. Adequate funding for operation, maintenance and replacement (OMR) and source water protection are essential to fulfill the trust responsibilities of the United States to the Oglala Sioux Tribe and other tribal participants.

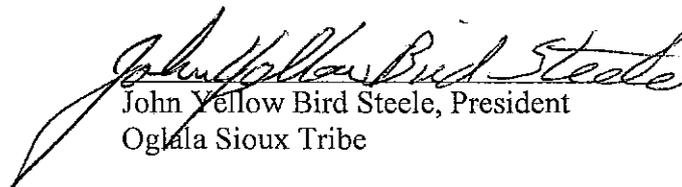
Our Keystone XL Pipeline concerns related to our Mni Wiconi Project are (1) OSRWSS pipeline integrity at Keystone XL crossings and (2) OSRWSS water source protection at the Missouri River, Cannonball River, Grand River, Moreau River, Cheyenne River and other Western Dakota tributary crossings by Keystone XL. TransCanada dismissed our concerns in its October 10, 2013, letter to Reclamation. Reclamation Regional Director Ryan then corresponded with the Department of State by letter dated December 12, 2013, requesting that the State Department approve Reclamation's crossing criteria for construction and operation of the Keystone XL Pipeline specifically to protect the OSRWSS core pipeline of the Mni Wiconi Project. Our water source concerns in (2) above are not limited to Keystone but also extend to Bakken shale activities in the Northern Great Plains, historical uranium mining in the Cheyenne River watershed and all other sources of contaminants, including, but not limited to, pharmaceuticals and personal care products from Missouri River public wastewater systems and non-point insecticides and pesticides.

The Oglala Sioux Tribe continues to fully and completely oppose the approval of construction of the TransCanada Keystone XL Pipeline. We have called on the President of the United States to deny a permit to Keystone XL. We have also made detailed arguments to the President and State Department outlining why Keystone XL is not in the national interest. The Tribe, however, cannot control the future actions of the Department of State and Department of Interior and their agencies with respect to Keystone XL.

As the President of the Oglala Sioux Tribe, therefore, I will look to the Secretary of the Interior as Trustee to protect our interests in OSRWSS pipeline integrity and water source protection in the streams that eventually enter Lake Oahe and our intake at Echo Point. I will rely on the agencies and officials that you designate to take appropriate steps and keep me fully informed. To further present our concerns, a meeting is requested with you on February 19, 2015.

Your attention to this important matter is greatly appreciated.

Sincerely,



John Yellow Bird Steele, President
Oglala Sioux Tribe

cc Estevan Lopez, Commissioner of Reclamation
Mike Ryan, Great Plains Area Director
David Rosenkrance, Dakota Area Manager



GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION

5041

Mailing Address: US Post Office Box 988, Rapid City, SD 57701

Physical Address: 321 Kansas City Street, Rapid City, SD 57701

Phone: (605) 721-6168

Fax: (605) 721-6174

Jan. 21, 2015
Sally Jewell, Secretary
Department of Interior
1849 C St. N.W.
Washington DC 20240

Dear Secretary Jewell:

RECEIVED
21 JAN 21 PM 2:22
OFFICE OF THE
EXECUTIVE SECRETARY

I am writing on behalf of the 16 Sovereign American Indian Treaty Tribes in the States of North Dakota, South Dakota, and Nebraska, who are members of the Great Plains Tribal Chairmen's Association, to urgently request a meeting with you, next week, to discuss our very real concerns regarding the forthcoming National Interest Determination on the Keystone XL Pipeline. We have been advised that the U.S. State Department has given the Department of the Interior (DOI) until February 2, 2015 to submit its comments on this critically important document yet, to date, our Tribes have not been afforded meaningful tribal consultation with the State Department, DOI, or any other relevant federal agency on this important matter.

As our Trustee, DOI has a specific duty to insure that its comments and positions on this National Interest Determination accurately reflect the very real potential impacts that this Project may have on our historical Tribal homelands, sacred sites, cultural resources and water rights, all of which are protected by applicable federal law and our Treaties with the United States. While many of our Tribes have submitted comments on this document, the State Department's unwillingness to sit down with us on a government to government basis to discuss our concerns has led us to question whether that Department really respects our legal roles as elected officials of federally recognized sovereign tribes. These concerns are so serious that the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, the Rosebud Sioux Tribe and the Yankton Sioux Tribe have all become party interveners in the South Dakota Public Utility Commission's proceedings challenging its 2010 action permit for this project.

Madame Secretary, we know that you have many important demands on your schedule, but meaningful government to government consultation, especially on matters of this importance, is assured to us by President Obama's Tribal Consultation policy of November 5, 2008, as well as by Executive Order Number 13175. President Clinton issued that Executive Order to "establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications [and] to strengthen the United States government-to-government relationship with Indian tribes" (emphasis added). President Obama re-committed federal agencies to this duty through a Memorandum for the Heads of Executive Departments and Agencies issued on November 5, 2009, in which he declared: "My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through a complete and consistent implementation of Executive Order 13175" (emphasis added). To

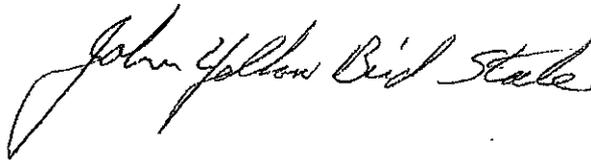
prepare final DOI comments on a document of this magnitude without affording us the opportunity for a *meaningful* face to face/government to government meeting is a flagrant violation of President Obama's directive in 2009 and of the commitments President Obama has made to us as recently as last December.

Our tribal leaders can be available in Washington, D.C. anytime next week and we will be prepared to present a clear and concise set of points. Please make every effort to fit this important tribal meeting into your schedule. At that time, we will be prepared to present you with both oral and written comments that we believe must be included in your February 2, 2015 response to the U.S. Department of State.

Because she is located in Washington, D.C., and we have a time difference, we have asked tribal attorney Patricia Marks of the law firm of Fredericks, Peebles and Morgan, L.L.C. to assist our Executive Director Ms. Gay Kingman in coordinating this meeting with your office. Gay can be reached at 605-484-3036 or e-mail, kingmanwapato@rushmore.com and Patty Marks can be reached at 202-450-4887 and at email pmarks@ndnlaw.com.

Thank you in advance for your kind attention to this important request.

Cordially,

A handwritten signature in cursive script that reads "John Steele". The signature is written in black ink and is positioned above the typed name and title.

John Steele, President, Oglala Sioux tribe
Chairman, Great Plains Tribal Chairman's Association

16 Tribal Leaders of the Great Plains Tribal Chairman's Association

Hoinon'ainino'

Northern Arapaho Tribe
TRIBAL HISTORIC PRESERVATION OFFICE

P.O. Box 67 - St. Stephens, Wyoming 82524 - PH: 307.856.1628 - narapahothpo_2009@ymail.com

January 27, 2015

Attention of:

United States Dept. of Interior
Office of the Secretary
Office of Environmental Policy and Compliance
1849 C Street, NW-MS2462-MIB
Washington, D.C. [Carol Braegelmann@ios.doi.gov](mailto:Carol_Braegelmann@ios.doi.gov)

Subject: "Key Stone XL Pipe Line Project"

The office of the Northern Arapaho Tribal Historic Preservation Office has reviewed this project.

Project for review: Construct, connect, operate and maintain pipeline facilities on the border of the U.S. and Canada.

Our office would like to address this project:

Our office's mission statement is "**Promote, Protect, Conserve, Preserve Significant Ancestral and Present Tribal Cultural Resources.**"

THPO has the responsibility of protecting the sovereignty of the Northern Arapaho Tribe. *Definition of sovereignty Tribal Sovereignty refers to tribes' right to govern themselves, define their own membership, manage tribal property, and regulate tribal business and domestic relations; it further recognizes the existence of a government-to-government relationship between such tribes and the federal government.
(<http://www.civilrights.org/indigenous/tribal-sovereignty/>)

With these goals in our mission statement being held in mind our office would like to, even though just receiving this comment on the day that it is due, we feel more communication and transparency for these projects is why no one in Indian Country is supporting this project. To whom is this project benefitting? To whom are these resources benefitting and to whom is reaping the rewards? To answer that question we know it isn't Indian Country benefitting from this project. Jobs won't last long. Water quality to the Ogallala Aquifer will be tainted.

Traditional Cultural Knowledge (TEK) and Traditional Cultural Resources and through a tribal perspective in respect to quality of life, especially water, there is no benefit to this project. Lately with the many oil and gas pollution into the Yellowstone River and many other projects that continue to pollute Indian Country. Look to your treaties and uphold those before trying to move into the future. This type of project will only receive a comment of moving forward from companies who benefit from this.

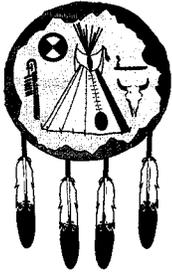
Through Code of Federal Regulations Section 106 and Civil Rights have tribes fought so hard to work with companies to mitigate traditional cultural properties and traditional cultural knowledge, I firmly ask Mr. President Obama... "VETO Key Stone XL Pipeline". "NO BUILD" Our tribe's interest is continuously for the preservation, protect, promotion and conservation of all traditional cultural resources, we see no benefit to the area tribes in this project. Look to the history of Canada's indigenous peoples and ask yourself what types of laws are Canada companies tactics and regulations are they used to using on their people. The Plains Indians (Allies) have fought too long and hard to let this unbeneficial project go through. Let the Veto set a precedence that for once the indigenous people of United States actually have a voice.

Given the short amount of time to address this project thoroughly the Northern Arapaho Tribe request a "NO BUILD" we call once again to Mr. Obama to "VETO Key Stone XL Pipeline".

The office of the Northern Arapaho THPO would like to thank you for consulting us and would like to be kept updated in this project.

Sincerely,

Yufna Soldier Wolf
Cell Tower and Cultural Researcher
nathpotcns@gmail.com
For
Darlene Conrad
Interim Tribal Historic Preservation Officer



PONCA TRIBE OF NEBRASKA

PO Box 288 • Niobrara NE 68760 • Phone: 402.857.3391 • Fax: 402.857.3736

January 27, 2015

Bureau of Energy Resources,
Room 4843
Attn: Keystone XL Public Comments
U.S. Department of State, 2201 C St. NW.
Washington, DC 20520

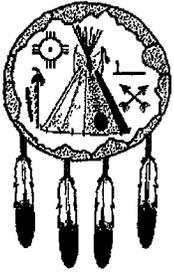
To Whom It May Concern:

Please be advised that the Ponca Tribe of Nebraska is against the Pipeline as consultation was not done properly (please see attached letter dated 3/4/13). The Ponca Tribe of Nebraska officials have tried to schedule meetings with TransCanada officials. A meeting was scheduled and then cancelled by them.

A traditional cultural property study on the reroute of the pipeline needs to be completed. The Tribe needs to monitor the work that is being done from the time the pipeline enters into Nebraska to when it exits Nebraska.

Sincerely,

Larry Wright, Jr., Chairman
Ponca Tribe of Nebraska



PONCA TRIBE OF NEBRASKA

P.O. Box 288 • Niobrara, NE 68760 • Phone: 402.857.3391 • Fax: 402.857.3736

March 4, 2013

To Whom It May Concern:

Please be advised that the Ponca Tribe of Nebraska Tribal Council has taken the position to oppose the TransCanada Keystone XL Pipeline Project due to the fact that the Section 106 process has not been followed.

Sincerely,

Rebecca White, Chairwoman
Ponca Tribe of Nebraska

cc: Randy Teboe, THPO
Gloria Hamilton, Director of Cultural Affairs



ADMINISTRATION

**Little Wolf Capitol Building 600 S. Cheyenne Avenue PO Box 128 Lame Deer, Montana 59043
Main Office: (406) 477-6284 Fax: (406)477-6210**

FAX COVER SHEET

DATE: 1/12/15 **TIME:** 1:26

TO: Russell Eagle Bear

FAX #: 605-747-4211 **TOTAL # OF PAGES(including cover page):** 3

FROM:

- Llevando Fisher, Tribal President
- Winfield Russell, Vice President
- William Walksalong, Executive Administrator
- Melissa Lonebear, Tribal Secretary
- Janet Wolfname, Executive Assistant
- Aleda Spang, Administrative Assistant
- Melissa Fisher, Lead Receptionist
- Barbara Spang, Office Manager
- Other: NC - THPO

Comment:



BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043



IN REPLY REFER TO:
Executive Direction

MAY - 6 2014

Llevando Fisher, Tribal President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Fisher:

This is in reference to Northern Cheyenne Tribal Resolution No. DOI-096 (2014) enacted by the Council on April 21, 2014 and received in this office on May 2, 2014.

Resolution No. DOI-096 (2014) supporting the opposition of the proposed 875 mile Keystone XL Pipeline Project extending from Morgan, Montana to Steel City, Nebraska.

Resolution No. DOI-096 (2014) is hereby noted. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (a), (k) and (r) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

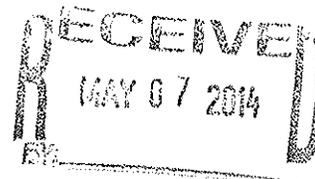
All necessary copies of this resolution have been retained for our files.

Sincerely,

Superintendent

Acting

Enclosure



WHEREAS, the Northern Cheyenne Tribe, through the THPO, has attended several meetings the regarding the cultural resources with the proposed pipeline corridor including several field projects; and

WHEREAS, the THPO and the Tribe have cultural and environmental concerns regarding the proposed pipeline project including: water resources; wetlands; groundwater; threatened and endangered Species; Aquifers; geology and soils; Terrestrial Vegetation; Wildlife; Fisheries; Air quality and noise; land use; cultural resources and cumulative effects; and

WHEREAS, the Tribe feels that the direct and long term cultural and environmental impacts of the proposed TransCanada Keystone, LP pipeline project will be devastating to local communities and to ancestral lands and the potential for high risks of spills and leaks that would threatened the water and aquatic life in addition to the temporary construction related disturbance to natural habitat; now

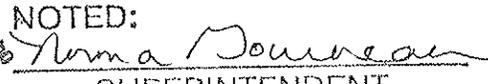
THEREFORE, BE IT RESOLVED, the Northern Cheyenne Tribe supports the opposition of the TransCanada Keystone Pipeline, LP (Keystone) proposed Pipeline project which will cross international borders from Morgan, Montana to Steele City, Nebraska and that the oil pipeline will do irreparable cumulative harm to the cultural, natural, and environmental resources within the ancestral lands of the Northern Cheyenne nation.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 10 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions this 21st day of April 2014.


Llevando Fisher, President
Northern Cheyenne Tribe

ATTEST:

Melissa Lonebear, Secretary
Northern Cheyenne Tribe

NOTED:

Acting Norma Dourneau SUPERINTENDENT MAY - 6 2014

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

RESOLUTION NO. DOI-096 (2014)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL SUPPORTING THE OPPOSITION OF THE PROPOSED 875 MILE KEYSTONE XL PIPELINE PROJECT EXTENDING FROM MORGAN, MONTANA TO STEEL CITY, NEBRASKA.

WHEREAS, the Northern Cheyenne Tribal Council (Tribe) is the governing body of the Northern Cheyenne Tribe by the authority of and pursuant to the Amended Constitution and Bylaws of the Northern Cheyenne Tribe as approved by the Secretary of the Interior on May 31st, 1996; and

WHEREAS, the Tribal Council possesses and exercises a broad array of governmental powers including the following powers: power to protect Tribal lands, interests in land, minerals, gas, oil, and other tribal assets; power to cultivate and preserve tribal culture and ceremonials; and

WHEREAS, the Northern Cheyenne Tribal Historic Preservation Office was established through the National Park Service to identify, archive, and preserve tribal cultural properties that are significant on ancestral and tribal lands; and

WHEREAS, the Northern Cheyenne consider most of North south Dakota as part of the ancestral land and an integral part of their cultural heritage with unquestionable cultural depth; and

WHEREAS, TransCanada Keystone Pipeline, LP (Keystone) applied for a Presidential pipeline to cross the United States-Canadian border at Morgan, Montana in September 19, 2008 and a Final Environmental Impact Statement (FEIS) was published in August 26, 2011

WHEREAS, during the interim of the FEIS several changes were made in the proposed route of the Keystone pipeline and the U.S. Department of State (the Department) prepared a Final Supplemental Environmental Impact Statement (the Supplemental EIS) to assess the potential impacts associated with the proposed Project and its alternatives; and

WHEREAS, for the proposed petroleum pipelines that cross international borders of the United States, the President, through Executive Order (EO) 13337, directs the Secretary of State to decide whether a project serves the national interest before granting a Presidential Permit and to make this decision (i.e., the National Interest Determination), the Secretary of State, through the Department, considers many factors, including energy security; environmental, cultural, and economic impacts; and compliance with relevant state and federal regulations; and

WHEREAS, the Supplemental EIS was produced consistent with the National Environmental Policy Act (NEPA) and will help inform that determination and before making a decision, the Department also asks for the views of eight federal agencies identified in EO 13337: the Departments of Energy, Defense, Transportation, Homeland Security, Justice, Interior, and Commerce, as well as the U.S. Environmental Protection Agency (USEPA);

January 27, 2015

US Department of the Interior
OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
1849 C Street, NW – MS2462-MIB
Washington, D.C. 20240

P.O. Box 266
St. Stephen's, WY 82524

RE: State Department Proposed Presidential Permit for the Proposed Keystone-XL Pipeline

To Whom It May Concern:

I have several concerns regarding the proposed Keystone-XL Pipeline. Although the impact for possible economic development and employment are a major plus for the states involved, the environmental and cultural aspects will be greatly affected by the disturbance of natural habitat and cultural areas important to Native Tribes. Also the local industries, such as ranching and farming will be affected by the construction and the influx of outside employees who will be temporary residents of areas of construction. The areas of development will not only damage the land, water and vegetation but will have lasting effects to Native Tribal medicinal gathering areas.

There are the possibilities of leakage and further damage in the future to the environment, such as the oil spilling into the Yellowstone River. Canada will be benefitting at the cost of our country.

I do not support the Keystone XL Pipeline and I strongly recommend that President Obama Veto the Proposed Permit.

Sincerely,

Antoinette Harris
Member of the Northern Arapaho Tribe

Hoinon'ainino'

"We are Arapaho"

Northern Arapaho Tribe

TRIBAL HISTORIC PRESERVATION OFFICE

P.O. Box 67 - St. Stephens, Wyoming 82524 - PH: 307.856.1628 - narapahothpo_2009@ymail.com

January 27, 2014

State Department
USDOJ Office of the Secretary
Office of Environmental Policy and Compliance
1849 C Street, NW-MS2462-MIB
Washington, D.C. 20240

**SUBJECT: STATE DEPARTMENT PROPOSED PRESIDENTIAL PERMIT FOR THE PROPOSED
KEYSTON XL PIPELINE PRESIDENTIAL PERMIT, MT,SD, AND NE**

The Northern Arapaho Tribal Historic Preservation Office has a comment on the Presidential Permit for the Keystone XL Pipeline. Our office has followed the application process for this intercontinental undertaking. TransCanada's proposed 876 miles of 36 inch pipe has the capacity to transport 830,000 barrels per day across lands covering the Oglalla Aquifer, a water source vital to the states and their inhabitants. Although we cannot stop the destruction caused by tar sand exploitation of Athabaskan River's ecosystem, the Dene, Cree & Metis communities in Canada, we should not encourage the damage to the ecosystem, degradation of the groundwater beneath U.S. soil.

We have also learned that Canada is looking to other pipeline routes (Enbridge pipeline) within their own country's boundaries from the Alberta Tar Sands fields. Since this is an alternative to constructing a "temporary economic boost" to the states the Keystone XL pipeline crosses. The Northern Arapaho THPO is asking that the presidential permit requested by TransCanada, Keystone Pipeline, L.P. be denied.

Respectfully,



Darlene Conrad
Tribal Historic Preservation Officer

Email NABC



ROSEBUD SIOUX TRIBE

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February 19, 2014

Hon. Sally Jewel, Secretary
United States Department of Interior
1849 C Street NW
Washington, DC 29240

Dear Hon. Secretary Jewel,

SUBJECT: THE POSITION OF THE ROSEBUD SIOUX TRIBE ON ENVIRONMENTAL IMPACT STATEMENT, TRANSCANADA KEYSTONE XL PIPELINE AND THE FEDERAL TRUST RESPONSIBILITY OF THE BUREAU OF INDIAN AFFAIRS

I write this letter to state the position of the Rosebud Sioux Tribe on the Environmental Impact Statement for the proposed construction of the TransCanada Keystone XL Pipeline. The Bureau of Indian Affairs, in signing off on the amended Programmatic Agreement, failed in its trust responsibility to the Rosebud Sioux Tribe, for the following reasons: 1) by failing to review the amended Programmatic Agreement and Tribal Monitoring Plan before signing off on the PA; 2) by failing to comment or take action to correct the wrongful designation of Tripp County as an area within the jurisdiction of the Yankton Sioux Tribe; 3) failing to identify those allotted and tribal trust tracts in Tripp County lying within the original treaty boundaries of the Rosebud Sioux Tribe and recognized by the United States Supreme Court; 4) by failing to comment or take corrective action to identify the Rosebud Sioux Tribe as the "Consulting Indian Tribe" in the Tribal Monitoring Plan, amended Programmatic Agreement.

The Rosebud Sioux Tribe is a federally recognized sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and is governed by a Constitution and By-laws ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935, and as amended. The Rosebud Sioux Tribe Reservation includes tribally-owned trust lands and allotted lands owned by enrolled tribal members within Todd, Tripp, Mellette, Gregory, and Lyman Counties, South Dakota.

The Rosebud Sioux Tribe has jurisdiction of all trust and restricted lands located in the counties of Lyman, Todd, Tripp, Mellette, and Gregory counties of South Dakota, of the Rosebud Sioux Tribe established by the 1851 and 1868 Treaty of Fort Laramie and the Act of March 2, 1889, 25 Stat. 888.

The United States Supreme Court in Rosebud Sioux Tribe v. Kniep, 430 U.S. 584, 615 (1977), held that the legislative history of acts opening up Todd, Mellette, Tripp, and Lyman Counties to

settlement demonstrated a legislative intent to diminish the boundaries of the Rosebud Reservation to remove certain lands in South Dakota from the jurisdiction of the Rosebud Sioux Tribe, but also stated, with regard to lands held in trust in those counties, Footnote 48, as follows: “To the extent the members of the Rosebud Sioux Tribe are living on allotted land outside the Reservation, they, too, are on “Indian Country” within the definition of 18 U.S.C s 1151, and hence subject to federal provisions and protections.” 430 U.S. at 615, Footnote No. 48.

Appendix A of the Tribal Monitoring Plan, Programmatic Agreement, containing a map of the proposed construction route of the Keystone XL Pipeline, mistakenly identifies Tripp County as an area of tribal consultation with the Yankton Sioux Tribe. Tripp County is an area that lies within the original boundaries of the Rosebud Sioux Tribe as established by the 1851 and 1868 Treaty of Fort Laramie and Act of March 2, 1889 25 Stat.888, and contains tracts of tribally-owned and allotted lands within the jurisdiction of the Rosebud Sioux Tribe.

The construction corridor of the KXL Pipeline would run through areas adjacent to and in close proximity to the Rosebud Sioux Tribe Reservation and cross lands within and adjacent to the lands within the Treaty boundaries of 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie.

The amended PA mistakenly identifies the Yankton Sioux Tribe as the consulting Tribe for tribal lands within the jurisdiction of the Rosebud Sioux Tribe located in Tripp County, Rosebud Sioux Tribe Reservation, South Dakota. The misidentification of “Tribal lands” in the amended Programmatic Agreement results in errors in fact, and errors in law resulting in substantial non-compliance of the amended Programmatic Agreement with applicable federal law and federal regulations governing the proposed construction of the TransCanada Keystone XL Pipeline.

The PA does not meet the goal of consultation required by Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 et. seq., with the proper Indian Tribe, to identify historic properties potentially affected by construction of the Keystone XL Pipeline, assess its affects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that the agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. Title 36, Part 800, 36 C.F.R. §800.2 (a). The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process, and should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. 36 C.F.R. §800. 2 (a)(4). When an Indian tribe has not assumed the responsibilities of the SHPO (“State Historic Preservation Officer”) the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. 36 C.F.R. § 800.2 (c)(2)(B)(ii). Section 101 (d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious or cultural

significance to historic properties that may be affected by an undertaking, regardless of the location of the historic property. 36 C.F.R. §800.2(c)(2)(B)(ii). It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. 36 C.F.R. § 800.2(c)(2)(B)(ii)(A). The Federal Government has a unique legal relationship with Indian tribes set for the in the Constitution of the United States, treaties, statutes, and court decisions, and consultations with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. 36 C.F.R. § 800.2(c)(2)(B)(ii)(B). Consultations with an Indian tribe must recognize the government-to-government relationship between the Federal government and tribes. 36 C.F.R. §800.2(c)(2)(B)(ii)(C). When Indian tribes and Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires federal agencies to consult with Indian tribes in the section 106 process, and federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part. 36 C.F.R. §800.2(c)(2)(B)(ii)(D).

The Environmental Impact Statement, finding no significant impact on cultural resources, is based upon incorrect factual and legal assumptions, was prepared without proper consultation with the Rosebud Sioux Tribe, the Indian Tribe with jurisdiction of allotted lands adjacent to the KXL Pipeline construction corridor. The EIS is therefore improperly prepared, and its findings based upon erroneous factual and legal assumptions under federal law.

For the reasons above, the BIA should rescind its signature on the amended Programmatic Agreement, and require the EIS to be rejected for failure to comply with federal law and federal trust responsibility.

Cyril Scott, President
Rosebud Sioux Tribe
cc: Rosebud Sioux Tribal Council
Rosebud Sioux Tribe Treaty Commission
RST Legal Department



Rosebud Sioux Tribe
Sicangu Oyate Land Office
P.O. Box 658
Rosebud, South Dakota 57570
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January 27, 2015

U.S. Department of State Bureau of Energy Resources
Room 4843
Attn. Keystone XL Public Comments
Washington, DC 20520

Comments regarding the national interest determination for TransCanada Keystone Pipeline and objections to the construction of the TransCanada XL Pipeline adjacent to tribal and allotted lands within the regulatory jurisdiction of the Rosebud Sioux Tribe and within the 1851 Treaty of Fort Laramie and 1868 Treaty of Fort Laramie Boundaries.

Dear Sir/Madam,

On behalf of the Rosebud Sioux Tribe-Sicangu Oyate Land Office, I humbly ask you to reject the application for the Keystone XL pipeline proposal, which is ***not in the best interest of the United States of American, the Indigenous People of North American, nor the Lakota.*** Our opposition is based on the negative impact the pipeline will have on our cultural, historical and burial sites; and on the many major environmental, public health hazards and safety possibilities it creates.

Our people were not given the courtesy of tribal consultation on the project. The costs and risks to our people, land and natural resources in building the pipeline across our 1868 Fort Laramie Treaty lands which holds the Oglala Aquifer, waterways, and wetlands is far too great at this or any other time. Our culturally and historically significant areas are in danger of being destroyed.

In the Lakota way of life, we are always reminded to look Seven Generations ahead in making our decisions for the people. The Sicangu Oyate Land Office considers ourselves to be Caretakers of the Rosebud People's Land, in Lakota, we say "Sicangu Oyate Tamakoce Okawanyakapi". We stand in unity with the other bands of the Lakota Nation, in protection of the land and importantly in our opposition to the Keystone XL pipeline project.

Please consider this letter on behalf of the RST-Sicangu Oyate Land Office to comment on the National Interest Determination for the approval of the Presidential Permit for the construction of the TransCanada Keystone XL Pipeline. The Rosebud Sioux Tribe objects to the construction of the TransCanada Keystone XL Pipeline and recommends the President Barak Obama find that it is not in the best national interest of the United States to approve the construction of the TransCanada Keystone XL Pipeline and deny the application for Presidential Permit for the following reasons.

FACTUAL BACKGROUND

The Rosebud Sioux Tribe is a federally recognized sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, (Indian Reorganization Act), and governed

pursuant to a Constitution and Bylaws ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ikes, on December 16, 1935.

The Rosebud Sioux Tribe Reservation includes tribally-owned trust lands and allotted lands owned by enrolled tribal members within Todd, Tripp, Mellette, Gregory, and Lyman Counties, South Dakota, established by the 1851 and 1868 Treaty of Fort Laramie and the Act of March 2, 1889, 25 Stat. 888.

The United States Supreme Court in *Rosebud Sioux Tribe v. Kniep*, 430 U.S. 584, 615 (1977), held that the legislative history of acts opening up Todd, Mellette, Tripp, and Lyman Counties to settlement demonstrated a legislative intent to diminish the boundaries of the Rosebud Reservation to remove certain lands in South Dakota from the jurisdiction of the Rosebud Sioux Tribe, but also stated, with regard to lands held in trust in those counties, Footnote 48, as follows: “To the extent the members of the Rosebud Sioux Tribe are living on allotted land outside the Reservation, they, too, are on “Indian Country” within the definition of 18 U.S.C s 1151, and hence subject to federal provisions and protections.” 430 U.S. at 615, Footnote No. 48.

THE FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE KEYSTONE XL PIPELINE CONCLUDING THERE ARE NO SIGNIFICANT IMPACT ON CULTURAL RESOURCES IS BASED UPON ERRORS IN FACT AND ERRORS IN LAW CONTAINED IN THE AMENDED PROGRAMMATIC AGREEMENT.

The Final Supplemental Environmental Impact Statement, Keystone XL Project, Chapter 1, Section 1.6.1, Tribal and SHPO Consultation, Tribal Consultation, provides;

“Following Keystone’s 2012, Presidential permit application, the Department began additional government-to government consultation consistent with Section 106 of the NHPA for the current Supplemental EIS process for the proposed Project. As the lead federal agency for the proposed Project, the Department is continuing throughout the Supplemental EIS process to engage in consultation on the Supplemental EIS, the proposed Project generally, and on cultural resources consistent with Section 106 of the NHPA with identified consulting parties, including federal agencies, state agencies, State Historic Preservation Offices (SHPOs), the Advisory Council on Historic Preservation, and interested federally recognized Indian tribes (70 Federal Register 71194) in the vicinity of the proposed project. Starting in September 2012, the Department notified Indian tribes of its intent to amend the Programmatic Agreement to reflect changes to the proposed Project route since 2011 and comments received from consulting parties. Tribal meetings were held in October 2012 in Montana, South Dakota, and Nebraska, and May 2013 in South Dakota. Discussion of the consultation efforts and a complete list, to date are included in Section 3.11.4.3, Tribal Consultation, and the amended Programmatic Agreement (see Appendix E, Amended Programmatic Agreement and Record of Consultation.” Final Supplemental Environmental Impact Statement, Keystone XL Project, pg. 1.6-1.

Appendix A of the Tribal Monitoring Plan, Programmatic Agreement, (Exhibit No. 1), containing a map of the proposed construction route of the Keystone XL Pipeline, mistakenly identifies Tripp County as an area of tribal consultation with the Yankton Sioux Tribe. Tripp County is an area that lies within the original boundaries of the Rosebud Sioux Tribe as established by the 1851 and 1868 Treaty of Fort Laramie and Act of March 2, 1889 25 Stat.888, and contains tracts of tribally-owned and allotted lands within the jurisdiction of the Rosebud Sioux Tribe.

It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that the agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. Title 36, Part 800, 36 C.F.R. §800.2 (a). The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process, and should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. 36 C.F.R. §800.2 (a)(4). When an Indian tribe has not assumed the responsibilities of the SHPO (“State Historic Preservation Officer”) the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. 36 C.F.R. § 800.2 (c)(2)(B)(ii). Section 101 (d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious or cultural significance to historic properties that may be affected by an undertaking, regardless of the location of the historic property. 36 C.F.R. §800.2(c)(2)(B)(ii). It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. 36 C.F.R. § 800.2(c)(2)(B)(ii)(A). The Federal Government has a unique legal relationship with Indian tribes set for the in the Constitution of the United States, treaties, statutes, and court decisions, and consultations with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. 36 C.F.R. § 800.2(c)(2)(B)(ii)(B). Consultations with an Indian tribe must recognize the government-to-government relationship between the Federal government and tribes. 36 C.F.R. §800.2(c)(2)(B)(ii)(C). When Indian tribes and Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires federal agencies to consult with Indian tribes in the section 106 process, and federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part. 36 C.F.R. §800.2(c)(2)(B)(ii)(D).

The incorrect designation of “Tribal lands”, in Tripp County, Rosebud Sioux Tribe Reservation, as lands within the Yankton Sioux Tribe Reservation in the amended Programmatic Agreement results in the following mistakes, errors in fact and errors in law, that create substantial non-compliance of the amended Programmatic Agreement with applicable federal law and federal regulations governing the proposed construction of the TransCanada Keystone XL Pipeline:

1. The seventh WHEREAS, page 2, states, “WHEREAS, the DOS... has consulted with...Indian tribes who may ascribe religious and cultural significance to historic properties that may be affected by the undertaking... consistent with 36 Part 800...”
 - a. Misidentifying Tripp County as part of the area under the jurisdiction and control of the “Yankton Sioux Tribe” instead of the “Rosebud Sioux Tribe”, adjacent to the route of the proposed pipeline construction zone, and the resulting lack of consultation with the Rosebud Sioux Tribe regarding those “tribal lands” threatens, jeopardizes, and fails to identify and protect any historic properties that the Rosebud Sioux Tribe ascribes religious and cultural significance.
2. The ninth WHEREAS, page 5, “the DOS provided Indian tribes the opportunity to provide information about historic properties of concern to Indian tribes and conduct Traditional Cultural Property (“TCP”) studies within the proposed Project APE, as summarized in Attachment I,”

- a. Misidentifying Tripp County as part of the area under the jurisdiction and control of the “Yankton Sioux Tribe” instead of the Rosebud Sioux Tribe, adjacent to the proposed pipeline construction corridor, and the resulting lack of consultation with the Rosebud Sioux Tribe has prevented the Rosebud Sioux Tribe from planning and taking part in Traditional Cultural Properties (“TCP”) studies.
3. Part 1 C., Standards and Definitions.
 - a. “Coordination Plan: A plan that, pursuant to Stipulations V.B and V.D, describes the coordination of construction with identification and evaluation of cultural resources, treatment of adverse effects, and protection of unanticipated discoveries.” The “Coordination Plan” that contains “tribal lands” in Tripp County and lists the wrong tribe, the Yankton Sioux Tribe, in the place of the proper consulting Tribe, the Rosebud Sioux Tribe, jeopardizes historic and cultural properties, and does not properly plan for identification and evaluation of cultural resources, treatment of adverse effects, and protection of unanticipated discoveries.
 - b. “Consulting Indian Tribes: Indian tribes that have consultative roles in the Section 106 process consistent with 36 C.F.R. § 800.2(c).” DOS has misidentified the “Yankton Sioux Tribe” as the “consulting Indian tribe”, rather than the Rosebud Sioux Tribe, as having “Tribal Lands” within Tripp County. DOS has therefore failed to identify “tribal lands” of the Rosebud Sioux Tribe located in Tripp County adjacent to the pipeline corridor or misidentified areas containing “tribal lands” of the Rosebud Sioux Tribe. The PA either has not identified or misidentified the Rosebud Sioux Tribe as the “Consulting Indian Tribe” for “tribal lands” Tripp County, South Dakota.
 - c. “Determination of Effect: A determination made by a Federal agency in regards to a Project’s effect upon a historic property consistent with 36 C.F.R. Part 800.” Department of State cannot make a proper determination of effect upon historic properties without proper and meaningful consultation with the Rosebud Sioux Tribe regarding the areas not identified as tribal lands within Tripp County, South Dakota.
 - d. “Tribal Monitoring Plan: A plan that, pursuant to Stipulation V.E and Attachment E, identifies appropriate areas for monitoring construction by tribal members appointed by their respective tribes. These tribal members shall meet the qualifications as noted by Stipulation V.E.3. The plan’s principal goal is to reduce the potential for impacts to previously unidentified historic properties that may also be properties of historic and religious and cultural significance to Indian tribes that meet the National Register criteria (see 36 C.F.R. § 800.16(1)(a).” The Tribal Monitoring Plan that misidentifies Tripp County as “tribal lands” of the Yankton Sioux Tribe fails in its principle goal to reduce the potential for impacts to previously unidentified historic properties that also may be properties of religious and cultural significance to Indian tribes by failing to consult with the proper Indian Tribe with lands in the construction corridor, the Rosebud Sioux Tribe.
4. “KEYSTONE XL PROJECT-PIPELINE CONSTRUCTION B. (1). Page 10, 11. “In consultation with the SHPOs, designated representatives of consulting Indian tribes, and other consulting parties, the DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties within the APE for each construction spread, including in areas yet to be surveyed outlined in Attachment A, prior to the initiation of construction of that spread, consistent with 36 C.F.R. §§800.4 (a),(b), and (c).” A reasonable and good faith effort to complete the identification and evaluation of historic properties cannot be accomplished without

proper consultation and participation of the Rosebud Sioux Tribe in Tripp County, South Dakota, prior to initiation of construction of that Spread.

B. 2. (a). “In the identification and evaluation of historic properties to which Indian tribes may attach religious and cultural significance, the DOS will take into consideration information through consultations and through the protocols for the TCP studies, post-review discovery, and the Tribal Monitoring Plan, as set forth in this PA.” The Department of State should consult with the Rosebud Sioux Tribe on “tribal lands” located in Tripp County, to avoid the risk of failing to properly identify and evaluate historic properties Indian tribes may attach religious and cultural significance. The Rosebud Sioux Tribe should be the consulting Indian Tribe for Tripp County, rather than the Yankton Sioux Tribe.

B.2.(b). “In the event identification of historic properties cannot be completed for any Construction Spreads prior to construction, Keystone will develop and submit a Coordination Plan for the DOS to review and approval pursuant to Stipulation V.D. The Coordination Plan must describe the measures Keystone will use to implement and complete the identification and evaluation of cultural resources and appropriate consultation before any historic properties are adversely affected by vegetation clearing and construction activities related to that spread.” The proposed pipeline has not received final approval for construction, therefore, there is sufficient time and opportunity for the DOS to consult with the Rosebud Sioux Tribe for identifying and evaluating historic properties in Tripp County, South Dakota.

C. 1. “Treatment of Historic Properties. Whenever feasible, avoidance of adverse effects to historic properties will be the preferred treatment. In consultation with the DOS, ACHP, SHPOs, designated representatives of consulting Indian tribes, and other consulting parties, Keystone may elect to consider and implement avoidance measures prior to completing the evaluation of historic properties.” The areas of proposed pipeline construction in Tripp County, South Dakota, should be properly identified as areas within the original boundaries of the Rosebud Sioux Tribe defined by the 1851 and 1868 Treaties of Fort Laramie and the Act of March 2, 1889, 25 Stat. 888. The PA should identify the Rosebud Sioux Tribe as the consulting Tribe in Tripp County, not the Yankton Sioux Tribe, for the construction corridor in Tripp County, South Dakota.

C.4., page 12. “If, after consultation, the DOS determines that the adverse effect cannot be avoided, Keystone will draft a comprehensive Treatment Plan for each adversely effected historic property.” The areas of proposed pipeline construction in Mellette and Tripp Counties, South Dakota, should be properly identified as areas within the original boundaries of the Rosebud Sioux Tribe defined by the 1851 and 1868 Treaties of Fort Laramie and the Act of March 2, 1889, 25 Stat. 888. The PA should identify the Rosebud Sioux Tribe as the consulting Tribe in Tripp County, not the Yankton Sioux Tribe, for the construction corridor in Tripp County, South Dakota.

D.2. (a). page 13. “A Coordination Plan will be prepared for each state and will include those measures developed by Keystone pursuant to Stipulations V.B and V.C to complete the identification and evaluation of historic properties, and, as appropriate, mitigation of adverse effects to them during and coordinated with vegetation clearing and construction activities.” The areas of proposed pipeline construction in Tripp County, South Dakota, should be properly identified as areas within the original boundaries of the Rosebud Sioux Tribe defined by the 1851 and 1868 Treaties of Fort Laramie and Act of March 2, 1889, 25 Stat. 888. The PA should identify the Rosebud Sioux Tribe as the consulting in Tripp County, not the Yankton Sioux Tribe, for the construction corridor in Tripp County, South Dakota.

E.1.(b). page 14. “ Historical Trail and Archaeological Monitoring Plan (“HTAM Plan”) and Tribal Monitoring Plan.

b. “The Tribal Monitoring Plan outlines areas that have been previously identified by Indian tribes, either through the preparation of Traditional Cultural Property reports or through consultation, that warrant monitoring during clearing and trenching for potential effects to previously unidentified historic properties that may include properties of religious and cultural significance to an Indian tribe and that meet the National Historic criteria. (See 36 C.F.R. § 800.16(1)(1).” The areas of proposed pipeline construction in Tripp County, South Dakota, should be properly identified as areas within the original boundaries of the Rosebud Sioux Tribe defined by the 1851 and 1868 Treaties of Fort Laramie and Act of March 2, 1889, 25 Stat. 888. The PA should identify the Rosebud Sioux Tribe as the consulting Tribe in Tripp County, not the Yankton Sioux Tribe, for the construction corridor in Tripp County, South Dakota.

The PA does not meet the goal of consultation required by Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 et. seq., with the proper Indian Tribe, to identify historic properties potentially affected by construction of the Keystone XL Pipeline, assess its affects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

The Environmental Impact Statement, finding no significant impact on cultural resources, is based upon incorrect factual and legal assumptions, was prepared without proper consultation with the Rosebud Sioux Tribe, the Indian Tribe with jurisdiction of allotted lands adjacent to the KXL Pipeline construction corridor. The EIS is therefore improperly prepared, and its findings based upon erroneous factual and legal assumptions under federal law.

THE DEPARTMENT OF STATE WILL CONSULT WITH THE DEPARTMENT OF INTERIOR IN FOCUSING ON WHETHER THE PROPOSED PROJECT SERVES THE NATIONAL INTEREST. THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS, IN SIGNING OFF ON THE AMENDED PROGRAMMATIC AGREEMENT, KEYSTONE XL PIPELINE, FAILED TO PERFORM ITS TRUST RESPONSIBILITY TO THE ROSEBUD SIOUX TRIBE, AND THEREFORE APPROVAL OF THE PROJECT IS NOT IN THE NATIONAL INTEREST.

The Bureau of Indian Affairs, in signing off on the amended Programmatic Agreement, (Exhibit No. 2), failed in its trust responsibility to the Rosebud Sioux Tribe, for the following reasons: 1) by failing to review the amended Programmatic Agreement and Tribal Monitoring Plan before signing off on the PA; 2) by failing to comment or take action to correct the wrongful designation of Tripp County as an area within the jurisdiction of the Yankton Sioux Tribe; 3) failing to identify those allotted and tribal trust tracts in Tripp County lying within the original treaty boundaries of the Rosebud Sioux Tribe and recognized by the United States Supreme Court as being part of “Indian Country”; 4) by failing to comment or take corrective action to identify the Rosebud Sioux Tribe as the “Consulting Indian Tribe” in the Tribal Monitoring Plan, amended Programmatic Agreement.

APPROVAL OF THE PRESIDENTIAL PERMIT FOR THE CONSTRUCTION OF THE PROPOSED KEYSTONE XL PROJECT IS INCONSISTENT WITH PRESIDENTIAL EXECUTIVE ORDERS NOS. 13084 AND 12898, AND THEREFORE IS NOT IN THE NATIONAL INTEREST.

Executive Order 13084, signed by President William Clinton on May 14, 1998, provides that the United States work with Indian Tribes on a government-to-government basis to address Indian tribal self-government, trust resources, and Indian tribal treaty and other rights. Furthermore, Executive Order 13084 orders the establishment of regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities.

The construction of the TransCanada XL Pipeline crosses lands within and adjacent to the lands within the Treaty boundaries of 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie. The Rosebud Sioux Tribe is a successor to the signatory Great Sioux Nation Tribes to the 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie. The tribal nations of the Great Sioux Nation have retained aboriginal and treaty rights to those lands, including protection of grave sites and sacred sites, (Native American Graves Protection and Repatriation Act, 25 U.S.C. Section 3001 et. seq., Pub. L. 101-601), protection of cultural, religious and historical sites, (National Historic Preservation Act of 1966, 16 U.S.C. Section 470 et. seq., Pub. L. 89-665), and protection of the Oglala Aquifer from contamination of potential catastrophic levels protection of Tribally reserved waters rights under the Winters Doctrine, and protection of our lands and waters on the tribal aboriginal treaty lands from desecration from tar sands sludge spills. The portion of the Oglala Aquifer located within the tribal lands in South Dakota, and the Rosebud Sioux Tribe Indian Reservation, are adjacent to and threatened by the construction of the TransCanada XL Pipeline.

The Rosebud Sioux Tribe has regulatory jurisdiction to regulate land use and potential harmful discharges into Reservation waters on tribally-owned trust lands and allotted trust lands owned by enrolled members of the Rosebud Sioux Tribe within Todd, Tripp, Mellette, Gregory, and Lyman Counties of South Dakota. The construction of the TransCanada XL Pipeline does not cross any tribal or allotted trust lands, but the proposed route lies adjacent to tracts of tribally owned trust and allotted trust parcels of land in Tripp County, South Dakota. Rights-of-way, including the TransCanada Keystone XL Pipeline, are defined by federal statute as “Indian Country.” 18 U.S.C. § 1151 (a). The construction of the Pipeline, and a possible spill or release of tar sands sludge from the Pipeline, poses a direct threat to two of the most important assets of the Rosebud Sioux Tribe, its lands and its water resources.

The damage caused by a release of tar sands sludge to Tribal trust and allotted lands could destroy and result in the loss of the essential character and beauty of the Rosebud Reservation, result in the destruction of the historical and cultural values and traditions of the Tribe, increase air, water, and solid waste pollution, and increase the possibility of contamination from the Oglala Aquifer and surface water supplies, and result in the deterioration of the standards of living, quality of life, welfare and well-being of all Reservation residents.

Executive Order 12898, signed by President William Clinton on February 11, 1994, directs federal agencies to make achieving environmental justice as part of the mission by identifying and addressing, as appropriate, disproportionately high adverse human health or environmental effects of its activities on minority and low-income populations. The United States and its federal agencies must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health, environmental, and social effects of its programs, policies, and activities on minority and low-income populations.

Todd County, South Dakota, also an area encompassing the Rosebud Sioux Tribe Indian Reservation, is the second poorest County in the United States. A spill of the tar sands sludge from the TransCanada Pipeline in Tripp County, South Dakota, would have a direct impact on the

economic security, health, welfare and general well-being of the Tribe and its members residing in both Tripp and Todd Counties.

CONCLUSION

The Final Environmental Impact Statement for the Keystone XL Pipeline project is based upon legal and factual errors, omissions, and does not comply with applicable federal statutes, regulations, and court decisions. The proposed project does not serve the national interest, and the application for the Presidential Permit must be denied.

Please consider our humble request for disapproval of the permit that will open the door for destruction of our lands, our culture and our history. In the words of Chief Arvol Looking Horse, 19th Generation Keeper of the Sacred White Buffalo Calf Pipe, "I know in my heart there are millions of people that feel our united prayers for the sake of our Grandmother Earth are long overdue." Please keep the next Seven Generations in your thoughts as we do. Thank you for this opportunity to express our opposition to this project.

Respectfully submitted and Pilamiya (Thank you),

Submitted Electronically: 01/27/2015

Paula Antoine,
Coordinator

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2014-33**

RESOLUTION OF THE OCETI SAKOWIN

WHEREAS, we are the OCETI SAKOWIN, known to the United States as the Great Sioux Nation, and

WHEREAS, we are inherently sovereign nations that predate the United States, have been and are the guardians of the people, air, land and waters of our traditional homelands since time immemorial, and

WHEREAS, despite the efforts of the United States to divide the Oceti Sakowin, we recognize that continued cooperation and support is the best way to continue to improve the quality of life of our people and ensure a better future for our generations to come, and

WHEREAS, the members of the Oceti Sakowin are successors to the signatory bands of the Fort Laramie Treaties of 1851 and 1868, and

WHEREAS, Article 3 of the Treaty of 1851 provides “In consideration of the rights and privileges acknowledged in the preceding article, the United States bind themselves to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States, after the ratification of this treaty”, and

WHEREAS, The construction of the TransCanada XL Pipeline crosses lands within and adjacent to the lands within the Treaty boundaries of 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie.

WHEREAS, The tribal nations of the Great Sioux Nation have retained aboriginal and treaty rights to those lands, including protection of grave sites and sacred sites, (Native American Graves Protection and Repatriation Act, 25 U.S.C. Section 3001 et. seq., Pub. L. 101-601), protection of cultural, religious and historical sites, (National Historic Preservation Act of 1966, 16 U.S.C. Section 470 et. seq., Pub. L. 89-665), and protection of the Oglala Aquifer from contamination of potential catastrophic levels, protection of water rights reserved to Tribal Nations by the Winters Doctrine, and protection of our lands and waters on the tribal aboriginal treaty lands from desecration from tar sands sludge spills; and

WHEREAS, The Tribal Nations of the Oceti Sakowin stand in unified opposition to the construction of the TransCanada XL Pipeline; and

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2014-33**

WHEREAS, the Tribal Nations of the Oceti Sakowin agree to introduce resolutions in each of their respective Tribal Councils to oppose the construction of the TransCanada XL Pipeline; and

WHEREAS, Appendix A of the Programmatic Agreement, maps of the proposed construction route of the Keystone XL Pipeline, mistakenly identifies areas of Tripp County as an area of tribal concern of the Yankton Sioux Tribe. Tripp County is an area that lies within the original boundaries of the Rosebud Sioux Tribe as established by the 1851 and 1868 Treaty of Fort Laramie and contains tracts of tribally-owned and allotted lands within the jurisdiction of the Rosebud Sioux Tribe; and

WHEREAS, The Tribal Nations of the Oceti Sakowin agree that the Rosebud Sioux Tribe should have been designated as the “consulting Tribe” in the amended Programmatic Agreement that is incorporated in the Environmental Impact Statement; and

WHEREAS, the Tribal Nations of the Oceti Sakowin agree to provide spiritual and any other available support to the efforts of the Rosebud Sioux Tribe to establish spiritual camps along the construction route of the TransCanada Keystone Pipeline within the aboriginal treaty boundaries defined by the 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie; and

THEREFORE BE IT RESOLVED, the Tribal Nations of the Oceti Sakowin agree to introduce resolutions in each of their respective Tribal Councils to oppose the construction of the TransCanada XL Pipeline; and

BE IT FURTHER RESOLVED, The Tribal Nations of the Oceti Sakowin agree that the Rosebud Sioux Tribe should have been designated as the “consulting Tribe” in the amended Programmatic Agreement that is incorporated in the Environmental Impact Statement; and

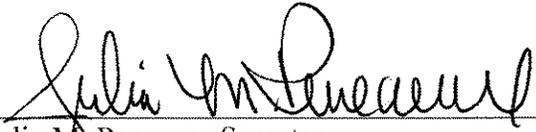
BE IT FINALLY RESOLVED, the Tribal Nations of the Oceti Sakowin agree to provide spiritual and any other available support to the efforts of the Rosebud Sioux Tribe to establish spiritual camps along the construction route of the TransCanada Keystone Pipeline within the treaty boundaries defined by the 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie.

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2014-33**

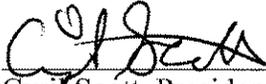
CERTIFICATION

This is to certify that the above Resolution No. 2014-33 was duly passed by the Rosebud Sioux Tribal Council in session on February 27, 2014 by a vote of eleven (11) in favor, zero (0) opposed and zero (0) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Julia M. Peneaux, Secretary
Rosebud Sioux Tribe



Cyril Scott, President
Rosebud Sioux Tribe

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2011-354**

- WHEREAS,** the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and pertinent amendments thereat and
- WHEREAS,** the Rosebud Sioux Tribe is governed by the Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-Laws; and
- WHEREAS,** Trans Canada Keystone XL crude oil pipeline project is awaiting permit from U.S. State Department pursuant to the authority delegated by the President of the United States under Executive Order 13337 (69 Federal Register 25299); and
- WHEREAS,** Department of State has determined that issuance of a Presidential Permit for the keystone XL project triggers review under Section 106 of the National Historic Preservation Act and its implementing regulations "Protection of Historic Properties." (36 CFR Part 800); and
- WHEREAS,** Keystone XL Pipeline comprises construction of approximately 1375 miles of new crude oil pipeline in the United States (Montana, South Dakota, Nebraska, Kansas, Oklahoma & Texas) and other associated above ground facilities such as pump stations, transmission facilities, substations, lateral pipelines, storage yards etc; and
- WHEREAS,** the Keystone XL pipeline will cross the Cheyenne River that flows into the Missouri River up gradient from the intake of the Mni Wiconi Rural Water System that supplies drinking water to the Tribal members on Rosebud, Oglala and Lower Brule Indian Reservations and West River —Lyman Jones customers; and
- WHEREAS,** the Keystone XL pipeline will cross the Mni Wiconi core pipeline at two locations and
- WHEREAS,** the Keystone XL pipeline will traverse through the Tripp County in South Dakota where the Ogallala Aquifer extends and from which Tribal members derives their drinking water in Tripp and Gregory Counties; and
- WHEREAS,** the Trans Canada Keystone XL crude oil pipeline has tremendous potential to contaminate the drinking water sources of Rosebud Sioux Tribal members; and
- WHEREAS,** Keystone XL pipeline specifically can contaminate the Cheyenne River water impacting the water intake for the Mni Wiconi Rural Water, the water in the pipelines at the two proposed locations of crossing and by leaking /percolation into the Ogallala Aquifer; and

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2011-354**

WHEREAS, the Trans Canada keystone XL pipeline has the potential to jeopardize the health and safety of Rosebud Sioux Tribal populations; and

WHEREAS, Environmental Impacts Statement completed by the U.S. State Department did not include all the risks that the keystone XL pipelines poses to the Rosebud Sioux Tribal populations; and

WHEREAS, a Risk Assessment is being conducted by the Battle Memorial Institute at the present time; and

WHEREAS, the Bureau of Reclamation under trust responsibility to the Rosebud Sioux Tribe can make significant contribution in protecting the Rosebud Sioux Tribal population from the potential contamination threats of the Keystone pipeline XL pipeline project; and

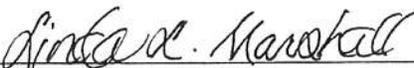
NOW THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council is vehemently opposed to the construction of the Trans Canada keystone XL pipeline that crosses the Cheyenne River, the Mni Wiconi Water lines at two locations and the Ogallala Aquifer in Tripp County; and

BE IT FURTHER RESOLVED, that the Commissioner of Bureau of Reclamation contacts the State Department and Battle Memorial institute and provides all the relevant information as enumerated in this Resolution and beyond, under trust responsibility to the Rosebud Sioux Tribe, in thwarting the construction of the Trans Canada Keystone XL pipeline that has the potential to jeopardize the health and safety of the Rosebud Sioux Tribal populations.

C E R T I F I C A T I O N

This is to certify that the above Resolution No. 2011-354 was duly passed by the Rosebud Sioux Tribal Council in session on December 29, 2011, by a vote of Eleven (11) in favor, Zero (0) opposed and Zero (0) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Linda L. Marshall, Secretary
Rosebud Sioux Tribe



Rodney M. Bordeaux, President
Rosebud Sioux Tribe

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2011-308**

- WHEREAS,** the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and
- WHEREAS,** the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and
- WHEREAS,** the Rosebud Sioux Tribe is authorized to promulgate and enforce ordinances for the maintenance of law and order, and to safeguard the peace and morals, and general welfare of the Tribe, and to purchase and to otherwise acquire lands and other property for or on behalf of the Tribe as authorized by law, pursuant to Rosebud Sioux Tribal Constitution and By-laws Article IV, Sections (k), and (m); and
- WHEREAS,** the United States Department of State has recently notified the Tribes of the Great Plains Region through Section 106 of the National Historic Preservation Act that TransCanada Keystone Pipeline, L.P., is proposing to build an oil pipeline, TransCanada XL from Canada traversing North Dakota, South Dakota, and Nebraska; and
- WHEREAS,** the proposed TransCanada Keystone Pipeline Project has a potential impact on areas containing human remains as defined by the Native American Grave Protection and Repatriation Act and cultural and historic sites protected by the National Historic Preservation Act; and
- WHEREAS,** The United States has obligated itself through Treaties entered into with the sovereign Tribes, to protect the legal rights of tribal Nations; and
- WHEREAS,** the areas of construction of the TransCanada Keystone xl Pipeline Project does not cross tribal lands, but the proposed route is within the treaty boundaries of member tribes of the Great Sioux Nation, and the Rosebud Sioux Tribe is a signatory band to the 1868 Treaty of Fort Laramie, a Treaty between the Great Sioux Nation and the United States; and
- WHEREAS,** the proposed route of the TransCanada XL Pipeline and the risk of oil spills will endanger the Oglala Aquifer, the source of drinking water for the Midwest, and reserved water rights of all Midwestern Tribal Nations; and
- WHEREAS,** the Rosebud Sioux Tribe joins the Great Plains Tribal Chairman's Association, the Dene Assembly of First Nations, and all other Tribal Nations, in opposing the construction of the TransCanada pipeline; and

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2011-308**

WHEREAS, The Rosebud Sioux Tribe adopts the Mother Earth Accord, September 15-16, 2011, developed by the Tribal Government Chairs and Presidents, Traditional Treaty Councils, and United States property owners, and demands that the Administration of President Barak Obama in finding the TransCanada pipeline is not in the "national interest," and refuse to grant a permit for the construction of the TransCanada XL pipeline;

THEREFORE BE IT RESOLVED, that Rosebud Sioux Tribe has treaty rights and aboriginal rights to cultural, historical and burial sites that may be located in the proposed construction area of the TransCanada Keystone Pipeline; and

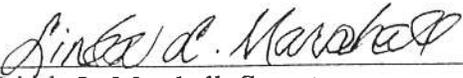
BE IT ALSO RESOLVED, the Rosebud Sioux Tribe joins the Great Plains Tribal Chairman's Association, the Dene Assembly of First Nations, and all other Tribal Nations, in opposing the construction of the TransCanada pipeline; and

BE IT FINALLY RESOLVED, The Rosebud Sioux Tribe adopts the Mother Earth Accord, September 15-16, 2011, developed by the Tribal Government Chairs and Presidents, Traditional Treaty Councils, and United States property owners, and demands that the Administration of President Barak Obama find the TransCanada XL pipeline is not in the "national interest," and refuse to grant a permit for the construction of the TransCanada XL pipeline.

C E R T I F I C A T I O N

This is to certify that the above Resolution No. 2011-308 was duly passed by the Rosebud Sioux Tribal Council in session on September 29, 2011, by a vote of Fourteen (14) in favor, Zero (0) opposed and One (1) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Linda L. Marshall, Secretary
Rosebud Sioux Tribe



Rodney M. Bordeaux, President
Rosebud Sioux Tribe

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-178**

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and pertinent amendments thereof; and

WHEREAS, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and

WHEREAS, the Rosebud Sioux Tribe Constitution and By-laws Article IV Section 1. (a) authorizes the council of the Rosebud Sioux Tribe to negotiate with the Federal, State, and local governments on behalf of the tribe; and

WHEREAS, the Rosebud Sioux Tribal Council has enacted Resolution No. 2008-95, finding that legal action is necessary for the protection of treaty and aboriginal rights of the Rosebud Sioux Tribe to cultural, historic and burial sites that may be located within the boundaries of member Nations of the Great Sioux Nation, and the Rosebud Sioux Tribe is a signatory hand to the 1868 Treaty of Fort Laramie, a treaty between the Great Sioux Nation and the United States; and

WHEREAS, the Rosebud Sioux Tribe has joined the Sisseton-Wahpeton Sioux Tribe and the Flandreau Sioux Tribe in an effort to protect the treaty and aboriginal rights of the Great Sioux Nation that may be irreparably damaged or destroyed by the construction of the Keystone TransCanada Pipeline; and

WHEREAS, the TransCanada Pipeline will cross North Dakota and South Dakota, and the Rosebud Sioux Tribe has officially opposed the construction of the project by Tribal Council Resolution; and

WHEREAS, the Rosebud Sioux Tribal Historic Preservation Office has requested the Rosebud Sioux Tribe to appropriate \$10,000.00 dollars for expenses and initial costs to support litigation; and

WHEREAS, the Rosebud Sioux Tribe authorizes a Special Attorney Contract for Mario Gonzalez, Attorney, and Eric Antoine, Attorney, to represent the Rosebud Sioux Tribe in litigation; now

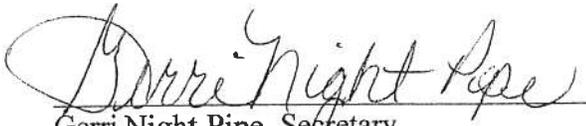
THEREFORE BE IT RESOLVED, The Rosebud Sioux Tribal Council accepts and adopts the recommendation of the Rosebud Sioux Tribe Historic Preservation Office to appropriate \$10,000.00 for expenses and initial costs to support litigation to protect the treaty and aboriginal rights of the Rosebud Sioux Tribe that may be irreparably harmed or destroyed by the construction of the TransCanada Keystone Pipeline.

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-178**

CERTIFICATION

This is to certify that the above Resolution Number 2008-178 was duly passed by the Rosebud Sioux Tribal Council in session on August 13, 2008, by a vote of twelve (12) in favor, none (0) opposed and none (0) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Gerri Night Pipe, Secretary
Rosebud Sioux Tribe



Rodney M. Bordeaux, President
Rosebud Sioux Tribe

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-161**

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and pertinent amendments thereof; and

WHEREAS, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-Laws; and

WHEREAS, the Rosebud Sioux Tribe Constitution and By-laws Article IV Section 1. (a) authorizes the council of the Rosebud Sioux Tribe to negotiate with the Federal, State, and local governments on behalf of the Tribe; and

WHEREAS, the Rosebud Sioux Tribal Council has enacted Resolution No. 2008-95, finding that legal action is necessary for the protection of treaty and aboriginal rights of the Rosebud Sioux Tribe to cultural, historic and burial sites that may be located within the boundaries of member Nations of the Great Sioux Nation, and the Rosebud Sioux Tribe is a signatory band to the 1868 Treaty of Fort Laramie, a treaty between the Great Sioux Nation and the United States; and

WHEREAS, the Rosebud Sioux Tribe desires to initiate legal proceedings as a joint plaintiff with other Sioux Tribes directly affected by the pipeline, namely the Sisseton-Wahpeton Sioux Tribe, Yankton Sioux Tribe, and the Standing Rock Sioux Tribe, for the purpose of protecting the cultural and human remains of the Tribe that will be disturbed by the TransCanada Keystone Pipeline Project; and

WHEREAS, the Rosebud Sioux Tribe is contemplating filing a civil action in the United States District Court, and will need to pay for attorney fees and expenses, and to contribute to the costs of expert witnesses; now

THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribe hereby requests the Bureau of Indian Affairs to provide a \$500,000.00 grant from FY 2008 rights protection funds to the Sioux tribes involved in the Keystone Pipeline civil action, which funds will be expended for attorney fees, expenses and expert witnesses pursuant to a budget agreed upon by the Tribes and approved by the BIA; and

BE IT FURTHER RESOLVED, that each Tribe involved in the TransCanada Keystone Pipeline will receive \$100,000.00 each from the \$500,00.00 grant from the FY 2008 rights protection funds: and

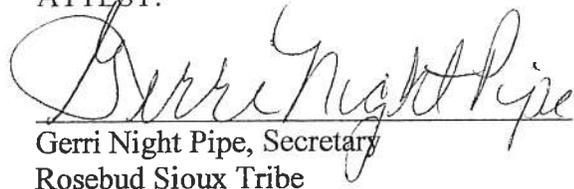
BE IT ALSO RESOLVED, that the Tribal Treasurer shall place the Rosebud Sioux Tribe's share of any rights protection grant funds obtained for the TransCanada Keystone Pipeline civil action in a special restricted account to be used exclusively for fees, expenses and expert witnesses of the Tribe.

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-161**

CERTIFICATION

This is to certify that the above Resolution Number 2008-161 was duly passed by the Rosebud Sioux Tribal Council in session July 16, 2008, by a vote of eleven (11) in favor, none (0) opposed and none (0) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:


Gerri Night Pipe, Secretary
Rosebud Sioux Tribe



Rodney M. Bordeaux, President
Rosebud Sioux Tribe

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-160**

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and pertinent amendments thereof; and

WHEREAS, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and

WHEREAS, the Rosebud Sioux Tribe Constitution and By-laws Article IV Section 1. (a) authorizes the council of the Rosebud Sioux Tribe to negotiate with the Federal, State, and local governments on behalf of the Tribe; and

WHEREAS, the Rosebud Sioux Tribal Council has enacted Resolution No. 2008-95, finding that legal action is necessary for the protection of treaty and aboriginal rights of the Rosebud Sioux Tribe to cultural, historic and burial sites that may be located within the boundaries of member Nations of the Great Sioux Nation, and the Rosebud Sioux Tribe is a signatory band to the 1868 Treaty of Fort Laramie, a treaty between the Great Sioux Nation and the United States; and

WHEREAS, the TransCanada Corporation is conducting scoping meetings in the area to generate support for another pipeline in addition to then Keystone Pipeline, called Keystone Phase II XL; and

WHEREAS, Keystone Phase II XL would go from Alberta Canada to Nebraska, and would run through areas in close proximity to the Rosebud Sioux Tribe Reservation outside Todd County; and

WHEREAS, Keystone Phase II XL may cross lands held in trust for the Rosebud Sioux Tribe by the United States in the counties of Lyman, Mellette, Tripp, and Gregory Counties, South Dakota; and

WHEREAS, the Rosebud Sioux Tribe will continue to take a position opposing construction of large scale pipeline projects for the purpose of protecting the cultural, historic, sacred sites and burial sites that will be disturbed by the construction of Keystone Phase II XL; and

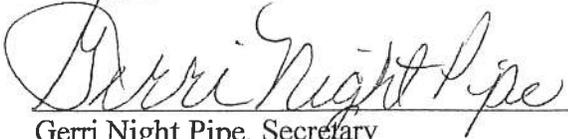
THEREFORE BE IT RESOLVED, the Rosebud Sioux Tribe opposes Keystone Phase II XL a proposed pipeline that may cross Rosebud Sioux Tribal lands located in the counties of Lyman, Mellette, Tripp and Gregory Counties, South Dakota.

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-160**

CERTIFICATION

This is to certify that the above Resolution Number 2008-160 was duly passed by the Rosebud Sioux Tribal Council in session July 16, 2008, by a vote of eleven (11) in favor, none (0) opposed and none (0) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Gerri Night Pipe, Secretary
Rosebud Sioux Tribe



Rodney M. Bordeaux, President
Rosebud Sioux Tribe

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-95**

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and pertinent amendments thereof; and

WHEREAS, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and

WHEREAS, the Rosebud Sioux Tribe Constitution and By-laws Article IV Section 1. (a) authorizes the council of the Rosebud Sioux Tribe to negotiate with the Federal, State, and local governments on behalf of the Tribe; and

WHEREAS, the Rosebud Sioux Tribal Historic Preservation Office has been involved in monitoring the potential for infringement upon traditional and historical lands and rights by the construction of the TransCanada Keystone Pipeline, a project that has already begun construction; and

WHEREAS, the United States Department of State has recently notified the Tribes of the Great Plains Region through Section 106 of the National Historic Preservation Act that TransCanada Keystone Pipeline, L.P, is proposing to build an oil pipeline from Canada traversing North Dakota, South Dakota, and Nebraska; and

WHEREAS, the proposed TransCanada Keystone Pipeline Project has a potential impact on areas containing human remains as defined by the Native American Grave Protection and Repatriation Act and cultural and historic sites protected by the National Historic Preservation Act; and

WHEREAS, the Rosebud Sioux Tribe has not had government to government consultation with the United States Department of State and the federal government has not complied with Section 106 of the National Historic Preservation Office; and

WHEREAS, the areas of construction of the TransCanada Keystone Pipeline Project do not cross any federal or tribal lands, but the proposed route is within the areas within the treaty boundaries of member tribes of the Great Sioux Nation, and the Rosebud Sioux Tribe is a signatory band to the 1868 Treaty of Fort Laramie, a treaty between the Great Sioux Nation and the United States; and

WHEREAS, other Tribes with rights protected by federal law and the U.S. Constitution, including the Oglala Sioux Tribe and the Sisseton-Wahpeton Sioux Tribe, have enacted Tribal Resolutions to authorize legal proceedings to halt the construction of the TransCanada Pipeline; and

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-95**

WHEREAS, the Rosebud Sioux Tribal Council directs the Legal Department and the Tribal Historic Preservation Office to enter into litigation jointly with other Tribes similarly situated, including the Oglala Sioux Tribe and the Sisseton-Wahpeton Sioux Tribe; and

WHEREAS, the Rosebud Sioux Tribal Council directs the Legal Department and the Tribal Historic Preservation Office to work collectively with the coalition member tribes and organizations to reduce litigation costs by directing litigation strategies, including choosing lead litigation attorney from the legal team, which consists of the tribal attorneys from their respective Tribes, the Plains Justice Center in Cedar Rapids, Iowa, (a non-profit organization) and other identified groups; and

THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribe finds that legal action is necessary to protect treaty rights and aboriginal rights of the Rosebud Sioux Tribe to cultural, historical and burial sites that may be located in the proposed construction area of the TransCanada Keystone Pipeline; and

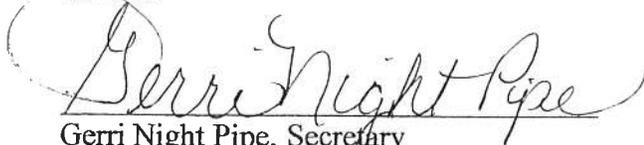
THEREFORE BE ALSO RESOLVED, that the Rosebud Sioux Tribe condemns the by pass of Section 106 has been bypassed with respect to the Indian Tribes and Nations on this project, and rejects the Programmatic Agreement entered into by various agencies of the federal government and a few affected Indian tribes; and

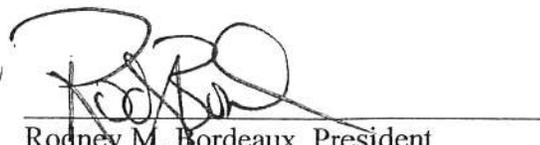
THEFORE BE IT FURTHER RESOLVED, The Rosebud Sioux Tribal Council agrees to enter into litigation jointly with the other Indian Tribes and Nations similarly situated, including the Oglala Sioux Tribe and the Sisseton-Wahpeton Sioux Tribe.

CERTIFICATION

This is to certify that the above Resolution Number 2008-95 was duly passed by the Rosebud Sioux Tribal Council in session on May 29, 2008, by a vote of fourteen (14) in favor, none (0) opposed and two (2) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:


Gerri Night Pipe, Secretary
Rosebud Sioux Tribe


Rodney M. Bordeaux, President
Rosebud Sioux Tribe

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-44**

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and pertinent amendments thereof; and

WHEREAS, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and

WHEREAS, the Rosebud Sioux Tribe is authorized to promulgate and enforce ordinances for the maintenance of law and order, and to safeguard the peace and morals, and general welfare of the Tribe, and to purchase and to otherwise acquire lands and other property for or on behalf of the Tribe as authorized by law pursuant to Rosebud Sioux Tribal Constitution and By-laws Article IV Sections (k), and (m); and

WHEREAS, the United States Department of State has recently notified the Tribes of the Great Plains Region through Section 106 of the National Historic Preservation Act that TransCanada Keystone Pipeline, L.P., is proposing to build an oil pipeline from Canada traversing North Dakota, South Dakota, and Nebraska; and

WHEREAS, the proposed TransCanada Keystone Pipeline Project has a potential impact on areas containing human remains as defined by the Native American Grave Protection and Repatriation Act and cultural and historic sites protected by the National Historic Preservation Act; and

WHEREAS, the United States has obligated itself through Treaties entered into with the sovereign Tribes, to protect the legal rights of tribal Nations; and

WHEREAS, the areas of construction of the TransCanada Keystone Pipeline Project do not cross any federal or tribal lands, but the proposed route is within the areas within the treaty boundaries of member tribes of the Great Sioux Nation, and the Rosebud Sioux Tribe is a signatory band to the 1868 Treaty of Fort Laramie, a treaty between the Great Sioux Nation and the United States; now

THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribe finds that the Rosebud Sioux Tribe has treaty rights and aboriginal rights to cultural, historical and burial sites that may be located in the proposed construction area of the TransCanada Keystone Pipeline; and

BE IT ALSO RESOLVED, that the Rosebud Sioux Tribe request technical, legal, and any other assistance from the United States Department of Interior, Bureau of Indian Affairs, for the identification, evaluation, and protection of any cultural, historic, religious, and burial sites in the proposed construction area of the TransCanada Keystone Pipeline; now

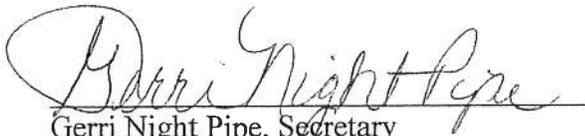
**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2008-44**

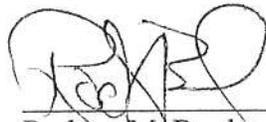
BE IT FINALLY RESOLVED, that representatives of the Rosebud Sioux Tribal Historic Preservation Office, and the President of the Rosebud Sioux Tribe are authorized and directed to contact representatives of the BIA for technical, legal and any other assistance that may be available for the identification, evaluation, and protection of any cultural, historic, religious, and burial sites in the proposed construction area of the TransCanada Keystone Pipeline.

CERTIFICATION

This is to certify that the above Resolution Number 2008-44 was duly passed by the Rosebud Sioux Tribal Council in session on February 22, 2008, by a vote of twelve (12) in favor, none (0) opposed and two (2) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:


Gerri Night Pipe, Secretary
Rosebud Sioux Tribe


Rodney M. Bordeaux, President
Rosebud Sioux Tribe

BUREAU OF INDIAN AFFAIRS
ISSUES REGARDING TRUST RESPONSIBILITY AND
TRANSCANADA XL PIPELINE

January 27, 2015

1. The Rosebud Sioux Tribe is a federally recognized sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and is governed by a Constitution and By-laws ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935, and as amended. The Rosebud Sioux Tribe Reservation includes tribally-owned trust lands and allotted lands owned by enrolled tribal members within Todd, Tripp, Mellette, Gregory, and Lyman Counties, South Dakota.
2. The Rosebud Sioux Tribe has jurisdiction of all trust and restricted lands located in the counties of Lyman, Todd, Tripp, Mellette, and Gregory counties of South Dakota, of the Rosebud Sioux Tribe established by the 1851 and 1868 Treaty of Fort Laramie and the Act of March 2, 1889, 25 Stat. 888.
3. The United States Supreme Court in Rosebud Sioux Tribe v. Kniep, 430 U.S. 584, 615 (1977), held that the legislative history of acts opening up Todd, Mellette, Tripp, and Lyman Counties demonstrated a legislative intent to diminish the boundaries of the Rosebud Reservation to remove certain lands in South Dakota from the jurisdiction of the Rosebud Sioux Tribe, but also stated, with regard to lands held in trust in those counties, stated in Footnote 48 as follows: “To the extent the members of the Rosebud Sioux Tribe are living on allotted land outside the Reservation, they, too, are on “Indian Country” within the definition of 18 U.S.C s 1151, and hence subject to federal provisions and protections.” 430 U.S. at 615, Footnote No. 48.
4. Appendix A of the Tribal Monitoring Plan, Programmatic Agreement, containing a map of the proposed construction route of the Keystone XL Pipeline, mistakenly identifies Tripp County as an area of tribal consultation with the Yankton Sioux Tribe. Tripp County is an area that lies within the original boundaries of the Rosebud Sioux Tribe as established by the 1851 and 1868 Treaty of Fort Laramie and Act of March 2, 1889 25 Stat.888, and contains tracts of tribally-owned and allotted lands within the jurisdiction of the Rosebud Sioux Tribe.
5. The construction corridor of the KXL Pipeline would run through areas in close proximity to the Rosebud Sioux Tribe Reservation and cross lands within and adjacent to the lands within the Treaty boundaries of 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie.; and

6. The amended PA mistakenly identifies the Yankton Sioux Tribe as the consulting Tribe for tribal lands within the jurisdiction of the Rosebud Sioux Tribe located in Tripp County, Rosebud Sioux Tribe Reservation, South Dakota. The misidentification of “Tribal lands” in the amended Programmatic Agreement results in errors in fact, and errors in law resulting in substantial non-compliance of the amended Programmatic Agreement with applicable federal law and federal regulations governing the proposed construction of the TransCanada Keystone XL Pipeline.
7. The PA does not meet the goal of consultation required by Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 et. seq., with the proper Indian Tribe, to identify historic properties potentially affected by construction of the Keystone XL Pipeline, assess its affects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.
8. The Bureau of Indian Affairs, in signing off on the amended Programmatic Agreement, failed in its trust responsibility to the Rosebud Sioux Tribe by failing to review the amended Programmatic Agreement, failing to comment or take action to correct the wrongful designation of Tripp County as an area within the jurisdiction of the Yankton Sioux Tribe, failing to identify those allotted and tribal trust tracts in Tripp County lying within the original treaty boundaries of the Rosebud Sioux Tribe, failing to comment or take corrective action, to identify the Rosebud Sioux Tribe as the “Consulting Indian Tribe.”
9. It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that the agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. Title 36, Part 800, 36 C.F.R. §800.2 (a). The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process, and should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. 36 C.F.R. §800. 2 (a)(4). When an Indian tribe has not assumed the responsibilities of the SHPO (“State Historic Preservation Officer”) the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. 36 C.F.R. § 800.2 (c)(2)(B)(ii). Section 101 (d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious or cultural significance to historic properties that may be affected by an undertaking, ***regardless of the location of the historic property.*** 36

C.F.R. §800.2(c)(2)(B)(ii). **It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process.** 36 C.F.R. § 800.2(c)(2)(B)(ii)(A). The Federal Government has a unique legal relationship with Indian tribes set for the in the Constitution of the United States, treaties, statutes, and court decisions, and consultations with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. 36 C.F.R. § 800.2(c)(2)(B)(ii)(B). Consultations with an Indian tribe must recognize the government-to-government relationship between the Federal government and tribes. 36 C.F.R. §800.2(c)(2)(B)(ii)(C). **When Indian tribes and Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires federal agencies to consult with Indian tribes in the section 106 process, and federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes** and Native Hawaiian organizations and should consider that when complying with the procedures in this part. 36 C.F.R. §800.2(c)(2)(B)(ii)(D).

10. The Rosebud Sioux Tribe cannot sign the amended Programmatic Agreement as a concurring party, and objects to the amended PA on that basis. Furthermore, the Environmental Impact Statement, finding no significant impact on cultural resources, is based upon incorrect factual and legal assumptions, was prepared without proper consultation with the Rosebud Sioux Tribe, the Indian Tribe with jurisdiction of allotted lands adjacent to the KXL Pipeline construction corridor. The EIS is therefore improperly prepared, and its findings based upon erroneous factual and legal assumptions under federal law.
11. For the reasons above, the BIA should rescind its signature on the amended Programmatic Agreement, and require the EIS to be rejected for failure to comply with federal law and federal trust responsibility.



Braegelmann, Carol <carol_braegelmann@ios.doi.gov>

TransCanada Keystone Pipeline, L.P. Response from Fort Peck Tribes

1 message

Sydney Campbell <scampbell@fortpecktribes.net>

Tue, Jan 27, 2015 at 6:14 PM

To: "Carol_Braegelmann@ios.doi.gov" <Carol_Braegelmann@ios.doi.gov>

I was asked to respond to the letter received today with a response needed by today. Fort Peck Tribes is against the TransCanada Keystone Pipeline due to the issue that has arose on the location of pipeline being moved to a different route which is on out skirts of Fort Peck Reservation and locating over by the Fort Peck Dam with the chances of it contaminating all waters on the West end of our Reservation should there ever be any kind of spills or leaks. If you have any questions please feel free to call our office and talk to Chairman AT Stafne in regards to the matter. Thank You.

Sydne E. Campbell

Chairman's Assistant

Fort Peck Tribes

P.O. Box 1027

Poplar, MT 59255

(406) 768-2301 Direct

(406) 768-5478 Fax

scampbell@fortpecktribes.net



Braegelmann, Carol <carol_braegelmann@ios.doi.gov>

FW: Keystone-XL Pipeline Presidential Permit

1 message

Tracey Zephier <tzephier@ndnlaw.com>

Tue, Jan 27, 2015 at 6:52 PM

To: "marilyn.bercer@bia.gov" <marilyn.bercer@bia.gov>, "timothy.lapointe@bia.gov" <timothy.lapointe@bia.gov>
Cc: "Bourland, Gregg" <gregg.bourland@bia.gov>, "Harold Frazier (haroldcfrazier@yahoo.com)" <haroldcfrazier@yahoo.com>, "vogel143@gmail.com" <vogel143@gmail.com>, "Gay Kingman (kingmanwapato@rushmore.com)" <kingmanwapato@rushmore.com>, Patty Marks <PMarks@ndnlaw.com>, "Carol_Braegelmann@ios.doi.gov" <Carol_Braegelmann@ios.doi.gov>, "harold.hall@bia.gov" <harold.hall@bia.gov>

I am an attorney representing the Cheyenne River Sioux Tribe in the Keystone XL matter.

As you can see from the dates and times on the email string below, I did not receive this notice of comments due by COB today until after the deadline passed.

Since it appears that someone within the BIA chain of command did not forward the Interior's Office of Environmental Policy's request to any Tribes in the Great Plains Region until this afternoon, I am now asking on behalf of the CRST that the BIA request an additional 2 days for Tribes in the Great Plains Region to properly respond to Interior's request for input in this critical matter.

Thank you for your consideration.

On behalf of the Cheyenne River Sioux Tribe,

Tracey Zephier, Esq.

Fredericks, Peebles, & Morgan LLP

910 Fifth Street, Suite 104

Rapid City, SD 57701

Phone: 605-791-1515

Fax: 605-791-1915

Email: tzephier@ndnlaw.com

Website: www.ndnlaw.com

From: Patty Marks
Sent: Tuesday, January 27, 2015 3:23 PM
To: Tracey Zephier
Subject: FW: Keystone-XL Pipeline Presidential Permit
Importance: High

Patty Marks

Fredericks Peebles & Morgan LLP

401 9th Street NW, Suite 700

Washington, DC 20004

202.450.4887 Phone

202.450.5106 Fax

pmarks@ndnlaw.com

www.ndnlaw.com

From: Jennifer P. Hughes [<mailto:JHughes@hobbsstrauss.com>]
Sent: Tuesday, January 27, 2015 5:20 PM
To: Kingman, Gay; Patty Marks; Thomasina Real Bird; pcapossela@nu-world.com
Cc: Dean B. Suagee; Tara M. Houska
Subject: FW: Keystone-XL Pipeline Presidential Permit
Importance: High

Oglala just received word of this via email from BIA. It states that comments are due in today on KXL.

Please pass along to all tribes in the Great Plains.

There is a street address and I am told that the Regional Office said send the comments to Harold Ham at harold.ham@bia.gov

Oglala is working now to resubmit its comment packet and recent letters.



Braegelmann, Carol <carol_braegelmann@ios.doi.gov>

Comments on the Proposed Keystone XL Pipeline - Oglala Sioux Tribe

1 message

Jennifer P. Hughes <JHughes@hobbsstrauss.com>

Tue, Jan 27, 2015 at 7:44 PM

To: "erin_walls@ios.doi.gov" <erin_walls@ios.doi.gov>, "laura_davis@ios.doi.gov" <laura_davis@ios.doi.gov>, "katherine_rupp@ios.doi.gov" <katherine_rupp@ios.doi.gov>, "michael_connor@ios.doi.gov" <michael_connor@ios.doi.gov>, "gareth_rees@ios.doi.gov" <gareth_rees@ios.doi.gov>, "kevin.washburn@bia.gov" <kevin.washburn@bia.gov>, "Sarah Harris (sarah.harris@bia.gov)" <sarah.harris@bia.gov>, "carol_braegelmann@ios.doi.gov" <carol_braegelmann@ios.doi.gov>
Cc: "johns@ogla.org" <johns@ogla.org>, "DonnaS@ogla.org" <DonnaS@ogla.org>, Kevin Steele <Kevin@ogla.org>, "Dean B. Suagee" <DSuagee@hobbsstrauss.com>

Secretary Jewell:

The Oglala Sioux Tribe understands that it is to submit comments on the proposed Keystone XL Pipeline to the Department of the Interior and the Bureau of Indian Affairs. On behalf of the Oglala Sioux Tribe, I am submitting the attached documents which set forth the Tribe's strong opposition to the Keystone XL Pipeline. The documents include:

1. January 27, 2015 letter to Interior Secretary
2. One-page briefing paper on why the Pipeline is not in the national interest
3. March 26, 2014 letter to Interior Secretary
 - 3a. Enclosures to the Tribe's March 26, 2014 letter
4. March 5, 2014 comment packet to the State Department in opposition to the pipeline, which includes a letter, position paper and Tribal Council resolution
5. January 8, 2015 letter to President Obama
6. January 20, 2015 letter to Interior Secretary specifically on the issue of water contamination

Please take these documents together as the Oglala Sioux Tribe's comments in staunch opposition to the proposed Keystone XL Pipeline.

The Tribe calls on the Interior Secretary to convey the Tribe's concerns to the State Department and to urge a denial of TransCanada's request for a Presidential Permit for the Keystone XL Pipeline.

Please do not hesitate to contact the Tribe if you have questions or would like additional information.

Thank you for your attention to this important matter.

Jennifer P. Hughes, *Partner*

T 202.822.8282 | F 202.296.8834

HOBBS STRAUS DEAN & WALKER, LLP

2120 L Street NW, Suite 700, Washington, DC 20037

HOBBSSTRAUS.COM

Hobbs, Straus, Dean and Walker, LLP. Confidentiality Statement

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7 attachments



OST statement on KXL one-page 12715.pdf

59K



OST ltr to DOI Secretary Jewell 3-26-14.pdf

274K



enclosure for DOI letters 3-26-14 .pdf

451K



Oglala Sioux Tribe comment package on Keystone XL 3-5-14.pdf

1202K



10815.PresSteele.to.PresObama.pdf

141K



12115.Steele.Jewell.Keystone.MWP.pdf

238K



12714.OSTtoSecretaryJewell.Keystone.2.pdf

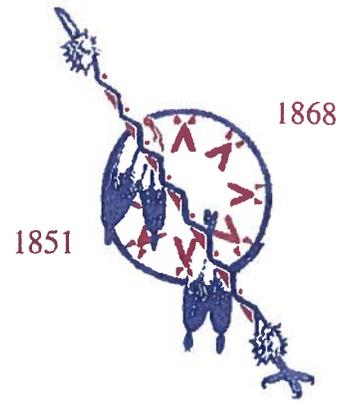
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Oglala Sioux Tribe

Office of the President

PO Box 2070
Pine Ridge, SD 57770
Phone: 605.867.5821
Fax 605.867.6076



January 8, 2015

The Honorable Barack Obama
President
United States of America
1600 Pennsylvania Avenue, NW
Washington DC 20500

RE: Veto Legislation to Approve the Keystone XL Pipeline and Do Not Approve A Permit for the Pipeline.

Dear Mr. President:

The Oglala Sioux Tribe calls on you NOT to allow the proposed Keystone XL pipeline to be built. We call on you to act with the welfare of future generations in your mind and your heart. We ask you to veto any legislation Congress sends to you that would approve the Keystone XL pipeline and to deny the proposed pipeline a permit to cross the border from Canada.

We understand that under Executive Order 13337, a Presidential permit is required for a pipeline that crosses an international border, and that the lead responsibility for reviewing this proposed pipeline has been assigned to the Secretary of State, who is charged with making the initial determination as to whether or not permitting the pipeline would serve the national interest. We have called on Secretary Kerry to acknowledge that the proposed pipeline does not serve the national interest and deny the permit. We also understand that, in this case, you are the person who is going to make the ultimate decision in the administrative process.

We are also aware of the efforts in Congress to pass legislation to approve the Keystone XL Pipeline. Such legislation would override the review process pursuant to Executive Order 13337 and would allow a project that is not in the national interest.

We were heartened to hear earlier this week that you will veto Keystone XL Pipeline legislation if it comes to your desk. We thank you for this statement and ask that you to adhere to it.

The Oglala Sioux Tribe strongly opposes the Keystone XL pipeline for many reasons, as we have advised the Department of State on many occasions. A major part of the route of the proposed pipeline would be located within our ancestral homelands, which includes but is not

limited to the territory of the Great Sioux Nation, as recognized in the Fort Laramie Treaties of 1851 and 1868. The territory recognized in those Treaties does not include all of the territory that our ancestors inhabited, which we consider our ancestral homelands. These homelands encompass a landscape in the Great Plains region that covers parts of ten present-day states as well as part of Canada. This landscape retains a great multitude of sites that hold traditional religious and cultural significance for our people, including burials, ceremonial and prayer loci, artifacts, petroglyphs, and habitation locales. Most of those sites have not yet been evaluated for eligibility for the National Register of Historic Places. The programmatic agreement that has been entered into for compliance with the National Historic Preservation Act acknowledges that construction of the pipeline would cause damage or destruction to many such places. That programmatic agreement was negotiated without proper consultation with our Tribe or the other concerned tribes.

We are concerned about the risk that a spill or leak would contaminate groundwater and surface water, including the Missouri River and its tributaries. We are particularly concerned about the risk to the Mni Wiconi Project, our rural water supply system which serves the public health needs of the Pine Ridge Indian Reservation, the Lower Brule Sioux Reservation, the Rosebud Sioux Reservation, and many non-Indian communities in southwestern South Dakota. The federal government has invested \$450 million in the Mni Wiconi Project. A spill of tar sands crude could have catastrophic consequences.

We are appalled by the environmental devastation taking place in Canada where the forests are being destroyed for the extraction of tar sands, and where the First Nations are witnessing the loss of wildlife and suffering health impacts. Those impacts constitute violations of the human rights the affected First Nations, including the right to their means of subsistence. As Native peoples, we believe the American people should not be a party to destroying the boreal forest and depriving First Nations of their human rights.

We are also opposed to the proposed pipeline because it would exacerbate the climate crisis. On June 25, 2013, you said, "Our national interest will be served only if this project does not significantly exacerbate the problem of carbon pollution." We believe it is obvious that it would. We understand that the Final Supplemental Environmental Impact Statement (FSEIS) includes a market analysis which asserts that whether or not the Keystone XL pipeline is built will have no effect on the rate at which the government of Canada allows the boreal forest in northern Alberta to be destroyed for the extraction of tar sands crude. That market analysis is deeply flawed. It assumes that governments will not act to reduce emissions from consumption of fossil fuels and that a business as usual scenario will prevail. But marketplaces in which energy goods and services are bought and sold respond to and are shaped by governmental policies, and we have to believe that governmental policies will be adopted to move beyond business as usual. The market analysis in the FSEIS ignores the likelihood that, over the coming decade or so as the public becomes better informed about the climate crisis, the people will demand governmental policies to dramatically limit emissions of greenhouse gases. Those policies will dramatically change the markets for carbon intensive fuels such as tar sands.

America needs policies that will help lead the world in a transition to an economy in which energy needs are met with renewable resources and energy demands are kept within reason through efficiency and conservation. American leadership must start now, and this leadership must start with the rejection of the Keystone XL pipeline on the grounds that it would not serve the national interest.

We only have one Mother Earth. In our traditional ways, we are taught to be concerned for the welfare of the seventh generation to come. The next seven generations, and those who come after, are depending on you to make the right decision. We call on you as an honorable human being to deny the permit for the proposed Keystone XL pipeline and to veto any legislative attempt to approve the pipeline.

Respectfully,

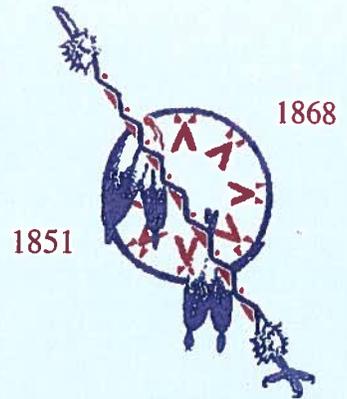

John Yellow Bird Steele, President



Oglala Sioux Tribe

Office of the President

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Pine Ridge, SD 57770
Phone: 605.867.5821
Fax 605.867.6076



January 20, 2015

The Honorable Sally Jewell
Secretary of the Interior
1849 C Street, N.W.
Washington DC 20240

RE: Contamination of Mni Wiconi Project Water
Source by Keystone XL or Other Activities

Dear Secretary Jewell:

The Oglala Sioux Tribe has corresponded with the Bureau of Reclamation (Reclamation) previously on the concerns we have with the TransCanada Keystone XL Pipeline (Keystone XL) and its potential impact on the core pipelines of the Oglala Sioux Rural Water Supply System (OSRWSS) and the people we serve on the Pine Ridge Indian Reservation and throughout the Mni Wiconi Project.

The authorizing legislation of the Mni Wiconi Project (PL 100-516, as amended) contains statutory provisions on the trust responsibility of the United States to ensure a safe and adequate water supply for the project beneficiaries:

...the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Pine Ridge Indian Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation;

The Oglala Sioux Tribe, through a 638 cooperative agreement with Reclamation, operates pumping and treatment facilities located along the Missouri River near Fort Pierre, South Dakota, pipelines extending from the Missouri River to the Pine Ridge Indian Reservation and facilities to allow for interconnections with the West River Rural Water System, Lyman-Jones Rural Water System, Rosebud Sioux Rural Water System and Lower Brule Rural Water System in addition to distribution and treatment facilities to serve the needs of the Pine Ridge Indian Reservation. The facilities listed above are known as the OSRWSS, and title to those facilities is held in trust by the United States on behalf of the Oglala Sioux Tribe.

The construction of all Mni Wiconi Project facilities, including OSRWSS and the Indian and non-Indian rural water systems that are interconnected, will be completed in FY 2015 at a federal cost of \$488 million. Adequate funding for operation, maintenance and replacement (OMR) and source water protection are essential to fulfill the trust responsibilities of the United States to the Oglala Sioux Tribe and other tribal participants.

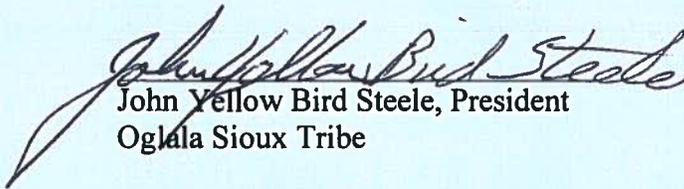
Our Keystone XL Pipeline concerns related to our Mni Wiconi Project are (1) OSRWSS pipeline integrity at Keystone XL crossings and (2) OSRWSS water source protection at the Missouri River, Cannonball River, Grand River, Moreau River, Cheyenne River and other Western Dakota tributary crossings by Keystone XL. TransCanada dismissed our concerns in its October 10, 2013, letter to Reclamation. Reclamation Regional Director Ryan then corresponded with the Department of State by letter dated December 12, 2013, requesting that the State Department approve Reclamation's crossing criteria for construction and operation of the Keystone XL Pipeline specifically to protect the OSRWSS core pipeline of the Mni Wiconi Project. Our water source concerns in (2) above are not limited to Keystone but also extend to Bakken shale activities in the Northern Great Plains, historical uranium mining in the Cheyenne River watershed and all other sources of contaminants, including, but not limited to, pharmaceuticals and personal care products from Missouri River public wastewater systems and non-point insecticides and pesticides.

The Oglala Sioux Tribe continues to fully and completely oppose the approval of construction of the TransCanada Keystone XL Pipeline. We have called on the President of the United States to deny a permit to Keystone XL. We have also made detailed arguments to the President and State Department outlining why Keystone XL is not in the national interest. The Tribe, however, cannot control the future actions of the Department of State and Department of Interior and their agencies with respect to Keystone XL.

As the President of the Oglala Sioux Tribe, therefore, I will look to the Secretary of the Interior as Trustee to protect our interests in OSRWSS pipeline integrity and water source protection in the streams that eventually enter Lake Oahe and our intake at Echo Point. I will rely on the agencies and officials that you designate to take appropriate steps and keep me fully informed. To further present our concerns, a meeting is requested with you on February 19, 2015.

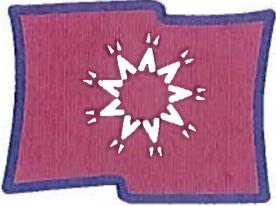
Your attention to this important matter is greatly appreciated.

Sincerely,



John Yellow Bird Steele, President
Oglala Sioux Tribe

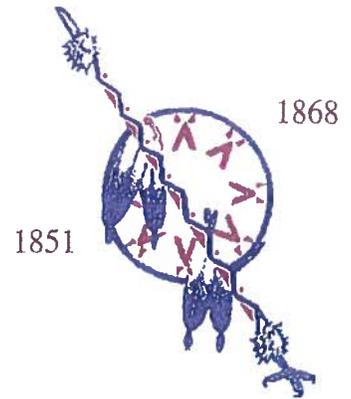
cc Estevan Lopez, Commissioner of Reclamation
Mike Ryan, Great Plains Area Director
David Rosenkrance, Dakota Area Manager



Oglala Sioux Tribe

Office of the President

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Pine Ridge, SD 57770
Phone: 605.867.5821
Fax 605.867.6076



January 27, 2015

The Honorable Sally Jewell
Secretary of the Interior
1849 C St., NW
Washington, D.C. 20042

RE: Proposed Keystone XL Pipeline National Interest Determination

Dear Secretary Jewell:

On behalf of the Oglala Sioux Tribe, we renew our request that you recommend to the Secretary of State that, pursuant to Executive Order 13337, he deny a Presidential permit for the proposed Keystone XL pipeline to cross the border into the United States. The permit should be denied because to allow the proposed pipeline to be built would not serve the national interest. We made this request of you on March 26, 2014, by letter from Bryan V. Brewer, who was then the President of the Oglala Sioux Tribe. In the event that the Secretary of State were to decide to issue such a permit, then we ask you to ask the Secretary to refer the application to President Obama, along with a recommendation from you that the President deny the permit.

The Oglala Sioux Tribe is strongly opposed to this proposed pipeline for many reasons. We have informed the Secretary of State of our views, in a letter, position paper, and Tribal Executive Committee resolution. Our March 26, 2014, letter transmitted a copy of that letter and supporting documents. For your convenience, this letter transmits copies of the earlier correspondence.

In addition, this transmits a one-page statement that summarizes our reasons for believing that the proposed pipeline would not serve the national interest. We ask that you include these reasons in your comments to the State Department which are due on February 2, 2015.

Respectfully,


John Yellow Bird Steele, President

Honorable Sally Jewell

January 27, 2015

Page 2

Enclosures

Cc: Michael L. Connor, Commissioner, BOR
Kevin Washburn, Assistant Secretary – Indian Affairs, BIA



United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

IN REPLY REFER TO:
GP-4200
ENV-6.00

MAR 14 2014

Ms. Genevieve Walker
Project Manager
U.S. Department of State
2201 C Street NW, Room 2726
Washington, D.C. 20520

Subject: TransCanada Keystone XL Pipeline, Bureau of Reclamation Required Crossing Criteria

Dear Ms. Walker:

Thank you for including Reclamation's crossing criteria in the Keystone XL Project Final Supplemental Environmental Impact Statement (SEIS, January 2014). In our recent review of the SEIS, specifically Appendix D containing Required Crossing Criteria for Reclamation Facilities, we would like to make a clarification with regard to the two sets of crossing criteria included. One is identified as Required Crossing Criteria for Reclamation Facilities (August 2010, Revised: April 2013), and the other is Engineering and Operation & Maintenance (O&M) Guidelines for Crossings (April 2008).

Crossing criteria in the revised 2013 version were prepared for the proposed Keystone XL Project to address unique characteristics of the pipeline crossings, including revisions of crossings of the Mni Wiconi Project. We note that the 2013 criteria differ in certain specifications from 2008 guidelines. Given the overlap and differences between the two versions, we are writing to clarify that Reclamation's 2013 Required Crossing Criteria takes precedence over the 2008 Engineering and O&M Guidelines for Crossings.

We appreciate your attention to this issue. If you have any questions regarding this, please contact Vernon LaFontaine at 406-247-7720.

Sincerely,

For

Michael J. Ryan
Regional Director

cc: See next page.

RECEIVED MAR 18 2014

cc: President Bryan Brewer
Oglala Sioux Tribe
P.O. Box 187
Pine Ridge, SD 57770-2070

Mr. Frank Means, Director
Oglala Sioux Rural Water Supply System
P.O. Box 610
Kyle, SD 57752-6110

Mr. James H. Odem
Regional Project Manager
Keystone XL Pipeline
TransCanada
2700 Post Oak Boulevard, Suite 400
Houston, TX 77056



United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

DEC 12 2013

IN REPLY REFER TO:
GP-4200
ENV-6.00

Ms. Genevieve Walker
NEPA Coordinator
U.S. Department of State
2201 C Street NW, Room 2726
Washington, D.C. 20520

Subject: TransCanada Keystone XL Pipeline, Mni Wiconi Project, Oglala Sioux Rural Water Supply System (OSRWSS) Core System Crossing Criteria, Mni Wiconi Project, South Dakota

Dear Ms. Walker:

Enclosed please find TransCanada Corporation's October 10, 2013, response to the Bureau of Reclamation's inquiry regarding the Oglala Sioux Tribe's May 2, 2013, request for additional measures for the Keystone XL pipeline crossing the North Core and South Core pipelines of the Mni Wiconi Project. The additional measures requested were above and beyond those included in the "Mni Wiconi Project, OSRWSS Core System Crossing Criteria for the TransCanada Keystone XL Project" transmitted from Reclamation to your office on April 22, 2013. Reclamation is not planning to revise the April 22, 2013, crossing criteria.

In the April 22, 2013, letter we requested that the Department of State include language in the Record of Decision, should the project be approved, to make Reclamation's crossing criteria a requirement of the construction phases and the operational life of the pipeline. Please note that your March 2013 draft Supplemental Environmental Impact Statement Appendix D contains the previous version of our crossing criteria and will need to be updated to include the revised April 22, 2013, crossing criteria.

We appreciate your attention to this issue. If you have any questions regarding this, please contact Mr. Arden Freitag at 701-221-1250.

Sincerely,

Michael J. Ryan
Regional Director

Enclosure

cc: Mr. Bryan Brewer
President, Oglala Sioux Tribe
P.O. Box 2070
Pine Ridge, SD 57770

Mr. Frank Means
Director, OSRWSS Project Officer
P.O. Box 610
Kyle, SD 57552

Mr. James H. Odem
Regional Project Manager
Keystone XL Pipeline
TransCanada
2700 Post Oak Boulevard, Suite 400
Houston, TX 77056 (w/encl to each)

bc: GP-1000, GP-4200 (LaFontaine)
DK-2000 (SSchelske, DKarsky AFreitag), DK-2002 (THall)
(w/encl to each)

WBR:VLaFontain:bscott:12/9/2013:406-247-7720
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IN REPLY REFER TO:
GP-4200
ENV-6.00

United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Region
P.O. Box 36900
Billings, Montana 59107-6900



APR 22 2013

Mr. Jim Stobaugh
National Project Coordinator
Bureau of Land Management
1340 Financial Blvd.
Reno, NV 89520-0006

Dear Mr. Stobaugh:

The Bureau of Reclamation (Reclamation) is providing final crossing criteria (enclosed) for guiding construction of the proposed TransCanada Keystone XL pipeline across Reclamation facilities. We are requesting the Bureau of Land Management include the enclosed document in the Final Plan of Development. Concurrently, we are submitting the criteria to the Department of State and requesting its inclusion in the Supplemental Environmental Impact Statement. Reclamation is providing copies of the criteria to TransCanada, the Oglala Sioux Tribe, and irrigation district managers of Reclamation project facilities crossed by the pipeline.

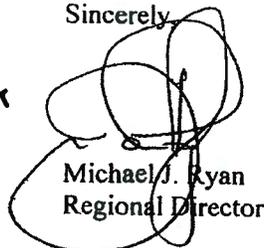
The final crossing criteria present reasonable and necessary measures for the proposed pipeline crossings of Reclamation water project infrastructure. The proposed pipeline crosses Reclamation facilities at seven places, all on private lands in Montana and South Dakota. Reclamation provided draft criteria to the Oglala Sioux Tribe, affected irrigation districts, TransCanada, and a professional consulting firm for comment. The final criteria allow for site-specific adjustments that may be necessary during construction. Each party may have representative field personnel responsible for coordinating construction at the crossings.

Under 43 CFR 429, Reclamation would issue TransCanada a letter of Acknowledgement of Easement Crossing including the criteria as terms and conditions. This consent document addresses Reclamation's easement rights to use and enjoy the private lands for the purpose of operating and maintaining water pipelines and related facilities. We are also requesting the Department of State to include language in the Record of Decision, should the project be approved, to make Reclamation's crossing criteria a requirement for the construction phases and for the operational life of the pipeline.

Thank you for considering Reclamation's request. If you have any questions on the information provided or need additional information, please call me at 406-247-7600 or Vernon LaFontaine at 406-247-7720.

Sincerely,

For


Michael J. Ryan
Regional Director

Enclosure -2 copies

cc: Ms. Genevieve Walker
U.S. Department of State
Bureau of Oceans and International
Environmental and Scientific Affairs
2201 C Street, NW OES/ENV Room 2657
Washington, D.C. 20520

Honorable Bryan Brewer
President, Oglala Sioux Tribe
P.O. Box 2070
Pine Ridge, SD 57770

Mr. Jim White
TransCanada
450 - 1st Street S.W.
Calgary, Alberta
Canada T2P 5H1

Mr. Steven Marr, P.E.
Manager, U.S. Pipeline
Keystone Pipeline Project
TransCanada Pipelines Limited
2700 Post Oak Blvd., Suite 400
Houston, TX 77056

Jon A. Schmidt, Ph.D.
Vice President
Environmental and Regulatory Services
Exp Energy Services, Inc.
1300 Metropolitan Blvd.
Tallahassee, FL 32308

Mr. Dave Sire
Office of Environmental Policy and Compliance
1849 C Street, NW – MS2462-MIB
Washington D.C. 20240
(w/ encl to all)



United States Department of the Interior

BUREAU OF RECLAMATION

Dakotas Area Office

P.O. Box 1017

Bismarck, North Dakota 58502

APR 24 2013



IN REPLY REFER TO:

DK-2000

PRJ-28.00

Honorable Bryan Brewer
President, Oglala Sioux Tribe
P.O. Box 2070
Pine Ridge, SD 57770

Subject: TransCanada Keystone XL Pipeline Crossing of the Mni Wiconi Project Pipelines –
Final Crossing Criteria

Dear President Brewer:

The Bureau of Reclamation sent you a letter on February 6, 2013, which explained that Reclamation would need to establish the conditions for the Keystone XL pipeline crossing of the Mni Wiconi project to ensure that TransCanada's proposed project does not interfere with the easements or endanger the Mni Wiconi Project pipeline. Those conditions are identified in crossing criteria which was attached to the February 6, 2013, letter. Reclamation has completed reviews of the crossing criteria and also discussed the crossings with TransCanada. The purpose of this letter is to transmit the final version of the "Mni Wiconi Project OSRWSS Core System Crossing Criteria for the TransCanada Keystone XL Project," which is enclosed in this letter, and to inform you how that crossing criteria will be used in the future.

Our Regional Office provided you, under a separate letter the "TransCanada Keystone XL Pipeline, Required Crossing Criteria for Reclamation Facilities" which covers the all of the Keystone XL pipeline crossings of Reclamation lands. The first section of that document covers the Mni Wiconi Project. The document was submitted as part of the Department of the Interior's comments on the Department of State's Keystone LX Pipeline Supplemental Environmental Impact Statement which is currently out for public review. Reclamation also submitted the same crossing criteria document to the Bureau of Land Management which represents the interest of the Department of the Interior in accordance with the Minerals Leasing Act.

The crossing criteria addresses two crossings of the Mni Wiconi Core pipeline. It requires TransCanada to bore under the South Core pipeline (steel) with a safe clearance. The North Core pipeline, however, will be relocated deeper in the ground so the Keystone XL pipeline can be installed above the North Core pipeline (PVC) with a safe clearance distance. Relocating PVC water pipelines under the oil pipeline is the method normally used for PVC water pipelines by rural water systems in South Dakota and was recommended in the "Improving Safety of Crude Oil and Regional Water System Pipeline Crossings" report prepared by South Dakota State University. Reclamation is in the process of developing an agreement with TransCanada to

relocate the North Core pipeline. West River/Lyman-Jones (WR/L-J) has 35 similar crossings and is negotiating with TransCanada to reimburse their relocation costs. WR/L-J will hire a contractor to construct the 35 pipe relocations and has tentatively agreed to relocate the North Core pipeline under the same contract, with TransCanada reimbursing WR/L-J for that cost. Reclamation has also contacted the landowner at the North Core and Keystone XL pipeline crossing location to notify them of the proposed relocation of the North Core pipeline on the existing easement.

The final step in the process before TransCanada can construct the Keystone XL pipeline through the Mni Wiconi project easements is for Reclamation to send TransCanada a "consent document." This document does not grant permission to cross the lands, but is simply an acknowledgement that the Keystone XL pipeline crossings will not interfere with or endanger the United States use of the lands if the conditions of the crossing criteria are followed.

If you have any questions or further concerns regarding this letter or other TransCanada Keystone XL Pipeline issues, please contact Arden Freitag at 701-221-1250, or me at 701-221-1201.

Sincerely,



Richard L. Long
Area Manager

Enclosure

cc: Mr. Frank Means, Director
Oglala Sioux Rural Water Supply System
Core System
P.O. Box 610
Kyle, SD 57752-6110

Mr. Dean B. Suagee, Of Counsel
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Washington, DC 20037

Mr. Ray Ecoffey
Acting Manager
Oglala Sioux Rural Water
Supply System Core System
P.O. Box 1209
Ft. Pierre, SD 57532

Mike Watson, P.E.
4452 Fox View Loop
Helena, MT 58602

Mr. Mario Gonzales
P.O. Box 334
Blackhawk, SD 57719

Mr. Gavin M. Frost, Attorney
Rocky Mountain Region
Billings Field Office
Office of the Solicitor
U.S. Department of the Interior
316 North 26th Street, Room 3005
Billings, MT 59101

cc: (Cont'd from previous page)

Mr. Don LeBeau
Coreline Field Supervisor
Oglala Sioux Rural Water
Supply System Core System
P.O. Box 1209
Ft. Pierre, SD 57532

Mr. Paul Little
Oglala District Councilman
Tribal Hall
P.O. Box 2070
Pine Ridge, SD 57770

Mni Wiconi Project, OSRWSS Core System Crossing Criteria for the TransCanada Keystone XL Project

Background Information: The Mni Wiconi Project in South Dakota includes the Oglala Sioux Rural water Supply System (OSRWSS Core System) which delivers potable water from the vicinity of Fort Pierre, South Dakota, south to three Indian reservations and a non-Indian rural water system. The OSRWSS Core System has two major conveyance pipelines, the South Core line and North Coreline. The South Core line runs directly south of Fort Pierre while the North Core line runs west of Fort Pierre about 40 miles and then south. At the proposed Keystone XL Pipeline crossings the South Core pipeline is constructed of 24 inch diameter steel while the North Core pipeline is constructed of 14 inch PVC.

Interruption of Service during Keystone XL Construction: TransCanada shall make provisions acceptable to Reclamation and OSRWSS for any activity conducted by TransCanada that causes water service in the OSRWSS Core System pipeline to be interrupted during Keystone XL construction. Under no circumstances shall the South Core and North Core pipelines have interruptions in water service at the same time. Such provisions shall include advance notification of the service interruption and temporary facilities to continue water service for interruptions lasting longer than 12 hours.

General Crossing Criteria:

- Not later than 10 days before start of construction, TransCanada shall provide OSRWSS and Reclamation with notice of the start of construction in the vicinity of the crossing to facilitate monitoring and observation.
- TransCanada shall be responsible for addressing landowner concerns, issues and interests within the OSRWSS right-of-way or easement.
- A minimum clearance of 6 feet between the TransCanada Keystone XL pipeline and the OSRWSS Core System potable water pipelines at both crossing shall be maintained.
- TransCanada must design its crossings such that the OSRWSS Core pipeline suffers no reduction in working pressure rating or pipeline integrity due to the operations of TransCanada. TransCanada will design the Keystone XL pipeline at both crossings with a 50 percent working pressure factor (as referenced in Appendix M of the Plan of Development). The higher pressure rated pipe should extend through the existing OSRWSS Core rights-of-way at both crossing locations.
- TransCanada shall install above ground signage (noting Keystone Pipeline location), and provide copies of as-built drawings of the Keystone XL Pipeline crossings to OSRWSS and Reclamation within 90 days of substantial completion of the crossing. The as-built drawings will show the location of the Keystone XL pipeline, the OSRWSS Core System pipelines and the fiber optic cables. The drawings will denote the latitude and longitude coordinates at each crossing location.

South Core Pipeline Crossing Criteria:

NW ¼, Section 36, T1S, R29E, Jones County

- The following drawings depict details of the OSRWSS pipeline in the vicinity of the crossings.
 1. Drawing G-3 showing the general location of the OSRWSS steel pipeline crossing
 2. Drawing C-40 showing the plan and profile of the OSRWSS steel pipeline crossing.
 3. Drawing CP-1 showing the Corrosion Protection (CP) Details
- TransCanada shall provide OSRWSS and Reclamation with drawings and specifications for review and comment of all features of construction at the crossing, including cathodic protection. The cathodic protection design is of particular concern to assure it does not impact the South Core pipeline or its cathodic protection system. Comments will be provided to TransCanada which shall be incorporated into the final project Plan of Development.
- TransCanada shall bore under the OSRWSS South Core pipeline right-of-way, which is 75 feet wide.
- The OSRWSS South Core line (24 inch diameter steel) is protected by an induced current ground bed. TransCanada must coordinate and correspond with OSRWSS's and Reclamation's corrosion experts prior to developing crossing plans to assess the potential impacts of interference of its pipeline.
- TransCanada shall install test stations as shown on Drawing CP-1. An alternate design / location of the corrosion protection test station may be used if mutually acceptable.
- TransCanada shall not case the Keystone XL pipeline crossing under the OSRWSS South Core line due to potential cathodic protection interference problems. If this is not possible, then TransCanada must provide a cathodic protection plan for review, comment, and approval from OSRWSS and Reclamation which accounts for the casing pipe.
- OSRWSS has a buried fiber optic cable installed above the South Core pipeline that was placed by plow; its precise location is unknown. The burial depth information provided on the drawings is for information purposes only. TransCanada shall take whatever precautions necessary to avoid damaging the buried fiber optic cable.

North Core Pipeline Crossing Criteria:

NE ¼, Section 8, T2N, R23E, Haakon County

- TransCanada shall provide OSRWSS and Reclamation with drawings and specifications for review and comment of all features of construction at the crossing. Comments will be

provided to TransCanada which shall be incorporate into the final project Plan of Development.

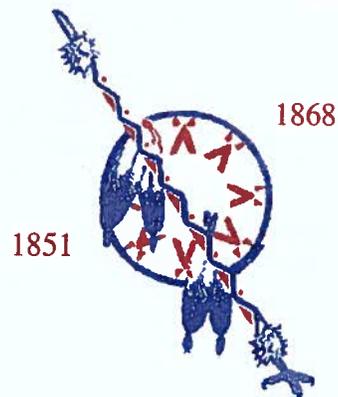
- The North Core pipeline (14 inch PVC) will be relocated a minimum of 6 feet below the planned bottom of the Keystone XL pipeline at the crossing location.
- The North Core pipeline (14 inch PVC) pipeline will include a casing pipe using fused joint PVC pipe designed with sufficient diameter and wall strength for the burial conditions. Ends of casing pipe will be sealed.
- The casing pipe will have a minimum total length of 300 feet (150 feet each side of crossing) or longer depending on allowable deflection of the North Core pipeline (14 inch PVC) and fused joint PVC pipe.
- The North Core pipeline relocation shall be designed and constructed in accordance with industry acceptance standards including applicable American Water Works Association manuals and 10 States Standards - Recommended Standards for Water Works.
- The North Core pipeline relocation site will be reclaimed as near as possible to its condition prior to the disturbance. The North Core pipeline will be relocated in a manner that causes the least interference to the landowner and their use of the land and if any injury is necessarily done to appurtenances such as roads, ditches, drainage, fences, vegetation, etc., it will repair or replace the same or will pay the landowner for such injury.



Oglala Sioux Tribe

Office of the President

PO Box 2070
Pine Ridge, SD 57770
Phone: 605.867.5821
Fax 605.867.6076



March 5, 2014

The Honorable John Kerry
Secretary
U.S. Department of State
2201 C Street NW
Washington DC 20520

RE: Proposed Keystone XL Pipeline National Interest Determination

Dear Mr. Secretary:

As Secretary of State, you are faced with an awesome responsibility. Pursuant to Executive Order 13337, you are charged with determining whether it would serve the national interest to allow the construction of the proposed Keystone XL pipeline. It is not in the national interest. On behalf of the Oglala Sioux Tribe, we call on you to acknowledge this and deny the proposed pipeline a permit to cross the border into the United States.

The Oglala Sioux Tribe remains strongly opposed to this proposed pipeline for many reasons, as we have informed the State Department on numerous occasions. We are concerned about the risk that a spill or leak would contaminate groundwater and surface water, including the Missouri River and its tributaries. We are particularly concerned about the risk to our rural water supply system, the Mni Wiconi Project. A major part of the route of the proposed pipeline would be located within our ancestral homelands, which includes but is not limited to the territory of the Great Sioux Nation, as recognized in the Fort Laramie Treaties of 1851 and 1868. There are many places within our ancestral homelands that are sacred for us, including burial grounds, and we believe that the programmatic agreement is inadequate to avoid the desecration that would result from building the pipeline through our Treaty territory. We are appalled by the environmental devastation taking place in Canada where the forests are being destroyed for the extraction of tar sands, and where the First Nations are witnessing the loss of wildlife and suffering health impacts. As Native peoples, we believe the American people should not be a party to destroying the boreal forest and depriving First Nations of their human rights, including the right to their means of subsistence.

These reasons are discussed in more detail in our enclosed position paper. We believe that each of these reasons supports a finding that the proposed Keystone XL pipeline is not in the national interest.

We have also enclosed Resolution No. 14-19XB which was adopted by the Executive Committee of the Oglala Sioux Tribe, which reiterates our opposition to the proposed Keystone

XL pipeline and calls on you to meet with elected representatives of the Oglala Sioux Tribe and other Sioux Tribes to discuss our objections to the proposed pipeline. Such consultation is explicitly authorized by section 1(e) of Executive Order 13337.

We remind you that on June 25, 2013, President Obama said, "Our national interest will be served only if this project does not significantly exacerbate the problem of carbon pollution." We believe it is obvious that the proposed pipeline would exacerbate the climate crisis. We understand that the Final Supplemental Environmental Impact Statement concludes that whether or not the Keystone XL pipeline is built will have no effect on the rate at which the government of Canada allows the boreal forest in northern Alberta to be destroyed for the extraction of tar sands crude. This analysis is flawed. Marketplaces in which energy goods and services are bought and sold respond to and are shaped by governmental policies. America needs policies that will help lead the world in a transition to an economy in which energy needs are met with renewable resources and energy demands are kept within reason through efficiency and conservation. American leadership must start now, and this leadership must start with the rejection of the Keystone XL pipeline on the grounds that it is not in the national interest.

We only have one Mother Earth. In our traditional ways, we are taught to be concerned for the welfare of the seventh generation to come. The next seven generations, and those who come after, are depending on you to make the right decision.

We call on you as an honorable human being to make the right decision and deny the permit for the proposed Keystone XL pipeline.

Respectfully,


Bryan V. Brewer, President

Enclosures

RESOLUTION OF THE EXECUTIVE COMMITTEE
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE OGLALA SIOUX TRIBE REQUESTING HONORABLE PRESIDENT BARRACK OBAMA TO DENY THE KEYSTONE XL PIPELINE A PRESIDENTIAL PERMIT TO CROSS INTERNATIONAL TREATY BOUNDARIES.

WHEREAS, the Secretary of State is authorized by Executive Order 13337 to make a determination as to whether it would be in the National Interest to approve a Presidential permit for the proposed Keystone XL pipeline because said pipeline crosses an international treaty boundary between the United States and Canada along the 49th Parallel, separating Alberta and Montana, and

WHEREAS, the proposed Keystone XL pipeline is designed to be constructed from Morgan, Montana to Steele City, Nebraska, traversing the states of Montana, South Dakota and Nebraska and dissecting the territories of the Great Sioux Nation and the traditional homelands of Oceti Sakowin, and

WHEREAS, to allow construction of the proposed Keystone XL pipeline would not serve the National Interest, and

WHEREAS, the Oglala Sioux Tribe is opposed to this proposed pipeline for many reasons, as we have informed the State Department on numerous occasions, and

WHEREAS, the proposed Keystone XL pipeline threatens to contaminate the source of water for our Mni Wiconi Project, a rural water supply system in which the federal government has invested \$450 million, and which delivers safe drinking water not only to the Pine Ridge Reservation but also to the Rosebud Reservation, the Lower Brule Reservation, and many non-Indian communities in southwestern South Dakota, and

WHEREAS, a major part of the route of the proposed pipeline would be located within territory of the Great Sioux Nation, as recognized in the Fort Laramie Treaty of 1851, territory where many sacred places are located, as well as the graves of many ancestors, and

WHEREAS, the Department of State has never properly consulted with the Oglala Sioux Tribe regarding the likely impacts of the construction of the proposed pipeline on our sacred places, and

RESOLUTION NO. 14-19XB

Page Two

WHEREAS, the proposed Keystone XL pipeline would enable the Government of Canada to expand the destruction of the boreal forest to expand extraction of tar sands crude, destroying wildlife habitat and poisoning surface waters, inflicting death and diseases upon the people of the First Nations and depriving them of their means of subsistence, and

WHEREAS, as Native peoples, we believe the American people should not be a party to depriving First Nations of their human rights, including the right to their means of subsistence, and

WHEREAS, the extraction, processing, transport, refining, and ultimate combustion of tar sands oil, on the scale planned for the Keystone XL pipeline will release an enormous amount of carbon dioxide, estimated to be 147 to 168 MMTC02e per year, into the atmosphere, and

WHEREAS, we believe that the proposed Keystone XL pipeline would substantially exacerbate the climate crisis by enabling Canada to expand extraction of tar sands crude, and

WHEREAS, we believe that the finding in the Final Supplemental Environmental Impact Statement that regardless of whether the pipeline is built, there will be no change in the rate at which the government of Canada will allow the boreal forest in northern Alberta to be destroyed for the extraction of tar sands crude, is not credible, and

WHEREAS, the stated purpose of the proposed pipeline is to deliver tar sands crude to the Gulf Coast refineries, in response to global market forces, not for energy needs in America, and

WHEREAS the market forces for energy goods and services respond to, and are shaped by, governmental policies, and

WHEREAS, America needs policies that will help lead the world in a transition away from dependence on fossil fuels and toward an economy in which energy needs are met with renewable resources and energy demands are kept within reason through efficiency and conservation, and allowing the Keystone XL pipeline to be built will impede our progress toward our renewable energy future, and

WHEREAS, proponents of the Keystone XL pipeline who have relied upon the supposed job creation and energy independence attributes of this project for the United States find no support for these beliefs in the Findings of the State Department Report, and

RESOLUTION NO. 14-19XB

Page Three

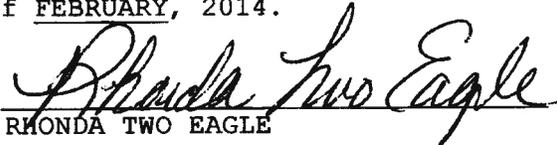
WHEREAS, each of the reasons stated above supports a finding that this proposed project is not in the national interest, now

THEREFORE BE IT RESOLVED, that the Oglala Sioux Tribe calls on Secretary of State John Kerry and President Barack Obama to acknowledge that to allow construction of the proposed Keystone XL pipeline would not serve the National Interest of either the United States, or the Great Sioux Nation, and deny the proposed pipeline a permit to cross the border, and

BE IT FURTHER RESOLVED, that the Oglala Sioux Tribe calls on Secretary of State John Kerry to meet with elected representatives of the Oglala Sioux Tribe and other Sioux Tribes to discuss our objections to the proposed pipeline.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, as undersigned Secretary of the Executive Committee of the Oglala Sioux Tribe, hereby certify that this Resolution was adopted by the vote of: 3 For; 0 Against; 0 Abstain, and 0 Not Voting during a SPECIAL SESSION held on the 15TH day of FEBRUARY, 2014.



RHONDA TWO EAGLE
Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:



BRYAN V. BEWER
President
Oglala Sioux Tribe

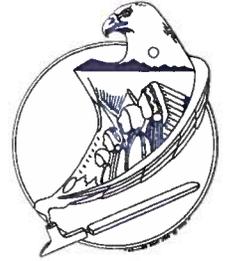




Oglala Sioux Tribe

Office of the President

Pine Ridge Indian Reservation
Post Office Box 2070
Pine Ridge, South Dakota 57770
Phone: 605.867.8420
Fax 605.867.6076
bryan@oglala.org



THE KEYSTONE XL PIPELINE IS NOT IN THE NATIONAL INTEREST

Position Paper of the Oglala Sioux Tribe

Enclosure to the March 5, 2014, Letter from
Oglala Sioux Tribal President Bryan Brewer to Secretary of State John Kerry

The Oglala Sioux Tribe remains strongly opposed to the proposed Keystone XL Pipeline for many reasons and encourages the Department of State to agree that the proposed pipeline is not in the national interest of the United States.

The Oglala Sioux Tribe is concerned about the risk that a spill or leak of tar sands crude would contaminate groundwater and surface water, including the Missouri River and its tributaries. A spill could contaminate the source of water for our Mni Wiconi Project, the rural water supply system for the Pine Ridge Indian Reservation. The proposed pipeline would be located within our ancestral homeland, which we shared with our relatives of the *Oceti Sakowin*. Our ancestral homeland includes, but is not limited, to the treaty territory of the Great Sioux Nation, as recognized in the Fort Laramie Treaties of 1851 and 1868. Within our ancestral homeland, there are a great many cultural resources and artifacts, graves of ancestors, and traditional and naturally significant places that are sacred to us. The programmatic agreement for compliance with the National Historic Preservation Act, which was developed without our proper involvement, is inadequate to avoid the destruction of cultural resources and burials that will result if the pipeline is built. The Oglala Sioux Tribe believes that the United States should not be a party to the environmental destruction occurring in Canada from the extraction of tar sands and the resulting negative impacts on the First Nations of Canada, impacts that constitute violations of their human rights as indigenous peoples. The proposed pipeline would exacerbate the climate crisis. The analysis of this issue in the Final Supplemental Environmental Impact Statement is deeply flawed. As President Obama has said, exacerbating the climate crisis is not in the national interest.

The United States should be a leader for the world in establishing energy policy to deal with the climate crisis. The United States should help lead the transition toward an economy in which most of our energy needs are met with renewable resources. Rejecting the Keystone XL pipeline as not in the national interest would be a major step leading in the right direction.

WATER RESOURCES

The proposed Keystone XL (KXL) pipeline threatens to contaminate the source of water for our Mni Wiconi Project, a rural water supply system in which the federal government has invested \$450 million. The Mni Wiconi Project Act, Pub. L. No. 100-516, as amended, specifically states that the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Pine Ridge Indian Reservation, the Lower Brule Sioux Reservation and the Rosebud Sioux Reservation. Section 2(a)(5). The Mni Wiconi Project helps to carry out the United States' trust responsibility in this regard. The United States' trust responsibility requires an appropriate level of care, skill and diligence with respect to the KXL pipeline and its potential impacts on the Mni Wiconi Project and the water supply on Indian reservations.

The FSEIS's risk analysis, however, of potential spills is inadequate. Additionally, there is no real consideration of potential impacts of the KXL pipeline on the Mni Wiconi Project. It is not in the national interest to risk contamination of our Mni Wiconi Project water or damage to our Mni Wiconi Project from the operation and construction of the KXL pipeline.

Pipeline Crossings.

The KXL pipeline would cross the Mni Wiconi distribution infrastructure. We have previously informed the Department of our concerns regarding these crossings. Yet, to date our concerns have not been adequately addressed.

In addition to design and construction specifications that TransCanada must be required to use if the KXL pipeline is built, provision must be made to ensure that the Mni Wiconi Project continues to operate without interruption. TransCanada must construct a fail-safe backup system in the event of a KXL pipeline-caused Mni Wiconi failure. Any damage to the Mni Wiconi Project would need to be paid for by TransCanada. The FSEIS has not satisfactorily addressed these issues.

The Intake.

Ensuring the Mni Wiconi Project will not suffer the consequences of an upstream oil spill is of critical importance to the Tribe. The Mni Wiconi surface water intake is located on the Missouri River near Pierre, SD. If a release were to reach the intake, the impacts on the Mni Wiconi Project would be catastrophic. The Draft SEIS contained no analysis of possible impacts, potential releases, or cumulative effects of an oil spill on the Mni Wiconi surface water intake. The FSEIS includes a brief discussion of this issue. At 4.3-19.

Yet, the brief discussion of this issue in the FSEIS is inadequate and unreasonable. The FSEIS risk analysis assumes that an oil spill will pollute rivers for no more than ten miles. The FSEIS also states that "crude oil materials such as tar balls could travel farther than ten miles but would not have a widespread effect on surface water resources." Limiting the impact assessment in this way is not reasonable. The kind of oil to be pumped through the KXL pipeline is prone to

sinking towards the bottom of rivers or other water sources. It has dissolved components that could be slowly released back to the water column for many years after the release.

The spill into the Kalamazoo River in July 2010 involved the same type of crude as that to be carried by the KXL pipeline (diluted bitumen or “dilbit” oil). That spill affected 36 miles of the River.¹ That spill was carried dozens of miles downstream before sinking to the riverbed, and continues to present clean up problems today. The discussion in the FSEIS at 4.3-19 ignores this recent experience, even though the FSEIS elsewhere acknowledges that “sinking oil can be deposited in river or stream bottoms and become a continual source of release over time.” At ES-19. A spill like the Kalamazoo spill along the Missouri or its tributaries which would reach the intake would be devastating. The FSEIS somehow predicts that a spill which would reach the Mni Wiconi intake is an event that is likely to occur once in between 18,000 and 47,500 years. This prediction is preposterous. Spills happen – 1,692 of them happened between 2002 and 2012. At ES-18.

While the FSEIS states that it addresses possible risks to high consequence areas (HCAs), it does not address the possible risks to the Mni Wiconi intake facility despite the fact that it meets the definition of “high-consequence area” (HCA)² and the Mni Wiconi Project meets the definition of a “Community Water System” in 49 C.F.R. § 195.6(c).³ Accordingly, the Mni Wiconi intake must be considered both an unusually sensitive area and an HCA. Despite this, the FSEIS does not address possible consequences of a spill with regard to the Mni Wiconi intake. The analysis in the FSEIS is therefore incomplete. The analysis of threats to HCAs relies on Appendix P, which is dated 2009 (and was apparently part of the original draft EIS). We found no discussion in the FSEIS to recognize that the Mni Wiconi intake is an HCA.

We also point out that the FSEIS does not even consider all the tributaries upstream of the Mni Wiconi intake even though we previously stated our concern with the KXL pipeline crossing the Missouri River in Montana, and the Cannonball River, Grand River, and Moreau River crossings in the Dakotas. The Cannonball River, Grand River, Moreau River and Cheyenne River individually and collectively enter the Missouri River in Lake Oahe, the Pick Sloan Reservoir immediately upstream from the Mni Wiconi Project intake.

¹ Michigan Department of Community Health, *Public Health Assessment: Kalamazoo River/Enbridge Spill: Evaluation of people’s risk for health effects from contact with the submerged oil in the sediment of the Kalamazoo River* (May 2012).

² An HCA is defined, in part, as “an unusually sensitive area” per the regulatory definitions in 49 C.F.R. § 195.6, which defines an unusually sensitive area as:

The water intake for a Community Water System (CWS) or a Non-transient Non-Community Water System (NTNCWS) that obtains its water supply primarily from a surface water source and does not have an adequate alternative drinking water source.

³ “Community Water System (CWS) means a public water system that serves at least 15 service connections used by year-round residents of the area or regularly serves at least 25 year-round residents.” 49 C.F.R. §195.6(c).

It is in the national interest to ensure clean, safe drinking water for Tribal peoples to whom the United States bears a trust responsibility. Jeopardizing our water resources does not serve the national interest.

SACRED AND CULTURAL PROPERTIES IN OUR TREATY TERRITORY

Much of the proposed KXL pipeline would be located within the territory of the Great Sioux Nation as recognized in the Treaty of Fort Laramie of 1851 and 1868. We must also note that the territory recognized in those Treaties does not include all of the territory that our ancestors inhabited, which we consider our ancestral homelands and burial grounds. The *Oglala Lakota*, who derive from a larger Nation commonly known as the *Oceti Sakowin* or Seven Council Fires of Lakota, Dakota, and Nakota peoples have inhabited a vast land base and hunting territory as a shared and collective resource since time immemorial. Historically speaking, our people had annual purposeful travels from one seasonal camp site to the next, and we followed our brothers the buffalo through a pathway of life that supported our entire existence all within our aboriginal/ancestral homelands. These homelands encompass a landscape in the Great Plains region that covers parts of ten present-day states as well as part of Canada. This landscape retains millions of burials, ceremonial and prayer loci, artifacts, petroglyphs, habitation locales, and sites of traditional religious and cultural significance to our Lakota peoples.

The National Historic Preservation Act (NHPA) recognizes that it is in the national interest to preserve places that are eligible for the National Register of Historic Places. The review process pursuant to NHPA section 106, 16 U.S.C. § 470f, as implemented through regulations issued by the Advisory Council on Historic Preservation (ACHP), 36 C.F.R. part 800, requires federal agencies to take into consideration the effects of any proposed undertaking on places that are listed on or eligible for the National Register. The section 106 process is intended to make sure that if a federal or federally-assisted undertaking would cause damage to places that are listed on or eligible for the National Register, there must be an agreement in place that provides for acceptable mitigation measures. The NHPA recognizes that places which hold religious and cultural significance for Indian tribes may be eligible for the National Register, and requires federal agencies to consult with any tribe that attaches religious and cultural significance to any historic property that would be affected by a proposed undertaking. 16 U.S.C. § 470a(d)(6). The ACHP regulations include numerous provisions to implement this statutory requirement to consult with tribes.

In this case, the section 106 process has failed. While there is a programmatic agreement (PA), that in itself is an acknowledgment that there will be adverse impacts on properties that are eligible for the National Register.

The Oglala Sioux Tribe decided not to sign the PA because the State Department's consultation with Tribal Nations in the development of the PA was grossly inadequate and did not fulfill the regulatory requirement that such consultation be conducted in good faith. The current version of the PA is substantively quite similar to the version that was executed in 2011, which the Tribe believes was entered into without a good faith effort to consult with concerned

Tribal Nations. There was a lack of good faith on the part of the State Department when the Tribal Nations were contacted in 2011 regarding the proposed PA. Tribal representatives were led to believe that a decision on the pipeline had been made – that the pipeline would be approved, without true attention to all of the Tribal Nations affected by this project and regardless of any objections Tribal Nations might raise. Thus, we believe that the Department intended to make it appear to have consulted in good faith while actually only trying to do the bare minimum to pass legal muster.

Though we believe that the State Department's steps to fulfill the requirements of the statute and regulations were grossly inadequate, we see that the FSEIS implies that there was extensive consultation between the State Department and Tribal Nations after the State Department received the new application for the KXL pipeline. ES-26. The FSEIS states that the Department has "continued government-to-government consultations ... to ensure that tribal issues of concern are addressed in the consultation process, and to amend and incorporate comments and modifications to the PA, as appropriate . . ." *Id.* This, however, was not the case. As stated above, the current PA is substantively quite similar to the version that was executed in 2011. Moreover, the State Department's steps to consult with Tribal Nations were limited to issues relating to historic properties, while Tribal Nations sought government-to-government consultation on a wide range of issues, and believed that such government-to-government consultations should have taken place prior to the more narrowly focused section 106 consultation. As one example, the Oglala Sioux Tribe's concerns regarding the Mni Wiconi Project were not addressed despite specifically and persistently raising them to the Department of State throughout the process to date. It is our position that Tribal consultation has been inadequate and remains incomplete, in both the section 106 context and the broader government-to-government context.

The FSEIS states that field studies were conducted between 2008 and 2013 to identify "cultural resources and assess archaeological resources, historic resources, and properties of religious and cultural significance, including traditional cultural properties." ES-25. The FSEIS states that "As of December 2013, most of the proposed Project area has been surveyed for cultural resources." ES-26. The FSEIS attempts to create the impression that there has been extensive involvement of tribes in conducting cultural resource surveys. This impression is not accurate, and we regard it as deceitful. In light of the lack of good faith on the part of the State Department, the Oglala Sioux Tribe did not participate in the field studies and cultural surveys. Our decision not to participate reflects differing cultural worldviews and disagreement regarding the methodology for identification, documentation and recordation of traditional and naturally significant places, or *Lakólyakel na ečhá wanjátuya yawá owánka*. The approach taken by the State Department did not allow for resolution of such differences.

It is not in the national interest to choose private corporation profit over the cultural resources and historically significant properties of the Native American peoples especially when those resources and properties are integral to our cultural identities and our way of life, and they have not adequately been the subject of section 106 consultation in the required good faith manner. The State Department should have demonstrated the intent to conduct section 106 consultation in good faith by starting with meaningful government-to-government consultation.

CLIMATE CRISIS IMPACTS

The FSEIS asserts that the greenhouse gas (GHG) emissions that would result from allowing the KXL pipeline to be built can be ignored. It is not in the national interest to do so. In the Northern Plains, we are witnessing impacts of climate change, as plants and animal species move in from the south, the patterns of the seasons change, and the web of life is disrupted.

The FSEIS acknowledges that construction and operation of the proposed KXL pipeline would result in an enormous amount of GHG emissions: “The total lifecycle emissions associated with production, refining, and combustion of 830,000 bpd of oil sands crude oil transported through the proposed Project is approximately 147 to 168 MMTCO₂e [million metric tons of carbon dioxide equivalents] per year.” At ES-15. The FSEIS also acknowledges that tar sands crude is about 17 percent more intensive in total carbon dioxide emissions (well to wheels) than the average kind of crude oil that is refined in the United States. In addition, transporting the tar sands crude through the proposed pipeline would emit 1.44 MMTCO₂e per year, which the FSEIS equates to the GHG emissions of about 300,000 cars. Adding the transport emissions to the production, refining, and combustion emissions yields a range of about 148.4 to 169.4 MMTCO₂e per year. This would be about equivalent to the emissions of 30.9 to 35.2 million cars. Regardless of the accuracy of these projections, in terms of order of magnitude, the proposed pipeline would result in an enormous amount of GHG emissions.

The FSEIS uses an invalid implicit assumption to distract attention from the projected actual GHG emissions associated with the tar sands crude that would be transported through the proposed KXL pipeline. It asserts that emissions associated with the supplies of crude oil that are currently being processed in the Gulf Coast refineries should be subtracted from the tar sands emissions to derive an estimate of the projected “incremental” emissions. At 4.14-36 – 4.14-40. Through the use of this assumption, the FSEIS estimates that the “incremental” GHG emissions brought about by the KXL pipeline would be 1.3 to 27.4 MMTCO₂e per year. This assumption is flawed because, unlike the tar sands crude, the supplies of crude currently being processed in the Gulf Coast refineries are not landlocked. If those supplies of crude are not processed in the Gulf Coast refineries, it seems reasonable to assume that they will be processed somewhere else, and the FSEIS does not offer any explanation for the assumption that those supplies would somehow be removed from the market. Accordingly, the analysis in the FSEIS actually indicates that the incremental GHG emissions of the KXL pipeline would be in the range of 148.4 to 169.4 MMTCO₂e per year.

In addition to using that flawed assumption to dramatically underestimate the incremental GHG emissions of the proposed KXL pipeline, the FSEIS uses a similar technique to present the incremental GHG emissions of the option of shipping tar sands crude by rail in a misleading way. The information presented in table 5.3-2 compares the GHG emissions of the rail alternatives to the GHG emissions associated with shipping by the proposed KXL pipeline and the existing southern segment of the KXL). At 5.3-5. This comparison purports to show that the rail alternatives would result in substantially more GHG emissions than the proposed pipeline,

about 40 percent more for two of the three rail alternatives. If, however, the emissions projected for rail transport are seen in the context of the aggregate GHG emissions of the proposed project – the range of 148.4 to 169.4 MMTCO₂e per year as discussed above – the incremental increase would be in less than 3 percent more for rail transport.

The presentation of this point appears to be intentionally misleading. Why else does the FSEIS exaggerate the incremental GHG emissions of shipping tar sands crude by rail while understating the incremental GHG emissions of the entire project?

In any case, the FSEIS asserts that the projected GHG emissions of the proposed pipeline can simply be ignored.

The FSEIS attempts to rationalize this assertion by saying that the decision whether or not to allow the pipeline to be built will not significantly affect the rate of extraction of tar sands. According to the reasoning in the FSEIS, if this pipeline is not built, the government of Canada will find other ways to get this crude to the world market – the carbon in the tar sands is going to be extracted and burned anyway. Thus, according to the FSEIS, the decision whether to permit the pipeline to cross the border will not in itself contribute to emissions of greenhouse gases. FSEIS at ES-16. This assertion makes no sense.

The assertion that GHG emissions can be ignored is based on a market analysis presented in section 1.4 of the FSEIS. The market analysis considers a number of scenarios, with multiple variables. While these projected scenarios may have a degree of validity in the near term, they become increasingly suspect as the timeframe lengthens. The FSEIS acknowledges “possible scenarios in which production and investment in the oil sands could abate due to extremely *low oil prices, regulatory changes, or the development of new technologies or energy sources*” but then says that “such factors should not be conflated with the effects of constraints on an individual pipeline.” At 1.4-138 (emphasis added). In other words, the FSEIS states that while factors such as low oil prices, regulatory changes, or a worldwide transition to a post-fossil fuels energy economy may operate to limit the extraction of tar sands, such factors should be ignored in making the decision whether to allow a pipeline that will facilitate the GHG emissions caused by 830,000 barrels per day of tar sands crude.

In our view, factors such as low oil prices, regulatory changes, or a worldwide transition to a post-fossil fuels energy economy must be taken into consideration.

Oil prices.

Increases in the costs of production should be expected to constrain tar sands extraction in ways similar to the effects of low prices. Incredibly, the market analysis in the FSEIS does not factor in the price of greenhouse gas emissions. This factor is bound to affect the price of crude oil over the next few decades, whether it is incorporated into the price through emissions allowances or carbon taxes or some other mechanism.

The market analysis concludes that the estimated break-even point for in situ tar sands extraction projects is the price range of \$65 to \$75 per barrel. As stated in the Executive Summary, “there could be a substantial impact on oil sands production levels” if the long-term price for West Texas intermediate crude equivalent (WTI-equivalent) were to fall “to around approximately \$65 to \$75 per barrel, if there were long-term constraints on any new pipeline capacity, and if such constraints resulted in higher transportation costs.” At ES-16 – ES-17. This point is discussed in more detail in the Market Analysis section of the FSEIS, which states, “Over the long-term, lower-than-expected oil prices could affect the outlook for oil sands production, and in certain scenarios higher transportation costs resulting from pipeline constraints could exacerbate the impacts of low prices.” At 1.4-136 – 1.4-137; *see also* 1.4-34 – 1.4-37 (explaining assumed average cost of production cost range of \$65 to \$75 per barrel for in situ extraction). The FSEIS acknowledges that “this estimated price threshold could change if supply costs or production estimates prove different than estimated” in the FSEIS. At ES-17.

The projected break-even price threshold for tar sands crude could change as a result of increased costs on the supply side as well as from decreases on the demand side. Incredibly, the market analysis does not discuss the cost of GHG emissions as a factor that will affect the break-even point for tar sands crude.

Over the next few decades, as various mechanisms are used to incorporate the costs of carbon pollution into prices, and as those costs are incorporated into the costs of production, the break-even point can be expected to rise. Using the numbers in the FSEIS as noted above (annual GHG emissions in the range of about 148.4 to 169.4 MMTCO₂e per year for tar sands crude transported at a rate of 830,000 barrels per day for 365 days a year or 302.95 million barrels per year), yields a range of emissions of 0.49 to 0.56 metric ton of CO₂e per barrel. This factor should be clearly explained in the FSEIS – reviewers should not have to derive an estimate on their own using the information in the FSEIS.⁴ The cost of carbon emissions will become a significant factor in the cost of fossil fuels, including tar sands crude, and for the market analysis in the FSEIS to overlook this factor is a major omission.

While currently there is no standard price that is imposed on carbon emissions, many companies have integrated an “internal carbon price” into their business strategies. According to a recent published report, for companies that disclosed their internal carbon price in 2013, the price ranged from \$6 to \$60 per metric ton, with an average for U.S.-based electric utilities of \$20 per metric ton and for international oil companies of \$40 per metric ton.⁵ Using the metric

⁴ We note that a report published by the Pembina Institute derives an estimate of 0.083 MMTCO₂e per barrel of tar sands crude for in situ extraction and 0.074 MMTCO₂e per barrel of tar sands crude for mining. Jennifer Grant, *et al.*, *Forecasting the impacts of oilsands expansion: Measuring the land disturbance, air quality, water use, greenhouse gas emissions, and tailings production associated with each barrel of bitumen production* (Pembina Institute, June 2013), available at www.pembina.org. While the Pembina Institute estimates are substantially less than the estimates derived from the FSEIS, the failure of the FSEIS to account for this factor in its market analysis is a fundamental omission in the FSEIS.

⁵ CDP North America, *Use of internal carbon price by companies as incentive and strategic planning tool: A review of findings from CDP 2013 disclosure* (Dec. 2013).

tons per barrel range derived in the preceding paragraph, and the \$40 per metric ton internal price currently used by international oil companies, the cost of producing a barrel of tar sands crude would be increased in the range of \$19.6 to \$22.4 per barrel. Cost increases in this range might be enough to constrain tar sands extraction, but this factor does not appear to have been considered in the market analysis in the FSEIS.⁶

We note that the FSEIS does briefly mention the possibility of two scenarios in which there would be a carbon tax: a “New Policies” scenario with a carbon tax of \$60 per ton and a “450” scenario with a carbon tax of \$120 per ton. At 2.2-43. These scenarios are briefly mentioned in the section of the FSEIS in which it dismisses the potential of renewable energy and conservation for reducing market demand for tar sands crude. At that point, the FSEIS states that these two scenarios would reduce the demand for tar sands crude by 0.5 and 1.4 million barrels per day respectively. Thus, the “450” scenario would reduce demand for tar sands crude by an amount greater than the capacity of the proposed KXL pipeline (1.68 times greater). Yet the FSEIS dismisses the projection, and the market analysis section ignores it.

In the absence of regulatory mechanisms to make the prices charged for fossil fuels incorporate the societal and environmental costs of carbon pollution, such costs will be borne by the public. Such costs could be estimated by using “Technical Support Document” prepared by the federal Interagency Working Group on Social Costs of Carbon.⁷ That Technical Support Document presents a range of values at five-year increments from 2010 to 2050, using three different discount rates. In the mid-range set of values, using a 3.0 percent discount rate, the social cost of carbon in 2015 is \$38 per metric ton, rising to \$62 per metric ton in 2040 (an out-year in which the proposed pipeline would still be in use). If these costs are not internalized into the price of tar sands crude, then the public would, in effect, be subsidizing extraction by absorbing these costs. As the public becomes better informed about this hidden subsidy, the public might decide that the subsidy should be eliminated. That might push the cost of extraction over the break-even point.

As such, even if the social costs of carbon pollution are not internalized into the price of tar sands crude, these costs should be considered in the national interest determination. And when these “external” costs are considered, it is apparent that to allow this pipeline to be built is not in the national interest.

⁶ Also, we note that the FSEIS asserts that the incremental cost of transporting tar sands crude by rail rather than by pipeline would not result in limiting the expansion of tar sands extraction over the long-term. It appears obvious, however, that not building Keystone XL will impose at least short-term constraints on the expansion of tar sands extraction. It may be that, over the long-term and in response to market forces, capacity for transport by rail would expand incrementally such that tar sands extraction will continue to expand. It might also turn out that short-term constraints on tar sands extraction will allow time for an increasing share of demands for energy goods and services to be met with energy efficiency and renewable energy technologies.

⁷ Interagency Working Group on Social Costs of Carbon, United States Government, Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis – under Executive Order 12866 (May 2013).

Regulatory changes.

Given the recognition of the social costs of carbon pollution and, more generally, awareness of the reality of the climate crisis, it is not reasonable for the market analysis in the FSEIS to simply assume away the adoption of regulatory measures that will affect the market for tar sands crude. As discussed above, such regulatory measures could include taxes on carbon emissions or other measures that would be the functional equivalent of a tax, such as regimes for trading emissions allowances. Regulating GHG emissions, however, is but one way in which regulatory changes could affect the market demand for tar sands crude. A wide variety of regulatory changes are likely to be adopted during the next few decades, i.e., the time frame in which the proposed pipeline would be in operation.

Given the numerous ways in which governmental policies shape energy marketplaces, there are many ways in which governmental policies could be implemented over next decade or so to encourage a transition away from fossil fuels and toward energy efficiency and renewable energy technologies. Some of the existing regulatory programs are briefly discussed in the FSEIS. At 4.14-6 – 4.14-13. One kind of existing regulatory program mentioned is a low carbon fuel standard (LCFS), noting that such policies have been adopted in California, British Columbia, and the European Union. The FSEIS dismisses such policies with the assertion, “The impact of LCFS on the U.S. market demand for oil sands crude oil is speculative at this time since few jurisdictions have implemented these standards.” At 4.14-13.

For the FSEIS to simply assume that the adoption and implementation of such changes in policies will not affect the financial viability of a single pipeline for transporting tar sands crude is not reasonable. The proposal to build the KXL pipeline assumes that it would be transporting tar sands crude for decades, and, over the next few decades, a wide range of governmental policies will be adopted and implemented to promote the transition to a post-fossil fuels economy. These policies are bound to affect the market demand for tar sands crude.

Transition to a post-fossil fuels energy economy.

Closed-minded reasoning is also apparent in the determination in the FSEIS to not give serious consideration to renewable energy and conservation as an alternative to the proposed pipeline. At ES-32. This determination is supported by the statement that “the crude oil would be used largely for transportation fuels and, therefore, any alternatives to the crude oil would need to fulfill the same purpose. The analysis found that even with renewable energy and conservation, there would still be a demand for oil sands-derived crude oil.” While it is generally true that most large scale renewable energy projects currently produce electric power rather than liquid fuels, it is technologically feasible, over the timeframe in which the proposed pipeline would be operational, for a transition to be underway from internal combustion motor vehicles to electric and plug-in hybrid electric vehicles, and the sources of electric power for such vehicles could increasingly be provided from renewable sources, especially wind and solar.

As noted earlier, the FSEIS does briefly mention the possibility of a “450” scenario with a carbon tax of \$120 per ton. At 2.2-43. The scenario is designed to limit the concentration of

carbon dioxide to no more than 450 parts per million (ppm), with the hope of achieving the goal of limiting the increase in mean global surface temperature to no more than two degrees Celsius above what it was in pre-industrial times.

As public awareness grows regarding the impacts and causes of the climate crisis, governmental policies are increasingly likely to be adopted to favor renewable energy over fossil fuels. To simply assert that renewable energy cannot displace a perceived market demand for tar sands crude for transportation is not reasonable.

To some extent, governmental policies will be driven by growing awareness – in the public and among political leaders – that, if we are to have any realistic hope of avoiding the more catastrophic impacts of global warming, we will need to keep most of the known reserves of fossil fuels in the ground. The most authoritative on the science of global warming is the Intergovernmental Panel on Climate Change (IPCC).⁸ In its Fourth Assessment Report (2007), the IPCC warned of major disruptions in ecological systems if the mean global surface increases in the range of two degrees Celsius above the mean before the industrial revolution. The IPCC's projections indicate that that amount of warming is a virtual certainty unless we accomplish major reductions in GHG emissions, soon. The IPCC has emphasized the importance of renewable energy for achieving reductions in emissions.⁹

Just how dramatically we need to reduce GHG emissions is not entirely clear. A group of climate scientists led by James Hansen has concluded that, in order to avoid a tipping point beyond which changes will not be reversible, our policies should be designed so that the atmospheric concentration of carbon dioxide is no higher than 350 parts per million.¹⁰ The concentration level has already reached 400 parts per million. Some analysts have argued that, if we are to have any hope of stabilizing the climate before those irreversible changes happen, we simply cannot afford to allow most of the known reserves of fossil fuels to be extracted and burned.¹¹

In our cultural traditions, we are taught that we have responsibilities to future generations, and to our relations among other than human beings. These responsibilities require us to become aware of the need to move beyond the fossil fuel economy before it is too late and to carry out such awareness in our actions.

Avoiding the climate catastrophe is not the only reason for leaving the fossil fuel economy behind. Moving into the renewable energy future will also mean more employment

⁸ See generally <https://www.ipcc.ch/report/ar5/wg1/>.

⁹ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, IPCC SPECIAL REPORT ON RENEWABLE ENERGY SOURCES AND CLIMATE CHANGE MITIGATION: SUMMARY FOR POLICYMAKERS (2011).

¹⁰ James E. Hansen et al., *Target Atmospheric CO₂: Where Should Humanity Aim?*, 2 OPEN ATMOS. SCI. J. 217 (2008).

¹¹ E.g., Bill McKibben, *Global Warming's Terrifying New Math*, ROLLING STONE (July 19, 2012).

opportunities. The International Renewable Energy Agency has published a working paper on its review of a number of studies of the employment prospects in renewable energy deployment, noting one study which found that “the number of jobs generated per dollar of investment or per unit of capacity is generally higher in renewable energy than in fossil fuel generation.”¹² In contrast, the proposed KXL pipeline is predicted to create only about 50 permanent jobs during operation and about 1,950 jobs per year over a two-year construction period. At ES-19.

Realizing the potential for jobs in renewable energy will not just happen on its own; rather, it will require governmental policies to develop an appropriately skilled workforce and to encourage private investment in renewable energy. America needs to help lead the world in making the transition to an economy in which energy needs are met with renewable resources and energy demands are kept within reason through efficiency and conservation. American leadership must start now. Our national interest will be better served by focusing on renewable energy and our national policy should drive private investment toward renewable energy. To permit the KXL pipeline to be built would be the wrong direction for our long-term national interest.

IMPACTS IN CANADA

The extraction and processing of tar sands crude is causing an enormous amount of environmental destruction in the territory currently known as the Province of Alberta. The environmental devastation caused by oil sands extraction inflicts severe adverse impacts on the First Nations of the region. As explained below, these impacts constitute violations of their human rights. It does not serve the national interests of the United States to be an accomplice to such human rights violations.

The impacts of extraction and processing of tar sands are discussed to some extent in section 4.15 of the FSEIS. At 4.15-4 – 4.15-116. The FSEIS assumes that such impacts will occur regardless of whether the KXL pipeline is allowed and that the consideration of such impacts is solely a matter of Canadian law. This section of the FSEIS reiterates the assumption in the “Market Analysis” (Section 1.4) that “approval of ... the proposed Keystone XL pipeline, is unlikely to significantly impact the rate of extraction in the oil sands.” FSEIS at page 4.15-104. This assumption is not credible, as previously discussed.

Denying a permit for this proposed pipeline will constrain the expansion of tar sands extraction in the near term. Such near term constraints will allow time for public awareness to grow regarding the environmental devastation caused by tar sands extraction. As such public awareness grows, governmental policies will be adopted that to constrain the expansion of tar sands extraction and to promote instead the shift to the renewable energy future. If such changes in policy are not adopted, the Canadian public can be expected, sooner or later, to vote out the

¹² International Renewable Energy Agency, *Renewable Energy Jobs: Status, Prospects & Policies; Biofuels and Grid-Connected Electricity Generation* 19 (IRENA Working Paper, 2011). See also Environmental and Energy Study Institute, *Fact Sheet: Jobs in Renewable Energy and Energy Efficiency* (June 2013).

politicians that refuse to change the national energy policy and vote in politicians who will make the needed changes.

Regardless of whether the constraint on tar sands extraction that would result from stopping this pipeline is substantial or only incremental, the United States should not be a party to depriving the affected Canadian First Nations of their human rights.

According to the FSEIS, there are some 18 First Nations and six Métis settlements in the region where deposits of tar sands are located. At 4.15-114. As indigenous peoples, these groups have certain rights under international law. (This Position Paper does not address the subject of the rights of these groups under Canadian law.) Two of the key instruments in which the rights of indigenous peoples are enshrined are the International Covenant on Civil and Political Rights (the “Covenant”) and the United Nations Declaration on the Rights of Indigenous Peoples (the “Declaration”).

The Declaration was adopted by the U.N. General Assembly, and is often described as an “aspirational” document. Nevertheless, Article 43 proclaims, “The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.” As such, the articles in the Declaration articulate standards that can be used in applying the recognized norms of international human rights law in the context of indigenous peoples. For example, Article 27 of the Covenant proclaims:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The cultures of the First Nations of northern Alberta, like other indigenous peoples, are deeply rooted in the lands and waters where they live. Several of the articles in the Declaration articulate the rights of indigenous peoples to carry on their cultural traditions, including articles 8, 11, 20, 25, and 29. These articles are reproduced below (some in full, some as excerpts):

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

* * *

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. ...

* * *

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. ...

* * *

The right to “their own means of subsistence,” as stated in Article 20, elaborates on a right that is also enshrined in Article 1 of the Covenant: “In no case may a people be deprived of its own means of subsistence.” For the First Nations of northern Alberta, hunting and fishing are integral aspects of their cultural traditions. And their means of subsistence.

The environmental destruction that is being caused by tar sands extraction violates the human rights principles listed above in many ways. The range and scale of environmental impacts jeopardize the viability of fish and wildlife populations on which the First Nations depend. Extraction of tar sands and conversion to crude entails destruction of large areas of the boreal forest. Strip mining involves outright destruction, and in situ extraction also involves an extensive amount of deforestation and destruction of wildlife habitat. Habitat fragmentation is such that the survival of caribou herds is jeopardized. Toxins from waste lagoons seep into streams and rivers, contaminating fish and other aquatic species.

The FSEIS attempts to create the impression that the environmental impacts of tar sands extraction are being adequately controlled, mitigated, and monitored, and that the scale of those impacts should be considered reasonable. The FSEIS is misleading. The Pembina Institute has been monitoring the impacts of tar sands extraction for many years and reporting on its findings. A recent Briefing Note¹³ states:

The public relations campaigns put forward by oilsands proponents speak of a rigorous and robust environmental management system in place to deal with the impacts of oilsands development. Although there are some environmental management systems in place and others under development, the policies and processes in place are not proving effective in managing the resulting industrial effects:

- After five years, not a single oilsands producer is complying with Alberta’s tailings rules (Directive 074), which provided the first binding requirement for operators to reduce the volume of toxic tailings on the landscape.

¹³ Andrew Read, Pembina Institute, *Alberta’s Environmental Management of the Oilsands* (Feb. 4, 2014).

- Although Alberta's greenhouse gas regulations are touted as the first such regulations in North America, the stringency of these has not increased since their inception in 2008 and remains at a level too low to provide incentive to reduce emissions.
- Oilsands facilities are not required to stop withdrawing water from the Athabasca River even during periods when river flows are so low that fisheries and habitats are at risk.
- The Alberta government has admitted that monitoring in the oilsands is inadequate and the full impact of these developments remains unknown — while it continues to approve projects that have been shown to result in significant adverse and irreversible environmental effects.

Other Pembina Institute reports present more detailed analyses of the impacts of tar sands extraction and the failures of the Alberta government to adequately regulate such impacts.¹⁴ In a “*Progress Update*” issued in April 2013, Pembina reported lack of progress on a number of fronts.¹⁵ For example, a “Joint Review Panel” called for the establishment of an ecological base flow (EBF) for the Lower Athabasca River, such that withdrawals of water for extraction would not be allowed to deplete the River below the levels needed to sustain the ecosystem, but there is still no EBF in place. Alberta is “many years overdue” in implementing a policy to compensate for the loss of wetlands habitat caused by tar sands extraction. Woodland caribou populations continue to decline, and no measures have been identified to conserve remaining habitat. Forest restoration efforts have not been effective.

The FSEIS also attempts to create the impression that the provincial government of Alberta has engaged First Nations in an integrated approach to planning, as described in a 2009 document captioned “Responsible Actions: A Plan for Alberta's Oil Sands.” (This document is referred to in the April 2013 Pembina “*Progress Update*” as “Alberta's previous oilsands plan,” i.e., the predecessor to the Lower Alberta Regional Plan (LARP).) Although not mentioned in the FSEIS, First Nations have very publicly withdrawn from engagement in activities related to the LARP.¹⁶ As reported, “aboriginal leadership felt the program was no longer listening to their needs.” Withdrawal from a monitoring program is but one indicator of resistance by Canadian First Nations to the environmental destruction caused by tar sands extraction. Canadian First Nations are also engaged in a number of legal actions.

¹⁴ See, e.g., *Solving the Puzzle: Lower Athabasca Regional Plan; performance backgrounder* (August 2012); *Solving the Puzzle: Progress Update* (April 2013); Jennifer Grant, et al, *Forecasting the impacts of oilsands expansion: Measuring the land disturbance, air quality, water use, greenhouse gas emissions, and tailings production associated with each barrel of bitumen production* (Pembina Institute, June 2013), available at www.pembina.org.

¹⁵ *Solving the Puzzle: Progress Update* (April 2013).

¹⁶ Vincent McDermott, “Oilsands monitoring program not working: ENGOS,” Fort McMurray Today (Nov. 14, 2013), <http://www.fortmcmurraytoday.com/2013/11/14/oilsands-monitoring-program-not-working-engos>; Canadian Press, Another First Nation leaves oilsands monitoring program (Jan. 24, 2014), <http://www.ipolitics.ca/2014/01/24/another-first-nation-leaves-oilsands-monitoring-program/>.

The FSEIS can be read to provide some insight into the ways in which the First Nations perceive that their concerns are disregarded by the government of Alberta. In its discussion of “Impacts to Aboriginal Groups,” the FSEIS notes that six cases of a rare form of bile cancer were reported in Fort Chipweyan between 1995 and 2006, and two cases were confirmed. An expert panel, however, found that there was “insufficient evidence to link these cancer incidents to oil sands operations” and “no credible evidence of public reports of elevated cancer rates occurring in Fort Chipweyan associated with exposure to contaminants released by oil sands operations.” At 4.15-114. Such findings can be interpreted by First Nations peoples as willingness by the non-Native society to treat Native people as an experimental population. The implication is that, before taking regulatory action to reduce exposures to contaminants, there first must be longitudinal studies to develop definitive evidence that exposure to contaminants introduced into the environment through tar sands extraction really does cause negative effects on human health. A civilized society should be following the precautionary principle.

The destruction of the forests and wetlands and the poisoning of surface waters are inflicting a great deal of suffering on the First Nations who have called that territory home for countless generations. These are indigenous peoples who depend on hunting, trapping, and fishing as a primary means of subsistence. Their cultural identities as distinct peoples depend upon being able to continue to carry on such traditions. Although the FSEIS does not acknowledge it, the impacts of tar sands extraction deprives Canadian First Nations of their human rights.

The United States of America should not be an accomplice in such human rights violations. We, the Oglala Sioux Tribe, stand with our brothers and sisters of the First Nations. The United States should stand up for them.



Oglala Sioux Tribe

Office of the President

Pine Ridge Indian Reservation

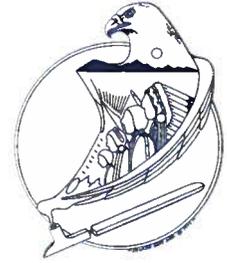
Post Office Box 2070

Pine Ridge, South Dakota 57770

Phone: 605.867.8420

Fax 605.867.6076

bryan@oglala.org



March 26, 2014

The Honorable Sally Jewell
Secretary of the Interior
1849 C St., NW
Washington, D.C. 20042

RE: Proposed Keystone XL Pipeline National Interest Determination

Dear Secretary Jewell:

On behalf of the Oglala Sioux Tribe, we ask you to recommend to the Secretary of State that he deny a Presidential permit for the proposed Keystone XL pipeline to cross the border into the United States. To allow the proposed pipeline to be built would not serve the national interest. In the event that the Secretary were to decide to issue such a permit, then we ask you, pursuant to Executive Order 13337, to ask the Secretary to refer the application to the President.

The Oglala Sioux Tribe is strongly opposed to this proposed pipeline for many reasons. We have informed the Secretary of State of our views, in a letter, position paper, and Tribal Executive Committee resolution. This transmits a copy of that letter and supporting documents.

Our reasons for opposition are discussed in detail in the enclosed position paper, and most of our reasons are summarized in this letter. One of our reasons for opposition, the risk to the Mni Wiconi Project, implicates the trust responsibility of the United States.

Cultural Resources and Sacred Places. A major part of the route of the proposed pipeline would be located within our ancestral homelands, which includes but is not limited to the territory of the Great Sioux Nation, as recognized in the Fort Laramie Treaties of 1851 and 1868. The territory recognized in those Treaties does not include all of the territory that our ancestors inhabited, which we consider our ancestral homelands. These homelands encompass a landscape in the Great Plains region that covers parts of ten present-day states as well as part of Canada. This landscape retains millions of burials, ceremonial and prayer loci, artifacts, petroglyphs, habitation locales, and sites of traditional religious and cultural significance to our peoples. The programmatic agreement that has been entered into for compliance with the National Historic Preservation Act acknowledges that construction of the pipeline would cause damage or destruction to many such places. That programmatic agreement was negotiated without proper consultation with the concerned tribes.

Human Rights of First Nations and Environmental Devastation in Canada. We are appalled by the environmental devastation taking place in Canada where the forests are being destroyed for the extraction of tar sands, and where the First Nations are witnessing the loss of wildlife and suffering health impacts. As Native peoples, we believe the American people should not be a party to destroying the boreal forest and depriving First Nations of their human rights, including the right to their means of subsistence.

The Climate Crisis. Another reason for our opposition to the proposed pipeline is that it would exacerbate the climate crisis. On June 25, 2013, President Obama said, “Our national interest will be served only if this project does not significantly exacerbate the problem of carbon pollution.” We believe it is obvious that it would. The Final Supplemental Environmental Impact Statement (FSEIS) includes a market analysis which asserts that whether or not the Keystone XL pipeline is built will have no effect on the rate at which the government of Canada allows the boreal forest in northern Alberta to be destroyed for the extraction of tar sands crude. That market analysis is deeply flawed.

The market analysis in the FSEIS includes a number of assumptions regarding the range of prices that the industry can expect for tar sands crude over the next several decades. These assumptions are incorporated into scenarios, which project that even considering the incremental costs associated with shipping the tar sands crude by rail as compared to the cost of transport by pipeline, the “break-even” price for the tar sands crude will not be exceeded, which means that the corporations with legal rights to extract the tar sands will continue to do so.

Incredibly, none of the scenarios in the FSEIS market analysis considers the likelihood, or even the possibility, that the United States and international community will implement effective strategies to reduce GHG emissions on the order of magnitude needed to some of the more catastrophic impacts of global warming. As the externalities are incorporated into prices, by whatever mechanisms are eventually chosen (e.g., carbon taxes, cap-and-trade, regulatory controls), the prices for fossil fuels will increase relative to alternatives such as renewable energy technologies and energy efficiency measures. More GHG-dense fossil fuels, such as tar sands crude, will become less marketable as the externalities are factored into prices – this can be expected to drive the cost of delivering tar sands crude to the Gulf Coast refineries over the “break-even” price range. The social costs of the GHG emissions can be seen as a placeholder for whatever mechanisms are eventually implemented to achieve meaningful reductions of GHG emissions.

We made this point in our comments to the State Department, but we also note that this point has been made in greater detail in a recent report prepared by the former head of research for Deutsche Bank for Carbon Tracker. James Leaton, *et al.*, “Keystone XL Pipeline: The ‘Significance’ Trap,” (Mar. 3, 2014), available at www.carbontracker.org/kxl. We commend that report to your attention. Marketplaces in which energy goods and services are bought and sold respond to and are shaped by governmental policies. We have to believe that, over the coming decade or so as the American public becomes better informed about the climate crisis, the people will demand governmental policies to dramatically limit GHG emissions. Those

policies will dramatically change the markets for carbon intensive fuels such as tar sands. The market analysis in the FSEIS ignores simply this.

America needs policies that will help lead the world in a transition to an economy in which energy needs are met with renewable resources and energy demands are kept within reason through efficiency and conservation. American leadership must start now, and this leadership must start with the rejection of the Keystone XL pipeline on the grounds that it would not serve the national interest.

Water Resources and the Mni Wiconi Project. We are concerned about the risk that a spill or leak would contaminate groundwater and surface water, including the Missouri River and its tributaries. We are particularly concerned about the risk to our rural water supply system, the Mni Wiconi Project, a rural water supply project which serves the Pine Ridge Indian Reservation, the Lower Brule Sioux Reservation, the Rosebud Sioux Reservation, and many non-Indian communities in southwestern South Dakota as well as two other reservations and non-Indian communities in southwestern South Dakota. The federal government has invested more than \$450 million in the Mni Wiconi Project. This is a matter on which we ask for your assistance in your capacity as trustee. The Mni Wiconi Project Act, Public Law 100-516, as amended, clearly states that the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the three Indian reservations the Project serves.

The proposed Keystone XL pipeline presents two kinds of risks to the Mni Wiconi Project. One kind of risk is that the proposed pipeline would cross several tributaries of the Missouri River upstream from the Mni Wiconi intake structure. A leak or spill of tar sands crude into any of those tributaries could contaminate the Missouri River. The intake structure near Pierre, South Dakota, is downstream from several points at which the proposed pipeline would cross tributaries of the Missouri, and a spill of tar sands crude could have catastrophic consequences. The diluted bitumen could settle into river beds where it would be nearly impossible to remove and then continue to release toxins into the water.

In analyzing the risk of spills into surface water, the FSEIS disregards the risks to rivers and streams more than ten miles downstream from a release. FSEIS at 4.3-18. In several recent spills, however, the pollution did not stop at the ten-mile limit, e.g., Kalamazoo 2010, Yellowstone 2011. In light of such recent experiences, we have no confidence in assurances by TransCanada that, in the event of a release of tar sands crude, it would promptly act to control the release, to remediate the damage caused, and to provide alternative supplies of water.

A second kind of threat is posed by the two points at which the proposed Keystone XL pipeline would cross the core pipeline of the Mni Wiconi Project. Construction and operation, including a leak of the Keystone XL pipeline, at either of these points could cause damage to the Mni Wiconi pipelines such that a safe and adequate water supply, assured by Public Law 100-516, could not be delivered to the water users we serve.

By letter dated April 22, 2013, the Director of Reclamation's Great Plains Regional Office transmitted to the State Department "final crossing criteria" for the points at which the proposed Keystone XL pipeline would cross Reclamation facilities, including the Mni Wiconi Project. (We have enclosed a copy of that letter and the crossing criteria for the Mni Wiconi Project, but not the criteria for other Reclamation facilities, as the enclosures with the letter were quite voluminous.) By letter dated March 14, 2014, the Director of Reclamation's Great Plains Regional Office raised this point again, after having reviewed the FSEIS. We have enclosed a copy of that letter as well.

Reclamation's April 22, 2013, letter was filed as a comment letter on the draft supplemental environmental impact statement (DSEIS) on the proposed Keystone XL pipeline. We note that, by letter dated April 29, 2013, the Department of the Interior's Office of Environmental Policy and Compliance filed what appears to be a consolidated comment letter on the DSEIS. The Department's April 29 letter, however, does not include any mention of the concerns raised in Reclamation's April 22 letter.

After filing its April 22 letter, Reclamation provided the Oglala Sioux Tribe with a copy of the crossing criteria that Reclamation recommended for the two points at which the Keystone XL pipeline would cross the Mni Wiconi core pipeline. Upon its review, the Tribe concluded that these criteria were not sufficiently protective of the Mni Wiconi Project. The Tribe then developed recommendations for additional measures, which were conveyed to Reclamation in a letter dated May 2, 2013, and which Reclamation then conveyed to TransCanada (the proponent of Keystone XL), on August 8, 2013. The Tribe's recommendations included bypass structures for the two points at which Keystone XL would cross the Mni Wiconi pipeline. The Tribe had also asked for measures for the detection and containment of leaks at the Missouri River, Cannonball River, Grand River, Moreau River, Cheyenne River and other Western Dakota tributary crossings by Keystone. By letter to Reclamation, dated October 10, TransCanada rejected the additional measures that the Tribe had recommended, saying that it "declines to fund construction of the proposed bypasses." In addition to bypasses, the October 10, 2013, TransCanada letter also rejected the measures proposed for crossing the Missouri River and its tributaries.

After receiving the October 10, 2013, TransCanada letter, Reclamation sent a letter to the State Department, dated December 12, 2013, (copy enclosed), transmitting a copy of the October 10 TransCanada letter and saying that while it will not push for the Tribe's additional measures, it will insist on its crossing criteria included in the "Mni Wiconi Project, OSRWSS Core System Crossing Criteria for the TransCanada Keystone XL Project" transmitted from Reclamation to the State Department on April 22, 2013. The December 12 Reclamation letter also points out that Appendix D of the Draft SEIS contains an earlier version of Reclamation's crossing criteria, and that this "will need to be updated."

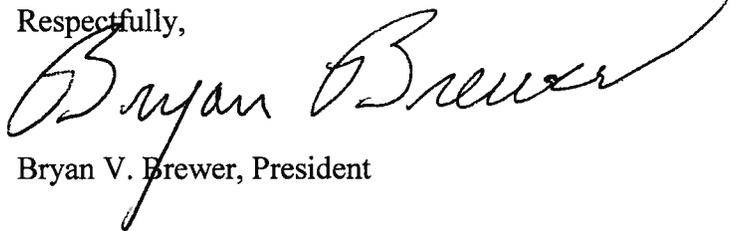
We continue to believe that that the additional measures that the Tribe had recommended in our May 2 letter are necessary and reasonable. However, should the Keystone XL pipeline be approved, it must at least be held to the criteria prescribed by Reclamation in its April 22 letter, and that crossing criteria must be included in the Record of Decision to make this a legal

requirement. The trust responsibility of the United States includes taking the steps that are necessary to protect the Mni Wiconi Project from the risks associated with the Keystone XL pipeline's crossing of the Project, in the event that the proposed pipeline is approved.

In light of the omission of this matter in the Department's April 29, 2013, letter to the State Department, we request that you take whatever steps are necessary to convey to the State Department that you support Reclamation on this important point.

Thank you for you for your consideration of these issues. We would welcome the opportunity to meet with you to discuss this matter.

Respectfully,

A handwritten signature in black ink that reads "Bryan Brewer". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Bryan V. Brewer, President

cc: Michael L. Connor, Deputy Secretary
Lowell Pimley, Acting Commissioner, BOR
Kevin Washburn, Assistant Secretary – Indian Affairs, BIA
Mike Ryan, Regional Director, Great Plains Region, BOR
Richard Long, Dakotas Area Office, BOR

THE KEYSTONE XL PIPELINE IS NOT IN THE NATIONAL INTEREST

Oglala Sioux Tribe

January 27, 2015

The Oglala Sioux Tribe remains strongly opposed the proposed Keystone XL Pipeline. To permit this pipeline to be built would not serve the national interest. On March 5, 2014, a detailed statement of reasons why it would not serve the national interest was conveyed to the Secretary of State by the President of the Oglala Sioux Tribe.

At this time, the Secretary of State has asked the Secretary of the Interior and the heads of other federal agencies, pursuant to Executive Order 13337, to provide their views on whether permitting the proposed pipeline to be built would serve the national interest. We call upon Secretary of the Interior as the head of the federal agency charged with lead responsibility for carrying out the trust relationship with Indian Tribes, along with the heads of the other federal agencies to tell the truth – tell the Secretary of State that this pipeline would not serve the national interest.

The proposed KXL pipeline presents a substantial risk that spills or leaks would contaminate groundwater and surface water, including the Ogallala Aquifer and the Missouri River and its tributaries. The Missouri River is the source for our Mni Wiconi Rural Water System. The risk of such contamination would not serve the national interest.

Construction of the proposed pipeline within the ancestral homelands of the Great Sioux Nation would result in damage to or destruction of cultural resources and burials, as well as many sacred natural places. The programmatic agreement (PA), which was developed without our proper involvement, is inadequate to avoid the damage and destruction that will result. It would not serve the national interest to permit this damage and destruction to take place.

The environmental destruction occurring in Canada from the extraction of tar sands and the resulting negative impacts on the First Nations of Canada constitute deprivations of the human rights of those First Nations. It would not serve the national interest for the United States to be a party to depriving indigenous peoples of their human rights.

The proposed Keystone XL pipeline would exacerbate the climate crisis. Although the analysis in the Final Supplemental Environmental Impact Statement presents an alternate conclusion, that analysis is fundamentally flawed. It would not serve the national interest for the United States to facilitate access to international markets for the carbon-intensive Alberta tar sands.

The United States should be a leader for the world in establishing energy policy, specifically leading the transition toward an economy in which most of our energy needs are met with renewable resources. Rejecting the Keystone XL pipeline as not in the national interest would be a major step leading in right direction.



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January 27, 2015

SENT VIA EMAIL AND US CERTIFIED MAIL

Secretary Jewell
United States Department of the Interior
OFFICE OF THE SECRETARY
Office of Environmental Policy and
Compliance
1849 C Street, NW – MS2462-MIB
Washington, D.C. 20240
Email: Sally.Jewell@ios.doi.gov

Bureau of Energy Resources,
Room 4843
Attn: Keystone XL Public Comments
U.S. Department of State, 2201 C St. NW.
Washington, DC 20520

Dear Secretary Jewell:

I am writing to you on behalf of the Yankton Sioux Tribe to urge the Department of the Interior recommend President Obama reject TransCanada Keystone Pipeline LP's application for its Keystone XL pipeline. The Tribe's public comments previously submitted to the Department of State regarding the Draft and Supplemental Environmental Impact Statement are enclosed for your consideration.

As an initial matter, the Tribe would like to thank you for this opportunity but also to express its heartfelt concern regarding the inadequate consultation and communication throughout this process. Not only has the Department of State failed to consult with tribes in good faith regarding the application, but now the Tribe's trustee, the Department of the Interior, has also chosen not to engage in government-to-government consultation or even grant a meeting with the Tribe.

The timeline allowed for federal agencies to submit final comments was unreasonable. However, the Yankton Sioux Tribe, along with the other member tribes of the Great Plains Tribal Chairman's Association immediately requested a meeting with Secretary Jewell to discuss the Tribe's well-founded concerns about the Keystone XL pipeline. Unfortunately, the Department of the Interior rejected the meeting request without explanation and did not offer an alternative option for the tribes. Moreover, the information leading to the submission of this letter was not

provided to the Tribe in a manner that allowed for meaningful participation. The handling of this has been wholly inappropriate and disappointing, to say the least.

Enclosed are the previously-submitted comments from the Yankton Sioux Tribe to the Department of State that communicate the deficiencies in the SEIS as identified by the Tribe as well explain the Tribe's many concerns with the Keystone XL pipeline project. We believe these reason also support a rejection of the application for a presidential permit. In addition, the Great Plains Tribal Chairmen's Association Resolution and two letters advocating rejection of a presidential permit are enclosed for your consideration.

Sincerely,



Thomasina Real Bird
Associate
Fredericks Peebles & Morgan, LLP
General Counsel to the Yankton Sioux Tribe

Enclosures:

April 23, 2013 Letter of Comment submission on behalf of the Yankton Sioux Tribe

April 21, 2013 Ihanktonwan Treaty Council Comments in Regard to TransCanada, Attachment 1 to Tribe's April 23, 2013 Comment

International Treaty to Protect the Sacred from Tar Sands Projects, Attachment 2 to the Tribe's April 23, 2013 Comments

Yankton Sioux Tribe Proposed Resolution Demanding the United States Uphold the Rights of the Ihanktonwan Dakota Historical Sites, Attachment 2 to the Tribe's April 23, 2013 Comments

Yankton Sioux Tribe General Council Resolution No. 2013-13, Attachment 4 to the Tribe's April 23, 2013 Comments

March 10, 2014 Letter of Comment submission on behalf of the Yankton Sioux Tribe

Official Comments of the Ihanktonwan Treaty Committee of the US Department of State, Attachment 1 to March 10, 2014 Comment Submission

Yankton Sioux Tribe Resolution No. 2014-041, Attachment 2 to the March 10, 2014 Comment Submission

Yankton Sioux Tribe Resolution NO. 2014-042, Attachment 3 to the March 10, 2014 Comment Submission

Secretary Jewell

Page 3 of 3

January 11, 2015 Great Plains Tribal Chairman's Association Letter to President Obama
Regarding Veto Legislation to Approve the Keystone XL Pipeline

Great Plains Tribal Chairman's Association Resolution No. 30-9-928-11

Meeting Request to Secretary Jewell regarding the Keystone XL Pipeline

CC:

Yankton Sioux Tribe Business and Claims Committee

Yankton Sioux Tribe Treaty Steering Committee

Timothy LaPointe, Acting Great Plains Regional Director, BIA, timothy.lapointe@bia.gov

Ben Kitto, Superintendent, Yankton Agency, BIA benjimiakitto@bia.gov

OEPC Staff Contact: Carol Braegelmann, Carol.Braegelmann@ios.doi.gov

Harold Hall: harold.hall@bia.gov

A. Gay Kingman, GPTCA, Executive Director, kingmanwapato@rushmore.com

April 23, 2013 Letter of
comment submission on behalf
of the Yankton Sioux Tribe

OFFICERS:
THURMAN COURNOYER SR., CHAIRMAN
IDA D. ASHES, VICE CHAIRWOMAN
LEO O'CONNOR, TREASURER
GLENFORD "SAM" SULLY, SECRETARY



COUNCIL:
JASON COOKE
GAIL HUBBELING
NICHOLAS COURNOYER
BRENDA ZEPHIER
JODY ALLEN ZEPHIER

To Whom It May Concern:

Please accept and fully consider these comments on behalf of the Yankton Sioux Tribe. The Comments of the Yankton Sioux Tribe include this Comment, the Ihanktonwan Treaty Council Comments in Regard to TransCanada/KXL Pipeline SEIS (Attachment 1), the International Treaty to Protect the Sacred from Tar Sands Projects (Attachment 2), Department of State Consultation Resolution (Attachment 3), and General Council Resolution No. 2013-13 (Attachment 4).

Failure to Consider the Cumulative Impact of the Keystone XL Pipeline

The United States has historically acted both as harbinger and shepherd of environmental protection through its substantive and procedural review process for major federal actions. However, the Draft Supplemental Environmental Impact Statement ("SEIS") for the Keystone XL Pipeline does not provide a satisfactory review process of the pipeline's environmental effects as it sweeps blatant environmental justice issues under the rug, again permitting the indigenous peoples of North America to suffer disproportionate adverse effects. The National Environmental Policy Act ("NEPA") requires that any federal agency contemplating a major federal action significantly affecting the quality of the human environment conduct an Environmental Impact Statement ("EIS") to assemble and analyze environmental information. 42 U.S.C. § 4332(2)(C). Such a requirement maintains a national "look before you leap" policy regarding major federal actions. The EIS is supposed to protect the integrity of agency decision-making by assuring that "stubborn problems or serious criticisms have not been swept under the rug." *Silva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1973). Essentially, the EIS is intended to "insure a fully informed and well-considered decision." *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978).

NEPA imposes a procedural, rather than substantive, requirement: "(1) to ensure the agency will have detailed information on significant environmental impacts when it makes its decisions; and (2) to guarantee that this information will be available to a larger audience." *Inland Empire Pub. Lands Council v. U.S. Forest Serv.*, 88 F.3d 754, 758 (9th Cir. 1996). "The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." 40 C.F.R. § 1500.1(c). NEPA requires agencies to take a "hard look" at a project's impact to the environment, enabling an analysis of the likely effects that also addresses the potential alternatives. By performing this hard look before committing to any course of action, NEPA provides critical procedural protections for resources at risk. *See Conservation Law Foundation v. Watt*, 560 F. Supp. 561, 581 (D. Mass. 1983), *aff'd by Massachusetts v. Watt*, 716 F.2d 946 (1st Cir. 1983).

In addition to taking a “hard look,” NEPA requires that federal agencies also consider the cumulative environmental impacts in its environmental analyses. *See Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002); *see also Grand Canyon Trust v. Federal Aviation Admin.*, 290 F.3d 339, 345-47 (D.C. Cir. 2002). NEPA’s regulations provide that “effects” includes ecological, aesthetic, and historic impacts, “whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8. “Cumulative impact” is defined as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Id. § 1508.7. The fact that a project may result in even an incremental increase in the overall impact to a resource is meaningless if “there is no way to determine . . . whether [this small increase] in addition to the other [impacts], will ‘significantly affect’ the quality of the human environment.” *Grand Canyon Trust*, 290 F.3d at 346. A cumulative impacts analysis must include “some quantified or detailed information.” Without such information, neither the courts nor the public can determine whether an agency undertook the necessary “hard look” that is required. *Neighbors of Cuddy Mountain v. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998). “General statements about ‘possible effects’ and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Id.* at 1380.

The Draft SEIS provides an inadequate environmental review of the Keystone XL Pipeline’s cumulative impact. By finding that the pipeline is not likely to have a substantial impact on the rate of tar sands development, the SEIS understates and disregards the risk posed to human and environmental health. The crux of the SEIS analysis is instead focused on the pipeline itself, rather than the inevitable development spurred by the pipeline. Despite the transient nature of pollution and greenhouse gas (“GHG”) emissions, which expanded tar sands development will intensify, the SEIS fails to include the required “quantified or detailed information,” merely referencing a Canadian report on the pipeline’s environmental effects. Such indirect effects should not be absent from the SEIS merely because the very worst environmental impacts will occur in Canada. By focusing on the environmental impact of the pipeline itself, rather than the intensified pollution and GHG emissions, the SEIS essentially misdirects the focus of the pipeline’s impact. As a direct consequence, the SEIS does not inform the public of the potential impacts of the project, as required by NEPA.

Section 1.7 of the SEIS, which examines the Canadian portion of the project, relied upon a Canadian report concluding “that implementation of the proposed Keystone XL Project in Canada would not likely result in significant adverse environmental effects with incorporation of Keystone’s proposed measures to avoid or minimize impacts and with Keystone’s acceptance of the NEB’s regulatory requirements and recommended conditions attached to the ESR.” But this general statement does not constitute the necessary hard look. “[A]ctivities associated with tar sands production are projected to account for more than sixteen percent of Canada’s CO₂ emissions by 2020 and already exceed the emissions of several European countries on an annual basis.”¹ Aside from the carbon-intensive extraction process, expanded tar sand production destroys an important carbon sink in

¹ Lilly Fang, *Environmental Review Problems of Cross-Border Projects Under NEPA: Lessons from the Tar Sands Pipelines*, 31 *Stan. Envtl. L.J.* 285, 291 (June, 2012).

Canada's boreal forests and peat bogs, replacing these with a blighted landscape bespattered with large and unlined toxic tailings ponds.²

Further, the effects of climate change should have been given more weight in the SEIS because they result directly from tar sands development. The U.S. Environmental Protection Agency ("EPA") estimates that the quantity of barrels per day of tar sands crude carried by the Keystone XL pipeline would result in the approximate annual emissions of seven coal-fired power plants.³ Tar sands oil is higher in contaminants and more difficult to extract than conventional sources, resulting in more GHG emissions.⁴ The colossal carbon footprint from tar sands production will have trans-boundary effects. North America should not be the source for the alarming GHG emissions that will result from increased development at a time when the Earth is on a path toward catastrophic and irreversible climate change. Therefore, the determination that the pipeline is not likely to result in significant adverse environmental effects is misleading since the SEIS does not provide "quantified or detailed information" about the how the pipeline, in addition to the extraction process, will "significantly affect" the quality of the human environment.

NEPA also requires "efforts which will prevent or eliminate damage to the environment" and "understanding of the ecological systems and natural resources." 42 U.S.C. § 4321. A thorough NEPA analysis should consider the full range of a federal project's effects. Because the SEIS does not provide a thorough and adequate understanding of the ecological systems and natural resources that will be affected, the SEIS does not put forth the requisite effort to prevent or eliminate damage to the environment. Though most of the environmental destruction caused by the pipeline will occur in Canada, trans-boundary pollution and GHG emissions will affect the United States. Accordingly, the SEIS provides an inadequate analysis of the pipeline's environmental impacts. In addition to environmental destruction, tar sands development also ravages cultures and communities of the First Nations. Therefore, expanded development directly resulting from the Keystone XL Pipeline will continue to wreak havoc on both the environment and the aboriginal peoples of Canada. However, this was not addressed in the SEIS.

Indiscriminate Effects on the First Nations of Canada

The United States has a track record of approving projects that indiscriminately affect the most vulnerable portions of the population. Often, these effects fall upon Native Americans. Just as the treaty rights of Native Americans have been historically trampled under the pretense of "progress," the SEIS overlooks the effects of expanded tar sands development on the First Nations, whose health, environment, and treaty rights will all suffer. Therefore, the SEIS should have considered the pipeline's effects on Canada's First Nations.

The purpose statement of NEPA explicitly includes preservation of "important historic, cultural, and natural aspects of our national heritage." 42 U.S.C. § 4331(b)(4); 40 C.F.R. § 1508.08(b). This requirement was expanded to include cultural and religious aspects of Indian tribal heritage in Executive Order No. 13007, which requires each executive branch agency to "(1) accommodate access to and

² NRDC, *Say No to Tar Sands Pipeline: Proposed Keystone XL Project Would Deliver Dirty Fuel at a High Cost 3* (2011), available at www.nrdc.org/land/files/TarSandsPipeline4pgr.pdf.

³ Letter from Cynthia Giles, Assistant Adm'r for Enforcement and Compliance Assurance, U.S. Env'tl. Prot. Agency, to Jose W. Fernandez and Kerri-Ann Jones, Assistant Sec'ys, U.S. Dep't of State 2-3 (July 16, 2010), available at <http://www.sierraclub.org/environmentallaw/tarsands/pipeline-keystone-xl/state-dept-permit-process/EPA%20Comments%C20on%C20DEIS%2010-7-16.pdf>.

⁴ See A.E. Farrell & A.R. Brandt, *Risks of the Oil Transition*, 1 *Env'tl. Res. Letters* 1, 2 (2006), available at <http://iopscience.iop.org/1748-9326/1/1/014004>.

ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.” A “sacred site” means “any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion . . .” *Id.*

In January of 2013, the Yankton Sioux Tribe signed the *International Treaty to Protect the Sacred from Tar Sands Projects* to protect the cultural and religious heritage of the First Nations. The treaty found that the tar sands projects present unacceptable risks to the soil, the waters, the air, sacred sites, and the indigenous way of life. Development has destroyed, and will continue to destroy, the rivers, lakes, boreal forests, and both the homelands and health of the Cree, Dene, and Metis peoples in the Northern Alberta tar sands region. The cumulative effects on human and environmental health will be drastic, laying waste to important cultural resources, sacred and historic places, burial grounds, and the environmental resources essential to the First Nations. Therefore, the Yankton Sioux Tribe found it necessary to take governmental action to protect and advance tribal interests affected by the pipeline project.

The SEIS does not adequately assess the environmental, social, or cultural impact of the Keystone XL Pipeline from an environmental justice framework. The EPA and the U.S. Council on Environmental Quality (“CEQ”) defines environmental justice as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.”⁵ Fair treatment means that no group of people, including racial, ethnic, or socio-economic groups should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.⁶ Executive Order 12898 directs federal agencies to make environmental justice part of their mission. The Obama Administration issued guidance in 2010 prioritizing environmental justice for the EPA and directing that environmental justice be factored into every agency decision. Therefore, environmental justice must be recognized and included in consultations under NEPA. *See Hualapai and Fort Mojave Indian Tribes*, 180 IBLA 158 (Dec. 7, 2010).

The environmental justice issue is twofold: who has the most to gain and who has the most at stake. It is clear that private interests such as the oil and gas industry have the most to gain. But the SEIS does not address who has the most at stake. Approval of the pipeline will result in the First Nations bearing a disproportionate share of the environmental consequences, severely impacting both the health and the culture of the Dene, Cree, and Metis’ First Nations. Tar sands development devastates the ecosystem—relied upon by these First Nations and guaranteed through treaty—in the form of poisoned waters, contaminated lands, polluted air, and deformed fish. A corollary to the environmental destruction is the damage to areas of cultural and historical significance to the First Nations.

Nevertheless, the SEIS fails to factor environmental justice into this SEIS and take a “hard look” at the environmental effects falling disproportionately on the First Nations. Failing to account for the expanded development that is a logical result of increased pipeline capacity, the SEIS focuses almost entirely on the environmental consequences of the pipeline itself in the United States. By assessing the environmental and cultural effects of the least harmful aspect of tar sands extraction, the transportation of the crude oil from Alberta to refineries in the United States, the SEIS has not taken a “hard look” at the cumulative impacts and its disproportionate effects. By finding that the “proposed Project is unlikely

⁵ U.S. ENVTL. PROT. AGENCY, EPA’S ACTION DEVELOPMENT PROCESS 1, 3 (2010), *available at* <http://www.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-07-2010.pdf>.

⁶ *Id.*

to have a substantial impact on the rate of development in the oil sands,” the U.S. Department of State circumvented the necessary environmental justice analysis. Accordingly, the SEIS is inadequate as it effectually sweeps both direct and indirect environmental effects, as well as environmental justice issues, under the rug.

Impacts on the Yankton Sioux Tribe

Cultural resources are considered significant, in the context of NEPA and National Historic Preservation Act (“NHPA”) discussions, if they appear to meet the criteria for listing in the National Register of Historic Places (“NRHP”). Section 106 of the NHPA requires federal agencies to consult with potentially affected parties prior to commencing a federal “undertaking” that may affect property eligible to be included in the NRHP and to consider the undertaking’s effect on eligible property. 16 U.S.C. § 470f; 36 C.F.R. §§ 800.1(a), 800.2(c)(2). The NHPA is similar in purpose and scope to NEPA except that it requires consideration of historic sites, rather than the environment. *United States v. 0.95 Acres of Land*, 994 F.2d 696, 698 (9th Cir. 1993). Properties of traditional religious and cultural importance to Indian tribes may be eligible for listing on the NRHP. 16 U.S.C. § 470a(d)(6)(A). Historic properties of religious and cultural importance to tribes include traditional cultural properties (“TCPs”), and a federal agency must consult with an Indian tribe which attaches religious or cultural importance to TCPs listed on, or eligible for, listing on the NRHP that may be affected by an undertaking. 36 C.F.R. § 800.2(c)(2)(ii). Therefore, under the NHPA, federal agencies must make a reasonable and good faith effort to identify and consider the impacts of a proposed project on historic properties of significance to Indian tribes, and grant indigenous peoples “a reasonable opportunity” to identify their concerns. *Id.* See also *Te-Moak Tribe of W. Shoshone of Nev. V. U.S. Dep’t of the Interior*, 608 F.3d 592, 608 (9th Cir. 2010).

“The NHPA involves a series of measures designed to encourage preservation of sites and structures of historic, architectural, or cultural significance.” *San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1093–94 (9th Cir. 2005) (internal quotation marks and citation omitted). An important measure to encourage preservation is the consultation process, which is triggered “[w]hen an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands.” *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 806 (9th Cir. 1999) (quoting 36 C.F.R. § 800.1(c)(2)(iii)). Through consultation, the federal agency must “take into account the effect of [an] undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the Nation Register [of Historic Places],” 16 U.S.C. § 470f, and determine whether there will be an adverse effect, and avoid or mitigate any such effects. See 36 C.F.R. § 800.6.

While the undefined term “consult” can lead to differing views and conflicting judicial interpretations, the NHPA explicitly delegates authority to the Advisory Council on Historic Preservation (“Council”) to promulgate regulations interpreting and implementing § 106. *Narragansett Indian Tribe v. Warwick Sewer Auth.*, 334 F.3d 161, 166 (1st Cir. 2003). Under the pertinent regulations, the agency official is responsible for initiating consultation with the tribes. 36 C.F.R. § 800.3(c). “Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them” 36 C.F.R. § 800.16(f). Further, “[t]he goal of consultation is to identify historic properties potentially affected by the undertaking,” and to understand tribal concerns sufficiently to take into account the effects that a proposed federal undertaking may have on eligible properties. *Id.* § 800.1(a). The regulations require that consultation with Indian tribes should be respectful of tribal sovereignty and must recognize the government-to-government relationship between the Federal Government and Indian tribes and “conducted in a manner sensitive to the concerns and needs of the Indian tribe.” *Id.* § 800.2.

The State Department did not accurately identify the relevant cultural and religious concerns of Native Americans in the SEIS because it did not make a good faith consultation effort. The NHPA consultation process has been referred to as a “complex consultative process,” *Save Our Heritage, Inc. v. Fed. Aviation Admin.*, 269 F.3d 49, 61 (1st Cir. 2001), that requires agency decision-makers to “stop, look, and listen.” *Mucklehoot Indian Tribe*, 177 F.3d at 805. Though the consultation does not require the agency to reach any particular outcome, it is a procedural requirement that must be initiated when a tribe considers a site that might be affected by the undertaking to have religious or cultural significance. 36 C.F.R. § 800.2(c)(2)(ii). Upon such a designation, a tribe is entitled to identify “its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” *Id.* § 800.2(c)(2)(ii)(A).

Moreover, the State Department has failed to properly involve indigenous nations on a government-to-government basis in its review of the proposed project because it has not made a good faith effort to consult with tribes. “The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey.” *Id.* § 800.4. It is imperative that the State Department do more than pay lip service to the consultation process to preserve and protect the cultural and spiritual resources of tribes.

In addition, the State Department cannot determine the impact the proposed Keystone XL pipeline would have on cultural and historic sites until the affected lands have been properly surveyed. Indigenous nations have not been properly involved in the surveying process or the environmental review of the proposed Keystone XL Pipeline. Without adequate tribal consultations, the route cannot be properly surveyed because surveyors are unaware of what possesses the unique cultural and spiritual attributes important to tribes.

It is important to consult with tribes in good faith because although the regulations allow tribes to participate in the consultation process, they may not turn back the clock. *Narragansett Indian Tribe*, 334 F.3d at 167. Though consultation is not the same thing as control over a project, tribes are entitled to “identify its concerns,” to “advise,” to “articulate,” and to “participate.” 36 C.F.R. § 800.2(c)(2)(ii)(A). The Yankton Sioux Tribe feels that the State Department’s “consultations” have been inadequate. Please see the attached Resolutions and the Ihanktonwan Treaty Council Comments in Regard to TransCanada/KXL Pipeline SEIS.

In addition, the Yankton Sioux Tribe identifies its concerns about certain properties of traditional religious or cultural significance to the tribe in the Ihanktonwan Treaty Council Comments in Regard to TransCanada/KXL Pipeline SEIS.

For these reasons, the Yankton Sioux Tribe believes that the SEIS is inadequate.

Cultural Landscapes

NEPA also triggers the NHPA by requiring agencies to consider the effects of a proposed project on sites listed or eligible for listing in the NRHP or that may otherwise “cause loss or destruction of significant scientific, cultural, or historical resources.” 40 C.F.R. § 1508.27(b)(8). A cultural landscape is a landscape resulting from cultural practices over historical and prehistoric times, is eligible for listing in the NRHP and it may be eligible for listing in the NRHP. National Register Bulletin 38 clarified that NHPA’s reach extends to “traditional cultural properties,” identifying a traditional cultural property as “one that is eligible for inclusion in the National Register because of its association with cultural

practices or beliefs of a living community that (a) are rooted in the community's history, and (b) are important in maintaining the continuing cultural identity of the community.”⁷ The Yankton Sioux Tribe does not believe that the SEIS accounts for “cultural landscapes” that are important to Indian tribes and does not believe that it has been consulted.

The Native American Graves Protection and Repatriation Act

The policy of the United States is to protect and preserve the Native American right to exercise traditional religious beliefs, including access to religious or cultural sites, use and possession of sacred objects, and worship through ceremonials and traditional rites. 42 U.S.C. § 1996. The Native American Graves Protection and Repatriation Act (“NAGPRA”) was enacted to safeguard “the rights of Native Americans by protecting tribal burial sites and rights to items of cultural significance to Native Americans.” *Pueblo of San Ildefonso v. Ridlon*, 103 F.3d 936, 938 (10th Cir. 1996). “Cultural items protected under NAGPRA include Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.” *Id.* (citing 25 U.S.C. § 3001(3)). NAGPRA is intended to rectify a history of injustice whereby Native American graves were looted, sacred objects were appropriated, and the bodies of Native Americans were desecrated.

The Yankton Sioux Tribe believes that inadequate tribal consultations have resulted in a SEIS that does not comply with the NAGPRA. Accordingly, the Yankton Sioux Tribe requests that the federal agencies fulfill its consultation duties with tribes on each tribe's reservation.

Endangered Species Act

The Yankton Sioux Tribe also believes that the SEIS did not adequately consider species under the Endangered Species Act. In 2008, four federally-endangered animals were listed in Charles Mix County. These included the whooping crane, the least tern, the piping plover, and the pallid sturgeon. Whooping cranes migrate through South Dakota on their way to northern breeding grounds and southern wintering areas, playing an important role in the Yankton tribal culture. The least tern and piping plovers are known to nest along the Missouri River, typically breeding in South Dakota between May and August. The pallid sturgeon is an endangered species of ray-finned fish, endemic to the waters of the Missouri and lower Mississippi River basins of the United States. In addition, the Tribe is concerned about the burying beetle, which is listed as an endangered species in the State of Nebraska, less than a mile south of the Yankton Sioux Indian Reservation. Burying beetles play an important role in agriculture and the Tribe wants to ensure that they continue to play this role. Finally, the Tribe wishes to protect the red fox, the prairie dogs, certain bat species, and the black-footed ferret. The Tribe demands that it be properly consulted on these matters. See General Council Resolution No. 2013-13.

⁷ Patricia L. Parker & Thomas F. King, Nat'l Park Serv., Guidelines for Evaluating and Documenting Traditional Cultural Properties (National Register Bulletin 38, 1990).

April 21, 2013 Ihanktonwan
Treaty Council Comments in
Regard to TransCanada,
Attachment 1 to Tribe's April
23, 2013 Comment

IHANKTONWAN TREATY COUNCIL COMMENTS IN REGARD TO TRANSCANADA/KXL PIPELINE SEIS

April 21, 2013

I. AUTHORITY

The Treaty Delegates of the Ihanktonwan Treaty Steering Committee are elected officials, appointed by the inherent authority of the Yankton Sioux Tribe to monitor, oversee and advise the General Council of the Ihanktonwan Dakota on treaty-related matters. The duties of the Treaty Delegates are to ensure that Treaty lands are respected in accordance with Dakota beliefs, values and priorities. The Treaty Delegates submitting this document are Faith Spotted Eagle (writer/secretary); John Wright, Chair; Shirley Arrow, member; and Armando Iron Elk, member. All of the delegates live in the community of Lake Andes, SD.

II. BACKGROUND

Since 2008, the Treaty Steering Committee has worked closely with the Yankton Sioux Tribe Business & Claims Committee. The General Council Resolution No. 2007-007 requests a comprehensive survey of the entire Keystone XL (“KXL”) corridor, which the Department of State has not satisfied. The THPO Office conducted a survey that both the General Council and the Treaty Steering Committee found to be inadequate.

Since 2008, the Ihanktonwan has passed three strong resolutions concerning the Keystone XL Pipeline.

- A. On January 22, 2013, a General Council Resolution was passed to host a Grand Council between the Pawnee Nation and the Ponca to revisit the Peace Treaty of 1863. The Grand Council took place and a new International Treaty was signed by these tribes along with signatories from the First Nations Chiefs in the Tar Sands Region of Canada.
- B. A Resolution passed on April 4, 2013, points out that forty-four (44) interested Indigenous Nations notified the State Department that they wished to participate in the consultation process; however, **not a single Indigenous Nation was included or invited to be a “signatory party” to the 2011 Programmatic Agreement (“PA”). The State Department not only deprived interested Indigenous Nations of the ability to protect their interests through signatory rights, but it also relegated Indigenous Nations to a status inferior to that of state and federal agencies.** Not only is the PA a flawed document, but the Department of State has not consulted with the Tribe on its Ihanktonwan homelands.
- C. The April 15 Resolution reaffirms the threats that the Keystone XL Pipeline poses to the land and waters of the Ihanktonwan Oyate (people). The resolution also identifies the marginalized species that the SEIS overlooked. It concludes that the SEIS is incongruous to the tenets of Dakota culture. The SEIS also fails to recognize the strong aboriginal ties that the Dakota/Lakota/Nakota have to five Canadian provinces and twenty-four (24) states in the United States, as proven by academic research and

supported by oral history. As a result, the Keystone XL Pipeline corridor penetrates important historic properties.

The Treaty Delegates maintain that the Department of State has:

- A. Failed to consult with the Ihanktonwan in good faith;
- B. Disregarded the environmental threat to sovereign Indigenous Nations who have not consented to this intrusion in our territories;
- C. Ignored best cultural practices in protecting historic properties of not only the Ihanktonwan but member bands of the Dakota/Lakota/Nakota, all members of the Oceti Sakowin (Seven Council Fires) or the Great Sioux Nation;
- D. Failed to uphold Treaty rights of the Oceti Sakowin in regard to land, water and cultural rights guaranteed by the Treaties. Treaties between the Ihanktonwan and members of the Oceti Sakowin are guaranteed in Article VI of the US Constitution which states that “treaties are the supreme law of the land.”
- E. Failed to uphold the *Winters* rights of Indigenous Nations.
- F. Failed to properly survey over 8,000 acres within the KXL corridor.

The Ihanktonwan continue to stand united in strongly rejecting the presence of the Keystone XL Pipeline in any treaty or aboriginal territory in South Dakota and Nebraska. Further, the Ihanktonwan stand with the Pawnee, the Omaha, the Ponca, the Oglala, the Lummi Nation and five First Nations Chiefs in opposition to the Tar Sands projects.

III. THE IHANKTONWAN OBJECT TO THE SEIS MARGINALIZING ENDANGERED AND THREATENED SPECIES AND CULTURAL AND HISTORIC PROPERTIES, AN UNETHICAL APPROACH CONTRARY TO DAKOTA CULTURE

Indigenous peoples are the ONLY PEOPLE indigenous to this land, thereby possessing a the right to protect the animals, the land and the air that comprise the cultural heritage of Indigenous Nations. The historic properties being infringed upon do not reflect the cultural heritage of the TransCanada developers, the State Department or even the United States Government, which may be the reason for wanton disregard to what we know as *Ina Maka*, or Mother Earth. Perhaps a way to get this point across is to pose the question: Would a pipeline be allowed to go through Stonehenge or the holy sites in Jerusalem? The Indigenous Nations believe that the Great Plains are just as sacred.

In the United States and in national historic preservation activities, the term “cultural resources” denotes the notion that these resources are usable. Researchers at some universities in the United States are interpreting the term cultural resources to mean “cultural heritage,” which is a “thing that belongs to someone.” This is the case in the Great Plains region, where the sacred sites and things being impinged on by pipeline routes “belong to a rich cultural heritage.” That heritage is in fact a **living community in the Oceti Sakowin or the Seven Council Fires of the Dakota/Lakota/Nakota. This living community continues to live and utilize the cultural landscape of the Great Plains region.**

IV. IHANKTONWAN POSITION REGARDING “WAMAKANSKAN” AND/OR ENDANGERED OR THREATENED SPECIES

Animals, known to the Ihanktonwan as “wamakanskan,” are a living, breathing, moving source of a **cultural property**. An example that might be easier to understand for non Native readers, is that of the **buffalo nation or “pte oyate.”** While the Nation considers buffalo to be a national treasure, the Lakota/Dakota/Nakota see buffalo as relatives, from whom we are descended. The same reverence is given to many other wamakanskan such as the fox, eagle, and even insects. Luther Standing Bear, a well known Lakota writer and boarding school survivor of the 1800’s explains it well:

From Wakan Tanka, the Great Spirit, there came a great unifying life force that flowed in and through all things...the flowers of the plains, blowing winds, rocks, trees, birds and animals...and was the same force that had been breathed into the first man. Kinship with all creatures of the earth, sky and water was a real and active principle. In the animal and bird world there existed a brotherly feeling that kept the people safe among them. And so close did some of the Lakotas come to their feathered friends that in true brotherhood they spoke a common tongue.

Further the Dakota/Lakota/Nakota Nations believe in the equality of all creatures. This is encapsulated in the term becoming universally known as MITAKUYE OWASIN, or “all my relatives.” They all serve a purpose in the ecosystem of survival and even the smallest creature is often depicted in the Plains designs of beadwork, including the maggot.

Each of those endangered and threatened species mentioned in the SEIS play a vital role in the ecosystem of the Great Plains region and are revered in that place by the Northern Plains cultural beliefs and must not be threatened in any way by the Keystone XL Pipeline.

The KXL Corridor is in the flyway of many migratory birds that traverse these sacred lands every fall and summer. One is the Whooping Crane which has a flyway very close geographically to the KXL proposed corridor. The Crane is revered by the Dakota/Nakota/Lakota as a relative that has finite knowledge of migratory patterns that are thousands of years old. The importance of the Whooping Crane is indicated by many of our Dakota people who have names like High Crane, Tall Crane and others. Some of the insects are known to navigate by the Milky Way. We are speaking of old and superior knowledge of the wamakanskan. There is actually no word for animals in the Dakota language, they are so revered that the literal translation of the “wamkanskan” is “I am holy moving.” The SEIS disregards this knowledge. Many world cultures regard animals as representative of ancestral presence, and it is so with the Dakota. Countless stories will speak of the eagle nation that flies above the funeral procession or burial of a relative.

Although the presence of the fox species mentioned in the SEIS is stated as not being impacted in Southwestern Montana and Northwestern Montana, it is still significant that this place is their habitat. The fox nation was so revered and recognized by the

Dakota/Lakota/Nakota people that a Kit Fox Society evolved in the camp circles of the Dakota people. Due to their role in nature and out of respect to them, the Kit Fox Society modeled themselves after the fox. Spills from the Keystone XL Pipeline would devastate this culturally significant species.

Mr. Thomas King who participated in the development of Bulletin #38, which identified Traditional Cultural Properties from a western viewpoint argued that animals can contribute to the character of a property. He stated: “I think it is entirely appropriate to identify animals as well as plants, of course... as contributing elements or character-defining features of a historic property, provided they actually do contribute to that properties historic or cultural character.” (King 2006). The property that is being discussed here is the Great Plains area from Texas to Canada. These Traditional Cultural Properties must be protected as they include the gather sites used by Northern Plains tribes.

There exists a tribal story for every single one of the endangered and threatened species listed in the SEIS, advocating for their place on the earth in equality. The bat, the fish, the black-footed ferret and even the dung beetle had an important part to play in the life of the camp circle. Tar sands presence will upset this delicate balance.

V. PROTECTING THE SACRED: INA MAKA OR MOTHER EARTH

In regards to *Ina Maka*, or Mother Earth, the words of Ken Painte, Hunkpapa Lakota explained this well on the 1999 Buffalo Walk to preserve the Buffalo in Yellowstone:

He likened the human body to Mother Earth, the dirt as our skin, the rocks as our bones, the water as the blood in our veins, and the air as our breath. He explains that when we clog the rivers we block the blood to our hearts, when we crush the rocks to build roads in the name of progress we are crushing our own bones, and when we scratch the earth with strip mining it's like tearing a piece of flesh from our bodies. He further said, that the land is sacred because of everything that is in place. (Painte 2007).

Every Native culture on Turtle Island (North America) has been vested through their oral history with the responsibility of taking care of Mother Earth and not depleting her resources. However, laws such as Section 106 treat Mother Earth as something to be dominated or harvested without regard to identity of place.

Tom Goldtooth of the Indigenous Environmental Network best summarized this inefficacy:

After 20 years of fighting the fight on environmental issues within and outside of Indigenous territories, our Indigenous nations and communities are constantly challenging a colonial system of laws and regulations aimed at controlling and dominating nature....Mother Earth. Nature is a property to be owned and destroyed at will. We are constantly fighting to have 'standing' in their colonial legal system. Corporations have more standing than First Nations in the Canadian

tar sands fighting to protect their homelands, health and future. When it comes to acting on our ‘original instructions’ to respect and recognize the natural laws of Mother...Grandmother Earth...where in this colonial system does Mother Earth have ‘standing’?

Other countries like Bolivia have recognized that Mother Earth is a legal entity that has inherent rights which can be protected. In December of 2010, Bolivia’s Plurinational Legislative Assembly passed a Law of the Rights of Mother Earth, entailing several principles including the “right to live free of contamination.” This is the issue that the Dakota/Lakota/Nakota are facing in the KXL fight as our Mother Earth has no rights, and the corporations through the arm of the Canadian and United States Government are exerting unconstitutional eminent domain despite the pleas of not only tribal people, but Euro-American farmers and ranchers. **In this fight, as Dakota people we will defend the rights of *Ina Maka*.**

VI. THE GREAT PLAINS IS A CULTURAL LANDSCAPE CONTAINING SACRED PLACES THAT KEEP OUR HISTORY ALIVE

It is essential that the Department of State honor and recognize that the Great Plains has been home to the Dakota/Lakota/Nakota peoples and that these land masses or “owanka” (altars) or “wizipan” (containers) were also known as home to the “buffalo people,” which is what the Dakota Oyate called themselves. **Western Academia research (Palmer 2008) and Dakota Nation Research (Dr. Leo Omani 2013) establishes that the “Siouan language family” including the Dakota/Nakota/Lakota Linguistic group inhabited “in total land mass....The Canadian provinces of Saskatchewan, Alberta, Manitoba and into Ontario (and) more than fifty percent of the continental United States or twenty four of the states” thereby establishing our aboriginal rights.**

The General Council Resolution (2013-13) states:

This linguistic evidence corroborates that the Dakota/Lakota/Nakota linguistic groups had an aboriginal homelands that created a cultural landscape that contains thousands of cultural and historical sites. This cultural knowledge belongs to Indigenous peoples and the people belong to the landscape, whereby traditional knowledge dwells in specific places/lands located in the KXL Corridor

Recent conversations in historic preservation language have brought up the term of “cultural landscapes.” Prior to the birth of such terms, Dakota people knew that large land masses contained the stories of our people. There were many Dakota terms for such large territories but one such term was “Owanka” or “altar” or “wizipan”; containers that encompass the sacred. One such example is the Black Hills, which was known as a Star Knowledge geographic area (Douville). The Star Knowledge was first documented by Mr. Ron Goodman and medicine men of the Sicangu Oyate, Rosebud Sioux Tribe beginning in the late 1970s. It existed in oral form prior to that. The sacred sites in the Black Hills correspond to several star constellations and were visited at different times for ceremonial purposes at different times of the year in tune with the seasons, even to this very day. The area is surrounded by the Race Track, whereby the animals negotiated their places in the ecosystem which prevail today through the running of a

great race around the Black Hills. The evidence of this great race, stained by their blood is existence in the red clay which still exists surrounding the Black Hills in Race track formation.

The Great Plains hold the same significance to the Plains Tribes. The “place meaning” all along the route creates a sense of history, spirituality and cultural significance. Some examples of this are the camps of Chief Big Foot, Touch the Clouds, and numerous other camp “wicoti” areas which contain elements which contribute to the cultural character of these camps (e.g., fasting areas, altars for specific healers, buffalo dreamers, elk dreamers, gathering sites, mystery dances, leadership places, records of events, Oceti Sakowin gatherings and burial areas).

Another land mass or “wizipan” is the entire length or more of the current state of South Dakota. Oral history (Spotted Eagle, 2004) states that there are several north to south ridges across South Dakota that are seen as being the ribs of the giant buffalo lying across the plains area. Some of these ridges are located at Wessington Springs, Medicine Knoll, and Lower Brule. This is a large cultural landscape. **One of these “ribs” is near the KXL corridor.**

This area is a cultural landscape and it must not be disturbed. **We are not asking** the Department of State to determine the cultural significance of the Great Plains to Indigenous Nations. Tribal historian Waziyatawin, cited tribal relative and author Vine Deloria, Jr.’s observation that the differences in native and western views include the belief that Native people “tend to be excitable, are subjective and not objective and consequently are unreliable observers and that all of the evidence their traditions present must be verified.” Waziyatawin comments, “This dismissal of Indigenous perspectives is symptomatic of the relationship of the colonizer to the colonized. Colonial domination can be maintained only if the history of the subjugated is denied and that of the colonizer elevated and glorified.” This is exactly what the National Register of Historic Places sometimes does and we are not inviting that rejection. The total environment of the area that is being disturbed by the KXL has an identity of place that has cultural and spiritual significance to the Oceti Sakowin (Seven Council Fires) and other Indigenous nations.

The KXL Pipeline will impact the Ponca Trail of Tears. The Trail of Tears of the Ponca runs parallel to the KXL proposal in several spots in Nebraska. We support the Ponca Tribe, our Siouan language relatives in preserving this important cultural landmark. The Trail of Tears does not need to cry again. The Pawnee Nation also has important camps and culturally important sites on the KXL corridor that must be protected. The Pawnee are signatories to our International Treaty to Protect the Sacred against Tar Sands.

In conclusion, we present research compiled by Ms. Sarah Anne Tarka in her Masters Thesis in Anthropology, Cultural Heritage Option at the University of Montana in the summer of 2007. Ms. Tarka compiled excellent culturally competent evidence of the importance of sacred places for the Lakota/Dakota/Nakota. Ms. Tarka studied the importance of buffalo to the Lakota and Nez Perce in the Greater Yellowstone area and she further argued that the Greater Yellowstone Area is a traditional cultural property to some native groups, and that the Yellowstone buffalo are a **contributing element** to the park’s significance. She argued a second holistic designation under which Yellowstone buffalo could be considered as part of the **cultural landscape**. In the Secretary of the Interior’s Standards for the Treatment of Historic Properties

with Guidelines for the Treatment of Cultural Landscapes, cultural landscape is defined as a geographic area (including both cultural and natural resources and the wildlife and domestic animals therein) associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values (Birnbaum and Peters 1996). She argued that the Greater Yellowstone area is a cultural landscape and its significance, character, and integrity are defined by several features, one of which is the Yellowstone herd. This same application could be made to the character defining elements in existence throughout the Great Plains land masses, such as those located all along the Keya Paha River in north central Nebraska, where the KXL is proposed.

The Great Plains “Siouan linguistic area” is a large land mass that contains the “stakeholders” who descend from the great culture of the Dakota/Lakota/Nakota people. It is not a prehistoric group of people, but indeed a living culture that still values, protects and practices the Dakota lifeways which are intrinsic to the “wamakaskan,” land, water and sacred sites in existence throughout the “wizipan” or sacred container of the Great Plains. Numerous effigies are contained in this “wizipan” that have not yet been disclosed because they are respected and protected. It is important to note that this “wizipan” stretches far north into Grandmother’s Land (Canada) and beyond.

Lastly, we must not forget another layer in this large land mass is the Treaty territory created by the 1851 and 1868 Treaties with the Ihanktonwan and the Tituwan. **This Treaty territory will be infringed upon by the Keystone XL Pipeline.** The 1868 Treaty in particular has unique “standing” as it has been determined by a United States court that it was abrogated. The Lakota prefer the return of the sacred Black Hills and the settlement now has grown into the billions of dollars. The 1868 Treaty territory still pertains to western South Dakota. Spiritual elder of the Lakota, Black Elk, summed it up in talking to author John Neihardt when he talked about the protection that was supposed to be afforded by the 1868 Treaty **“as long as grass should grow and water flow. You can see it is not the grass and water that have forgotten. (Neihardt 1961).**

The water of the Oglala Aquifer and 56 water bodies that are being crossed by the Keystone XL Pipeline are in danger of contamination.

Department of State, Mr. John Kerry, and President Obama: If you have an ounce of respect for Indigenous Nations, do not approve the Keystone XL Pipeline. The war on the environment, the lands, and the culture of Indigenous Nations must stop!

Yankton Sioux Tribe Proposed
Resolution Demanding the
United States Uphold the Rights
of the Ihanktonwan Dakota
Historical Sites, Attachment 2
to the Tribe's April 23, 2013
Comments

International Treaty to Protect
the Sacred from Tar Sands
Projects, Attachment 2 to the
Tribe's April 23, 2013
Comments

INTERNATIONAL TREATY TO PROTECT THE SACRED FROM TAR SANDS PROJECTS

The representatives from sovereign Indigenous Nations, tribes, and governments, participating in the Gathering to Protect the Sacred on January 23 – 25, 2013, on the 150 year anniversary of the *Treaty Between the Pawnee and Yankton Sioux*, have gathered on the Ihanktonwan homelands, and have resolved by our free, prior, and informed consent to enter into a treaty to be forever respected and protected. We agreed upon the following articles:

ARTICLE I

The undersigned Indigenous Peoples have inhabited and governed our respective territories according to our laws and traditions since time immemorial.

ARTICLE II

As sovereign nations, we have entered into bi-lateral and multi-lateral agreements with other nations including the *Treaty Between the Pawnee and Yankton Sioux*, *Mother Earth Accord*, the *Spiritual Leaders Declaration*, the *Agreement to Unite to use 16 Guiding Principles*, and the *Black Hills Sioux Nation Treaty Council Declaration*, and all the inter-tribal treaties in the Western hemisphere, among others, which promise peace, friendship, and mutual opposition to tar sands projects and energy development that threaten the lands, the waters, the air, our sacred sites, and our ways of life, and acknowledge other Indigenous Peoples such as the Yinka Dene, the People of the Earth' who have exercised their lawful authority to ban tar sands projects from their territories through Indigenous legal instruments such as the *Save the Fraser Declaration* and the *Coastal First Nations Declaration*.

ARTICLE III

We act with inherent, lawful, and sovereign authority over our lands, waters, and air, as recognized by Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples which provides:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

ARTICLE IV

We mutually agree that tar sands projects present unacceptable risks to the soil, the waters, the air, sacred sites, and our ways of life including:

- The destruction of rivers, lakes, boreal forests, homelands and health of the Cree, Dene, and Métis peoples in the Northern Alberta tar sands region and downstream Dene communities of Northwest Territories
- The threat of pipeline and tanker oil spills into major river systems, aquifers and water bodies such as the Salish Sea, the North Pacific coast, and the Ogallala Aquifer.
- The negative cumulative health and ecological impacts of tar sands projects on Indigenous Communities.
- The irreparable harm to irreplaceable cultural resources, burial grounds, sacred and historic places, natural resources, and environmental resources of the central plains region which is the aboriginal homelands of many Indigenous Nations.
- Greenhouse gas pollution that could lock the planet onto a path of catastrophic climate change.

ARTICLE V

We affirm that our laws define our solemn duty and responsibility to our ancestors, to ourselves, and to future generations, to protect the lands and waters of our homelands and we agree to mutually and collectively oppose tar sands projects which would impact our territories, including but not limited to the TransCanada Keystone XL pipeline, the Enbridge Northern Gateway, Enbridge lines nine (9) and sixty-seven (67), or the Kinder Morgan Trans Mountain pipeline and tanker projects.

ARTICLE VI

We agree to mutually and collectively, as sovereign nations, call upon the Canadian and United States governments to respect our decision to reject tar sands projects that impact our sacred sites and homelands; to call upon the Canadian and United States governments to immediately halt and deny approval for pending tar sands projects because they threaten the soil, water, air, sacred sites, and our ways of life; and, confirm that any such approval would violate our ancestral laws, rights and responsibilities.

ARTICLE VII

We agree to the mutual, collective, and lawful enforcement of our responsibilities to protect our lands, waters, and air by all means necessary, and if called on to do so, we will exercise our peace and friendship by lawfully defending one another's lands, waters, air, and sacred sites from the threat of tar sands projects, provided that each signatory Indigenous Nation reserves and

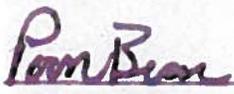
nt sovereign right to take whatever governmental action and strategy that its governing sees fit to best protect and advance tribal interests affected by the pipeline project with the agreements made herein and subject to the laws and available resources of respective nation.

Treaty of mutual defense and support is made on the occasion of the 150 year anniversary Treaty Between the Pawnee and Yankton Sioux concluded between the Pawnee Nation and Sisseton/Oyate/Yankton Sioux Tribe on January 23rd, 1863, and the parties thereto commemorate the signing of that historic treaty that has endured without violation for 150 years.

Treaty goes into effect once ratified by the governing bodies of the signatory nations.

IN WITNESS WHEREOF, the undersigned dually authorized representatives, after having verified their full powers found to be in due and proper form, sign this treaty on behalf of their respective governments, on the date appearing opposite their signatures.

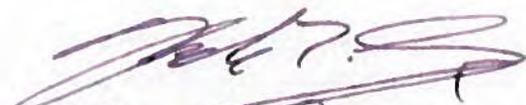
WITNESSED:

Signature of Representative	Representing	Signature	Date
	Oglala Lakota Nation	Tim Pawnee	1-25-13
	Sisseton/Oyate/Yankton Sioux Tribe	Ruston George	1-25-13

Tom Pan Ben

Tantoo Cardinal Kaidwin

Robert George



Tom Goldtooth



CASEY CAMP Heimer - FORT Casey Camp Heimer

Robert Doan BEAERS

Jeguya Kte Fire Lanting Tiospage

Wagbat Ob Kingyan - Norisa Shields Hore Tiospage

Philip N. Saxe Jr Deborah Tiospage

~~Amel~~

~~Lin Brock SM 044 Bear~~

~~Imvuy~~
Faith spotted Lake Brave Heart Sully
Junkan Inajin Win Catote Duitiko

Paula Hore-Malla Sissobon Wakipon Oyate Witness

Jwila Zephier Shanktonwan Oyate Witness

Marie Rendell Oyate F Ki Ti Pi Win
Ade Zephier Shanttonwan Oyate Witness

Roake Lake Thunder Wakinyan Cik'ala Tiospage

**PLEDGE OF SUPPORT to the
INTERNATIONAL TREATY TO PROTECT THE SACRED
FROM TAR SANDS PROJECTS**

January 2013

We the undersigned Indigenous Peoples Organizations, levels of government, businesses, unions, non-governmental organizations, and citizens hereby recognize and commit ourselves to upholding the January 2013 *International Treaty to Protect the Sacred from Tar Sands Projects*:

Name of Representative	InterTribal COUP Representing	Signature	Date
Bob Gough Bill Schumacher	InterTribal COUP		1/25/13
Phyllis Cole-Dai	Fast for the Earth		1/25/2013
Elizabeth Patton	Tar Sands Blockade		1/25/2013
Philip Strickland	Earth First!		1/25/2013
Andrea Wilson			1/25/2013
Matthew West	Earth First!		1/25/2013
Crystal Tegada Marjan	Earth First!		1/25/2013
Byron Steshel	Farmer		1/25/2013
TERRY FRISCH	FARMER		1/25/2013
JASON SARKIS	global Revolution		1/25/2013
George Vest	Earth First!		1/25/2013
Tom Gennaro	Nebraska Land Day		1/25/2013
Lauren Zigmont	Earth First!		1/25/2013
Bruce Beetham	Reader		1/25/2013
Craig Neef	Chicago Indymedia		1/25/2013
Ashley Young	THE FEATHER PROJECT UN CSD EDUCATION CAUCUS INT'L ASSN FOR THE ADVANCEMENT OF INNOVATIVE SOLUTIONS TO GLOBAL CHALLENGES		1/25/2013
Kathleen McLeod	a friend of all people		1/25/2013
Lorenzo Serra	the movement		1/25/2013
ELIZABETH ARCE	THE MOVEMENT		1/25/2013
Shivani Larva St. George			1/25/2013
Happy Waters-Catron	the movement		1/25/2013
Gillette West	North Star Energy Coalition		1-25-2013

Yankton Sioux Tribe Proposed
Resolution Demanding the
United States Uphold the Rights
of the Ihanktonwan Dakota
Historical Sites, Attachment 3
to the Tribe's April 23, 2013
Comments

**YANKTON SIOUX TRIBE
GENERAL COUNCIL RESOLUTION NO. _____**

A RESOLUTION DEMANDING THAT THE UNITED STATES UPHOLD THE RIGHTS OF THE IHANKTONWAN DAKOTA/NAKOTA OYATE AND OTHER INDIGENOUS NATIONS AND THEIR MEMBERS WITH RESPECT TO CULTURAL AND HISTORICAL SITES BY CONFORMING ITS REVIEW OF THE PROPOSED KEYSTONE XL PIPELINE TO FEDERAL LAW AND TREATY RIGHTS AS DESCRIBED HEREIN:

WHEREAS, a company called TransCanada Keystone Pipeline, LP(TransCanada) wishes to construct a 1,179-mile pipeline called the “Keystone XL Pipeline” from the tar sands in Alberta through the United States to transport tar sands diluted bitumen (dilbit) to refineries in Texas, and

WHEREAS, the proposed pipeline project would cross the U.S. Canada border and would therefore require approval through a Presidential Permit issued by the U.S. Department of State, and

WHEREAS, TransCanada initially applied for a Presidential Permit for the proposed Keystone XL Pipeline in 2008, and

WHEREAS, The State Department prepared an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act as part of its environmental review of TransCanada’s 2008 permit request, and

WHEREAS, as part of the Final EIS route evaluation process, the State Department executed a Programmatic Agreement in 2011 to govern how TransCanada and government agencies would ensure that historic properties, burials, and funerary objects are properly protected and how the parties to the Programmatic Agreement will satisfy all responsibilities under Section 106 of the National Historic Preservation Act if TransCanada’s 2008 permit application was approved, and

WHEREAS, State Department denied TransCanada’s 2008 permit request in January 2012, and

WHEREAS, TransCanada again applied for a Presidential Permit in May of 2012, and

WHEREAS, the State Department is now in the process of preparing a Supplemental Environmental Impact Statement to address changes in the proposed pipeline route and new information and circumstances have arisen since the previous EIS was prepared, and

WHEREAS, the State Department has failed to properly involve Indigenous Nations in its review of the proposed project, neglecting its legal obligation to engage with Indigenous Nations on a GOVERNMENT TO GOVERNMENT basis, and

Department of State Consultation Resolution

WHEREAS, the State Department **has erroneously stated** in the Draft SEIS that it consulted with Ihanktonwan/Yankton Sioux Tribe at least one hundred fifty nine (159) times which is a gross misrepresentation of information, as the communications in no way qualify as “Nation to Nation” consultations, and

WHEREAS, in order for consultation with the Ihanktonwan Oyate to qualify as “Nation to Nation”, such consultation **must occur on Ihanktonwan homelands** with the General Council, and

WHEREAS, that meetings conducted with THPO entities are **not** “Nation to Nation consultations; as THPO’s are regulatory entities, and

WHEREAS, the **State Department’s failure is particularly egregious** with respect to the surveying process to identify cultural and historical sites that will be harmed if it approves the proposed Keystone XL pipeline, and

WHEREAS, the use and **contents of a Programmatic Agreement are crucial factors in ensuring the protection of cultural and historical sites of significance to all tribal nations, and**

WHEREAS, both “signatory parties” and “invited signatories” have certain rights to amend or terminate the 2011 Programmatic Agreement, and

WHEREAS, the 2011 Programmatic Agreement included eleven (11) federal agencies and six (6) State Historic Preservation Officers as “signatory parties,” and it included two state agencies in Montana as well as TransCanada as “invited signatories,” and

WHEREAS, despite the fact that forty-four (44) interested Indigenous Nations notified the State Department that they wished to participate in the consultation process, **not a single Indigenous Nation was allowed to be included as a “signatory party” or even an “invited signatory”** to the 2011 Programmatic Agreement, and

WHEREAS, by excluding Indigenous Nations from “signatory party” status, the State Department not only deprived interested Indigenous Nations of the ability to protect their interests through signatory rights described above, but it also relegated Indigenous Nations to a status **inferior to that of state agencies, and**

WHEREAS, the State Department has not yet indicated whether it intends to use the 2011 Programmatic Agreement, whether it will seek to modify the 2011 Programmatic Agreement, or whether it will create a new Programmatic Agreement to be incorporated in the SEIS, and

WHEREAS, the 2011 Programmatic Agreement purports to enable the State Department to issue a decision in its evaluation of the proposed Keystone XL pipeline project before the affected lands have been surveyed to identify cultural and historic properties, and

Department of State Consultation Resolution

WHEREAS, the State Department cannot determine the impact the proposed Keystone XL Pipeline would have on cultural and historic sites until the affected lands have been properly surveyed, and

WHEREAS, as of October 2012, more than **8,514** acres of the proposed project corridor remained unsurveyed, and

WHEREAS, if the 2011 Programmatic Agreement is followed, the State Department would make **its decision without taking into consideration the impact of a proposed project on cultural and historic sites, as required by federal statutes** which preempt any inconsistent regulations, and

WHEREAS, the preservation and protection of our cultural and spiritual resources are mandated by the natural laws of every Indigenous Nation and are of utmost importance to our continued existence as Nations, and

WHEREAS, **we refuse to allow the United States to deny us our rights to preserve and protect what we hold sacred through violations of its own federal laws,** and

THEREFORE BE IT RESOLVED, that the Ihanktonwan/Yankton Sioux Nation **does declare that Indigenous Nations have not been properly involved in the review of the proposed Keystone XL pipeline as a whole and have been forced to participate in a fragmented divisive process, which does not allow tribes to share information with each other in a cooperative manner even though the lands on which Indigenous Nations' sacred, cultural, and historic sites are found often overlap,** and

BE IT FURTHER RESOLVED, that the Ihanktonwan/Yankton Sioux continue to be **firmly opposed to the construction of any and all segments of the proposed Keystone XL Pipeline,** and

BE IT FURTHER RESOLVED, **that the Ihanktonwan/Yankton Sioux Nation demands that no decision be made with respect to TransCanada's application for a Presidential Permit** because Indigenous Nations have been denied the right to survey the full length of the proposed pipeline route by tribal surveyors and spiritual persons who possess the unique cultural and spiritual knowledge to conduct this work, and

BE IT FURTHER RESOLVED, that the Ihanktonwan/Yankton Sioux demands that a new Programmatic Agreement be created, and that all Indigenous Nations who wish to participate be made **"signatory parties"** to that Agreement, and

BE IT FURTHER RESOLVED, that the Ihanktonwan/Yankton Sioux **hereby demands that all federal agencies** involved in the review of the proposed Keystone XL pipeline **act in accordance with the Nation to Nation relationship that exists between Indigenous Nations and the United States, as recognized by treaties and federal law,** and

BE IT FURTHER RESOLVED, that this Resolution shall in no way be interpreted to validate the imposition of United States law on the sovereign Ihanktonwan /Yankton Sioux Nation in violation of the valid and legally binding treaties between the Ihanktonwan Oyate and the United States, and the Ihanktonwan Oyate fully reserves all rights under the 1851 Treaty which was signed at Ft. Laramie, the 1868 Treaty in support of the Ihanktonwana and other Bands of the Oceti Sakowin (Seven Council Fires)which was signed at Fort Laramie and

BE IT FINALLY RESOLVED, that this Resolution will be delivered to the State Department by delegates or designees of the Treaty Steering Committee; in cooperation on behalf of the Ihanktonwan/ Yankton Sioux General Council and Treaty Council.

THIS IS TO CERTIFY AND AFFIRM, the above and foregoing resolution was duly authorized and passed by the Yankton Sioux Tribe's General Council on the 4th day of April, 2013 at a duly called meeting held at the Yankton Sioux Ft. Randall Casino, by a vote of _____ in favor, _____opposed, _____abstained. **MOTION CARRIED.**

ATTEST

Thurman Cournoyer, Sr., Chairman
Business & Claims Committee
Yankton Sioux Tribe

Glenford "Sam" Sully, Secretary
Business & Claims Committee
Yankton Sioux Tribe

Yankton Sioux Tribe General
Council Resolution No. 2013-
13, Attachment 4 to the Tribe's
April 23, 2013 Comments

Box 1153
Wagner, SD 57380



(605) 384-3804 / 384-3641
FAX (605) 384-5896

OFFICERS:

Thurman Cournoyer, Sr., Chairman
Ida Ashes, Vice Chairwoman
Glenford Sully, Secretary
Leo O'Connor, Treasurer

COUNCIL:

Jason Cooke
Nicholas Cournoyer
Gail Hubbeling
Brenda Zephier
Jody Allen Zephier

YANKTON SIOUX TRIBE

GENERAL COUNCIL RESOLUTION NO. 2013-13

A "RESOLUTION OF DECLARATION"

- 1. TO ACT WITH INHERENT, LAWFUL AND SOVEREIGN AUTHORITY OVER OUR LANDS, WATERS AND AIR AS RECOGNIZED BY ARTICLE 32 OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES.**
- 2. IN ORDER TO FURTHER DEFEND AGAINST DEPREDATIONS OCCURRING ON 1851 TREATY LANDS AND OCETI SAKO WIN 1868 TREATY LANDS.**
- 3. TO DEFEND THE INTERNATIONAL TREATY OF JANUARY 15, 2013 TO PROTECT THE SACRED AGAINST TAR SANDS, AND LASTLY**
- 4. PREVENT INTRUSIONS ON ABORIGINAL AND HISTORICAL LANDS OF THE IHANKTON WAN OYATE AND OCETI SAKO WIN LANDS."**

WHEREAS: The Ihanktonwan Oyate are a nation of Indigenous Peoples of the Western Hemisphere who through birthright are sovereign: and

WHEREAS: Are part of a confederation of member nations commonly referred to Oceti Sakowin. and in English the Seven Council Fires or Great Sioux Nation; and

WHEREAS: Would not have signed the 1851 and 1868 Treaties if the ancestors had known the United States would consistently violate them up to even today; and

WHEREAS: Signers of the above mentioned treaties can act and shall act against any **depredations** occurring within respective homelands. and

WHEREAS: Western Acadmia research (Palmer 2008) and Dakota Nation research (Dr. Leo Omani 2013) establishes that the region which the "Siouan language family" including the Dakota, Nakota, Lakota Linguistic group **inhabited** "in total land mass... .The Canadian provinces of Saktachewan. Alberta, Manitoba and into Ontario (and) more than fifty percent of the continental



United States or twenty four of the forty eight states," thereby establishing our aboriginal rights **which we will protect**; and

WHEREAS: This linguistic evidence corroborates that the Dakota. Nakota. Lakota linguistic groups had an aboriginal homelands that created a **cultural landscape that contains thousands of cultural and historical sites. This cultural knowledge belongs to Indigenous peoples and the people belong to the landscape, whereby traditional knowledge dwells in specific places/lands located in the KXL Pipeline Corridor which are irreplaceable, and**

WHEREAS: The Department of States Keystone XL Supplemental Impact Statement **blatantly disregards** the role of our relatives the "wamakaskan" the literal translation for the animals of Turtle Island (North America) by minimizing their status as endangered species and further declaring that the fox, burying beetle, whooping crane, black-footed ferret, least tern, pallid sturgeon and certain bat species will not be affected by the KXL Pipeline which is an unacceptable intrusion to the delicate ecosystem that these species impart to our culture; and

WHEREAS: The General Council of the Ihanktonwan has the responsibility to ensure the preservation and protection of the Ihanktonwan people against infringement and depredations on traditional, historical, aboriginal and Treaty lands and Ina Maka (Mother Earth) and.

WHEREAS: The Department of State through the KXL Pipeline has completely disregarded this environmental threat to our Nation and other said "sovereign Indigenous Nations" who have not had "free. prior and informed consent" in this intrusion in our territories. and

WHEREAS: The Ihanktonwan Ovate (Yankton Sioux) signed the INTERNATIONAL TREATY TO PROTECT THE SACRED AGAINST TAR SANDS PROJECTS ON JANUARY 25. 2013 on Ihanktonwan homelands with four other Sovereign Indigenous Nations from Turtle Island (Canada and the United States) with five other First Nations in Canada coming on as signatories since that date and will continue to stand firm with those allies against Tar Sands intrusions; and

NOW THEREFORE BE IT RESOLVED: As stated in our **2013 Treaty to Protect the Sacred** "we affirm that our laws define our solemn duty and responsibility to our ancestors, to ourselves and to future generations. To protect the lands and waters of our homelands and we agree to mutually and collectively oppose tar sands project which would impact our territories. including **but not limited to** Transcanada Keytone XL Pipeline, the Enbridge Northern Gateway, Enbridge lines nine (9) and sixty-seven (67), or the Kinder Morgan Trans Mountain pipeline and Tanker projects; and

BE IT FURTHER RESOLVED, That the Ihanktonwan will support the Oglala Nation Resolution (March 26, 2013 action) prohibiting any intrusion of Tar Sands Projects in 1851

and 1868 Treaty Territory, and

BE IT FURTHER RESOLVED, that the General Council of the Ihanktonwan will take these necessary actions to ensure that the above mentioned priorities are protected and that the Ihanktonwan Treaty Council and the Business & Claims Committee will support these actions. and

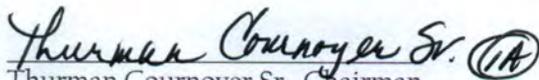
BE IT FURTHER RESOLVED, that this action will represent the official position of the Ihanktonwan / Yankton Sioux further opposing Tar Sands Development, standing in Solidarity with the other affected sovereign nations of aboriginal descent; tribes and Treaty Councils, and

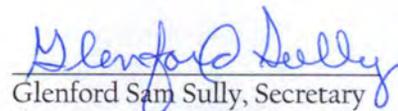
BE IT FINALLY RESOLVED, that this Resolution will be served to the Department of State at the Public Hearing in Grand Island, Nebraska on April 18th, 2013 by the Treaty Delegates and the Chairman of the Yankton Sioux Tribe or his designee, along with the Resolution enacted on April 4th which was prepared for the April 11th DOS meeting in Rapid City, which was cancelled; and.

CERTIFICATION

THIS IS TO CERTIFY AND AFFIRM that the above foregoing resolution as duly authorized and adopted by the General Council of the Yankton Sioux/Ihanktonwan Oyate on this 15th day of April, 2013 at a meeting held at Fort Randall Casino Hotel, Pickstown, South Dakota, on the Yankton Sioux Reservation, by a vote of 18 in favor 0 opposed. Motion Carried.

ATTEST


Thurman Cournoyer Sr., Chairman
Business and Claims Committee
Yankton Sioux Tribe


Glenford Sam Sully, Secretary
Business and Claims Committee
Yankton Sioux Tribe

1870

1871

March 10, 2014 Letter of
Comment submission on behalf
of the Yankton Sioux Tribe

OFFICERS:
ROBERT FLYING HAWK, CHAIRMAN
JEAN ARCHAMBEAU, VICE CHAIRWOMAN
LEO O'CONNOR, TREASURER
GLENFORD "SAM" SULLY, SECRETARY



COUNCIL:
JASON COOKE
QUENTIN "JB" BRUGIER, JR.
EVERDALE SONG HAWK
JUSTIN SONG HAWK
MONA WRIGHT

To Whom It May Concern:

Please accept and fully consider this Comment on behalf of the Yankton Sioux Tribe in response to the application of TransCanada Keystone Pipeline, L.P. for a Presidential Permit that would authorize construction, connection, operation, and maintenance of pipeline facilities through lands sacred to the Yankton Sioux Tribe. The Comments of the Yankton Sioux Tribe include this Comment, the Ihanktonwan Treaty Council Comments in regard to TransCanada/KXL Pipeline FSEIS (Attachment 1), General Council Resolution No. 2014-041 (Attachment 2), and General Council Resolution No. 2014-042 (Attachment 3).

The Yankton Sioux Tribe objects to the Final Supplemental Environmental Impact Statement ("FSEIS") provided by the United States Department of State ("Department") for the Department's failure to consult in good faith with the Yankton Sioux Tribe and other tribes on a government-to-government basis. As a result, the FSEIS neglects to consider countless cultural, communal, and environmental concerns of Indian tribes. The Yankton Sioux Tribe is also concerned that the FSEIS misleads the public by overestimating the benefits that the Keystone XL Pipeline will provide while downplaying its social, economic, and environmental costs. Furthermore, the pipeline's proximity to Indian reservations in South Dakota will increase crime and threaten the vitality of tribal culture, values, morals, language, and religion—all concerns conspicuously absent from the FSEIS. Finally, approval of the pipeline will expedite the destruction of both the health and the culture of the Dene, Cree, and Metis First Nations in the Northern Alberta tar sands region. The Yankton Sioux Tribe remains dedicated to protecting the cultural and religious heritage of the First Nations and objects that the FSEIS does not address the risk that the tar sands extraction presents to the soil, water, air, sacred sites, and the indigenous way of life of the First Nations.

The Department Has Not Adequately Consulted with Native American Tribes That Will Be Impacted by the Keystone XL Pipeline

The Department has failed to consult with tribes in good faith, and as a result, it has overlooked important cultural and religious concerns of Native Americans. The National Historic Preservation Act ("NHPA") consultation process is a "complex consultative process," *Save Our Heritage, Inc. v. Fed. Aviation Admin.*, 269 F.3d 49, 61 (1st Cir. 2001), that requires agency decision-makers to meet with tribes to discuss tribal concerns. Tribes are entitled to identify their "concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(2)(ii)(A). But these properties have not been considered in the FSEIS. Without adequate government-to-government consultation, the pipeline route cannot be

properly surveyed because surveyors are unaware of which properties possess the unique cultural and spiritual attributes important to tribes. As a result, the cultural, historic, and burial sites of the Yankton Sioux Tribe will be jeopardized by the construction of the Keystone XL Pipeline.

Though consultation is not the same thing as control over a project, tribes are entitled to “identify its concerns,” to “advise,” to “articulate,” and to “participate” in a federal action. *Id.* § 800.2(c)(2)(ii)(A). Although there are numerous definition and interpretations for the term “consultation,” the NHPA defines it as “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them” *Id.* § 800.16(f). Consultation enables tribes to identify and clarify their concerns regarding the potential project that may potentially be affected by the undertaking.” The agency official must make a reasonable and good faith effort to carry out appropriate identification efforts, “which may include background research, consultation, oral history interviews, sample field investigation, and field survey.” *Id.* § 800.4. After proper consultations, decision-makers will better understand tribal concerns and they can take these into account when considering a federal action. Here, however, countless cultural, communal, and environmental concerns remain unaddressed as a result of inadequate consultation. While the FSEIS conveys the perception that the Department has bent over backwards to accommodate tribes, the Yankton Sioux Tribe can attest that such has not been the case.

The Yankton Sioux Tribe remains steadfast in its request to engage the Department in a government-to-government consultation on Yankton Sioux Indian Reservation. Because representatives from the Yankton Sioux Tribe attended all but one face-to-face “consultation,” the Tribe is keenly aware of the inaccurate consultation claims by the Department in its FSEIS. During the course of one week in 2012, the Department held just three face-to-face meetings where representatives from only twelve tribes were able to attend. A subsequent meeting was scheduled for May 16, 2013, but demonstrations prevented its occurrence. Rather than rescheduling individual meetings with the representatives that attended, the Department held a single teleconference on July 31, 2013, with representatives from nine Indian tribes. A teleconference is not the proper manner to conduct a consultation where such a large number of tribes were in attendance as it did not provide sufficient time for representatives to express their concerns. Throughout this application process, the Department has consistently treated these consultations as a perfunctory task at the expense of Indian tribes.

The Keystone XL Pipeline has infiltrated the Treaty lands of the Great Sioux Nation, despite the protest of the tribes in the State of South Dakota. The Yankton Sioux Tribe considers its Treaty lands to be a cultural landscape resulting from cultural practices over historical and prehistoric times that may be eligible for listing in the NRHP. National Register Bulletin 38 clarified that NHPA’s reach extends to “traditional cultural properties,” identifying a traditional cultural property as “one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in the community’s history, and (b) are important in maintaining the continuing cultural identity of the community.”¹ Such is the case here. Therefore, the Department should have considered the effects of a proposed project on the Yankton Sioux Tribe’s Treaty lands because the pipeline will “cause loss or destruction of significant scientific, cultural, or historical resources.” 40 C.F.R. §

¹ Patricia L. Parker & Thomas F. King, Nat’l Park Serv., Guidelines for Evaluating and Documenting Traditional Cultural Properties (National Register Bulletin 38, 1990).

1508.27(b)(8). Because the FSEIS failed to consider the Treaty lands of the Great Sioux Nation as a cultural landscape, the Yankton Sioux Tribe finds the FSEIS to be incomplete.

The Keystone XL Pipeline Will Irrevocably Harm Indian Country

The Keystone XL Pipeline will provide few, if any, benefits to Indian Country. The FSEIS states that proposed Project spending would *support*—the Department carefully chose this word rather than “create”—approximately 42,100 jobs (mostly indirect, induced, and fabricated) throughout the United States. The roughly 1,950 direct construction jobs will be filled by transient employees and the indirect economic gains, if any, will not be felt in Indian Country. But too much misinformation has been directed toward the alleged economic benefits of the Keystone XL Pipeline. True, some communities may experience sudden economic growth and they will invest scarce resources into infrastructure projects and new businesses to meet this demand. But any growth will disappear as quickly as it arrived, leaving the communities in debt and new businesses without customers. Emerging unscathed will be TransCanada, the true economic victor in this deal. By approving this pipeline, the United States will appease a Canadian conglomerate at the expense of United States citizens and communities.

The pipeline’s economic benefits—inflated and clearly misleading—are substantially outweighed by the substantive social, cultural, and environmental threats. The pipeline’s proximity to Indian reservations in South Dakota will increase crime and threaten the vitality of tribal culture, values, morals, language, and religion. To construct access roads, auxiliary stations, and other infrastructure necessary for the pipeline, three man camps will be established within the Treaty lands of the Yankton Sioux Tribe under the 1851 Treaty of Fort Laramie (“Treaty”). Social ills resulting from the sudden influx of transient workers will spill into the lands of the Yankton Sioux Tribe. The Yankton Sioux Tribe is concerned about its capabilities to ensure public safety. These concerns have not been addressed by the consultation. The Yankton Sioux Tribe has every reason to believe that its integrity and security will be severely compromised by what others have identified as “progress”—an unfortunate repeat occurrence in Indian Country.

The Missouri River plays a vital role for many of the tribes in South Dakota, including the Yankton Sioux Tribe. Compromising the safety of the Missouri River Basin to benefit a Canadian conglomerate is both unnecessary and unfair. The inevitability of a spill as the pipeline crosses tributaries to the Missouri River compromises the entire basin. Diluted bitumen, the toxic slurry that facilitates shipment of the heavy crude, is difficult to clean once it spills into the water. Examples of the difficulties and high clean-up costs can be found in recent pipeline spills. The Enbridge Line 6B Pipeline spill closed forty miles of the Kalamazoo River, the cleanup of which has continued to this day and cost over \$809 million. Spills of this magnitude are not uncommon. ExxonMobil Pipeline Co.’s Pegasus Pipeline spilled roughly 80,000 gallons of Canadian tar sands crude near Little Rock, Arkansas in March of 2013. Later that year, over 865,200 gallons of oil spilled from a Teosoro Logistics six inch pipeline in Tioga, North Dakota, seeping into 7.3 acres of land. The FSEIS underestimates the likelihood of a spill into a tributary of the Missouri River and the consequences such a spill would have on the tribes of the Missouri River Basin.

The FSEIS Disregards the Effects of the Pipeline on the First Nations of Canada

Once again the United States has overlooked an injustice to the most vulnerable portion of a population—Canada’s First Nations. Just as the Sovereign Nations of the United States

have suffered injustice as a result of federal policy, the Department's failure to analyze the effects of the Keystone XL Pipeline on the First Nations will facilitate the Canadian government's usurpation of the treaty rights and sovereignty of the First Nations. In the Yankton Sioux Tribe's Comment to the Draft Supplemental Environmental Impact Statement ("DSEIS"), the Tribe requested that the Department address the effects of expanded tar sands development on the First Nations, whose health, environment, and treaty rights are at risk by this pipeline. Just as the DSEIS disregarded these matters, the FSEIS has ignored this injustice.

The Yankton Sioux Tribe remains dedicated to protecting the cultural and religious heritage of the First Nations, as represented in the *International Treaty to Protect the Sacred from Tar Sands Projects*. Therefore, the Tribe objects that the FSEIS does not address the risk that tar sands extraction presents to the soil, water, air, sacred sites, and the indigenous way of life of the First Nations. The EPA and the U.S. Council on Environmental Quality ("CEQ") defines environmental justice as the "fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies."² The FSEIS addresses *some* of the environmental justice issues. For example, the FSEIS acknowledges that the Cheyenne River Indian Reservation and the Rosebud Indian Reservation will be exposed to certain disruptions like noise, dust, and increased competition for health services. However, the FSEIS should have included other Indigenous Nations in its analysis.

While TransCanada and United States refineries have the most to gain from this project, the Indigenous Nations in Canada and the United States have the most to lose. The First Nations will lose important cultural resources, sacred and historic places, burial grounds, and crucial environmental resources. Like an ostrich with its head buried in the sand, the Department has ignored these impacts. Approval of the pipeline will expedite the destruction of both the health and the culture of the Dene, Cree, and Metis First Nations in the Northern Alberta tar sands region. Tar sands development devastates the ecosystem—relied upon by these First Nations and guaranteed through treaty—in the form of poisoned waters, contaminated lands, polluted air, and deformed fish. Without even raising this issue for consideration in the FSEIS, the United States is complicit in the injustice these peoples will suffer. Because the Department has declined to acknowledge the interests of the First Nations in the FSEIS, the Yankton Sioux Tribe believes it must speak on behalf of the First Nations and condemn the glaring inadequacies of this FSEIS.

The Keystone XL Pipeline will permeate the indigenous, minority, and low-income communities—those communities that are the least equipped to handle a disaster and least capable of resisting the development of disadvantageous projects. Though most of the tragic environmental destruction caused by the pipeline will occur in Canada, the Yankton Sioux Tribe will suffer both direct and indirect environmental consequences. The pipeline will steadily corrode the environment and culture treasured by Native American tribes. There is no doubt that the pipeline's impact will be insidious, gradually but seriously harming Indian Country. The social and cultural consequences will seriously impact Indian Country, subjecting tribes to unnecessary and unwarranted social, environmental, and cultural risk. Like many of the past injustices suffered by Indian tribes in the United States, the harm caused by approval of the Keystone XL Pipeline will be dangerous and irreversible. The Yankton Sioux Tribe beseeches

² U.S. ENVTL. PROT. AGENCY, EPA'S ACTION DEVELOPMENT PROCESS 1, 3 (2010), *available at* <http://www.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-07-2010.pdf>.

the Department and the President of the United States to adhere to the promises made to the United States to protect Indian tribes and to prevent such an injustice from plaguing Indian Country. Just as President Obama improved the lives of many as a community organizer in Chicago, the Yankton Sioux Tribe is standing up for others and asking for an opportunity to express overlooked concerns about the devastation this pipeline will have on our communities.

The Yankton Sioux Tribe appreciates the consideration of these matters and hopes that the Department, and ultimately the President of the United States, denies Keystone Pipeline, L.P.'s Presidential Permit Application, finding that the project is not in the best interest of the United States of America.

Official Comments of the
Ihanktonwan Treaty Committee
of the US Department of State,
Attachment 1 to March 10,
2014 Comment Submission

**OFFICIAL COMMENTS OF THE
IHANKTONWAN TREATY COMMITTEE
TO THE
UNITED STATES DEPARTMENT OF STATE**

PURSUANT TO PUBLIC NOTICE 8622, DOCKET ID: DOS-2014-0003

Regarding the National Interest Determination for
TransCanada Keystone Pipeline, L.P.'s Presidential Permit Application for the
Proposed "Steele City Segment" of the Keystone XL Pipeline

March 7, 2014

To President Barack Obama, Secretary John Kerry, And All Whom It May Concern:

Please be advised that the Ihanktonwan Treaty Committee affirmatively asserts and urges you to find that the proposed "Steele City Segment" of the Keystone XL pipeline is NOT in the best interest of the United States or the American people.

The Ihanktonwan Treaty Committee is a formal steering committee of the government of the Yankton Sioux Tribe, a federally-recognized Indian tribe. The Treaty Committee is comprised of elected officials who are appointed pursuant to the inherent authority of the Yankton Sioux Tribe to monitor, oversee, and advise the General Council of the Ihanktonwan Dakota (known to the United States as the "Yankton Sioux Tribe") regarding treaty-related matters. The primary duty of the Treaty Committee is to ensure that Treaty lands of the Ihanktonwan Dakota are respected in accordance with Dakota beliefs, values and priorities.

Pursuant this duty, the Treaty Committee has reviewed the Final Supplemental Environmental Impact Statement ("FSEIS") for the proposed "Steele City" segment of the Keystone XL Pipeline ("proposed project") and has determined that approval of a Presidential Permit for the proposed project would violate the 1851 Treaty of Fort Laramie and the rights of the Ihanktonwan Dakota as follows:

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- I. The proposed project would trespass across hundreds of miles of land reserved for the Ihanktonwan Dakota and other Indigenous Nations by the 1851 Treaty of Fort Laramie, in violation of said Treaty.
- II. The State Department has failed to comply with Executive Order 13175, which requires federal agencies to honor tribal treaty rights and inherent tribal rights through consultation and coordination with Indigenous Nations.
- III. In addition, the State Department has failed to meet its consultation obligations to the Ihanktonwan pursuant to the National Historic Preservation Act.
- IV. The State Department excluded the Ihanktonwan Nation from the development of the Programmatic Agreement for the proposed project, in violation of federal law. As a result, the rights of the Ihanktonwan Dakota are left unprotected by the Programmatic Agreement which has instead been drafted to coerce concurrence from Indigenous Nations.
- V. The FSEIS was issued prematurely, as all requisite information was not yet available to complete the report. Failure by the federal government to consider all relevant and necessary information in assessing the proposed project violates the rights of the Ihanktonwan Dakota and of all Americans.

I. Ihanktonwan Dakota Treaty Territory, 1851 Treaty of Fort Laramie

Approval of the proposed project would violate the 1851 Treaty of Fort Laramie because the route of the proposed pipeline and the accompanying facilities would trespass on lands reserved by that Treaty for the Ihanktonwan Dakota and other Indigenous Nations. This trespass and the accompanying environmental threat posed by the proposed project constitute a depredation against which the United States bound itself by treaty to protect the Ihanktonwan Dakota.

The Treaty lands of the Ihanktonwan Dakota are identified in Article 5 of the 1851 Treaty of Fort Laramie (“Treaty”), a binding peace treaty and legal agreement between the United States and several Indigenous Nations, including the Ihanktonwan Dakota.

The parties to the Treaty acknowledged that the territory of the “Sioux or Dahcotah Nation,” which includes the Ihanktonwan Dakota, consists of the territory:

commencing the mouth of the White Earth River, on the Missouri River; thence in a southwesterly direction to the forks of the Platte River; thence up the north fork

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of the Platte River to a point known as the Red Butts, or where the road leaves the river; thence along the range of mountains known as the Black Hills, to the headwaters of Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the place of beginning.

1851 Treaty at Fort Laramie, Article 5. A map of the Treaty territory is attached hereto for your reference. The proposed project which is the subject of TransCanada's Presidential Permit application would traverse from the northwest boundary to the southeast boundary through the heart of the Ihanktonwan Dakota Treaty territory. The Treaty territory encompasses all of the proposed pipeline route that would be located within what is known today as the state of South Dakota. Approximately three hundred sixteen (316) miles of the proposed new pipeline would be located within the Treaty territory. FSEIS Table 2.1-13. This constitutes more than one-third of the length of the entire proposed project. *Id.* The proposed ancillary facilities that would be located within the Treaty territory include seven (7) pump stations (including thirty-three (33) pumps), eighteen (18) permanent access roads, fifteen (15) intermediate mainline valves, seven (7) contractor yards, three (3) rail sidings, eleven (11) pipe yards. FSEIS Table 2.1-1; Table 2.1-7; Table 2.1-10. In addition, TransCanada has indicated that three (3) temporary work camps, or "man camps," would be constructed within the Treaty territory. FSEIS Table 2.1-11.

In consideration for the rights and privileges granted to the United States in the Treaty, the United States "bound themselves to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States, after the ratification of this treaty." 1851 Treaty at Fort Laramie, Article 3. The United States therefore made a legally binding commitment to the Ihanktonwan Dakota to protect them from harm and predation by the United States in the very document acknowledging the land rights of the Ihanktonwan Dakota. The duty to protect the land of the Ihanktonwan Dakota and prevent infringements or encroachments upon their territory is a therefore a fundamental element of the 1851 Fort Laramie Treaty and the relationship between the Ihanktonwan Dakota and the United States.

The construction and perpetual use *within the Treaty territory* of 316 miles of pipeline that is thirty feet in diameter and contains highly toxic material would be a blatant infringement on the Treaty rights of the Ihanktonwan Dakota in violation of Article VI of the United States Constitution. Coupled with the obscene rate and severity of spills likely to occur during the use of the proposed pipeline, the fact that the United States is even considering authorizing construction of the proposed pipeline through the Treaty territory is an affront to treaty rights and to the United States Constitution. Approval of the proposed project would constitute a flagrant violation by the United States of the peace treaty with the Ihanktonwan Dakota and several other Indigenous Nations.

The Supreme Court of the United States has held time and again that Indigenous Nations, or “Indian tribes,” retain all rights inherent to them as sovereigns except those which have been relinquished by treaty, and that treaties between the United States and Indigenous Nations are binding contracts, enforceable against the United States.

II. Executive Order 13175, Tribal Treaty Rights and Inherent Tribal Rights

Throughout its review of the proposed project, the U.S. State Department has failed to meet its obligations to the Ihanktonwan Dakota imposed by Executive Order 13175, which requires federal agencies to honor tribal treaty rights and inherent tribal rights through consultation and coordination with Indigenous Nations.

In furtherance of its duty under Article VI of the Constitution to comply with all treaties into which the United States enters, and to avoid potential violations of tribal treaty rights through federal actions, President William Clinton issued Executive Order 13175, entitled “Consultation and Coordination With Indian Tribal Governments,” on November 6, 2000. Executive Order 13175 mandates that all federal agencies “respect Indian tribal self-government and sovereignty, **honor tribal treaty and other rights**, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.” Exec. Order No. 13175, Section 3(a) (emphasis added). To ensure that federal agencies are fully informed about tribal treaty rights and inherent rights that may be impacted by federal action,¹ Executive Order 13175 imposes an affirmative duty on federal agencies to “establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications [and] to strengthen the United States government-to-government relationship with Indian tribes.” Exec. Order No. 13175, Preamble.

President Barack Obama reaffirmed the consultation duties of federal agencies pursuant to Executive Order 13175 through a Memorandum for the Heads of Executive Departments and Agencies he issued on November 5, 2009. In that Memorandum, President Obama declared: “My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through a complete and consistent implementation of Executive Order 13175.” To date, President Obama’s Administration has failed miserably to meet his stated expectations.

¹ Executive Order 13175 applies specifically to “policies that have tribal implications,” which include “actions that have substantial direct effects on one or more Indian tribes.” Executive Order 13175 therefore applies to the U.S. Department of State’s role and corresponding actions in the National Interest Determination for TransCanada Keystone Pipeline, L.P.’s Presidential Permit Application.

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The consultation process pertaining to this proposed project has been wholly inadequate both with respect to Executive Order 13175 and with respect to the National Historic Preservation Act. While ignorance of the problem might explain the State Department's failure to properly, adequately, and meaningfully consult with tribes during its assessment of TransCanada's initial Presidential Permit application which was filed in 2008, the continued and ongoing failure of the State Department to fulfill its legal obligations to Indigenous Nations defies explanation and logic. Prior to TransCanada's submission of the pending Presidential Permit application in 2012, the Ihanktonwan Dakota and numerous other Indigenous Nations informed the State Department through a number of forums, including the formal public comment process for the Draft Environmental Impact Statement for the proposed Keystone XL pipeline and "consultation" meetings themselves, that its "consultation" process was inconsistent with federal requirements and was furthermore insufficient and ineffective. The fact that these concerns were not addressed and corrective measures were not taken prior to conducting "consultation" with Indigenous Nations during the subsequent review of TransCanada's 2012 application demonstrates just how meaningless these "consultations" are to the State Department.

III. Consultation Pursuant to the National Historic Preservation Act, 16 U.S.C. § 470a(d)(6)(B)

The State Department has not fulfilled its duty to conduct meaningful consultation with the Ihanktonwan Dakota pursuant to the National Historic Preservation Act ("NHPA"). Federal agencies are required to consult with any Indigenous Nation that attaches religious and cultural significance to properties that may be determined eligible for inclusion on the National Register pursuant to Section 101(d)(6)(B) of the NHPA (16 U.S.C. § 470a(d)(6)(B)). The alleged attempts by the State Department to fulfill its consultation duties under Section 101(d)(6)(B) have fallen far short of complying with the NHPA and its implementing regulations, and with Executive Order 13175 as described above.

The federal regulations that implement the NHPA require that "[c]onsultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes." 36 C.F.R. § 800.2(c)(2)(ii)(C). Furthermore, such consultation must be conducted "in a sensitive manner respectful of tribal sovereignty," and "in a manner sensitive to the concerns and needs of the Indian tribe..." 36 C.F.R. §§ 800.2(c)(ii)(B), 800.2(c)(ii)(C). The process undertaken by the State Department to meet its consultation requirement has been void of respect and sensitivity for tribal sovereignty and bears no resemblance to government-to-government relations.

The FSEIS alleges that the State Department "consulted" with 67 Indigenous Nations, yet that document indicates that the State Department only actually met with 17 of these Nations.

Meaningful consultation could not possibly have been conducted with the remaining 50 Indigenous Nations with whom it never met, and in the experience of the Ihanktonwan Dakota, even actual meetings with the State Department have been inadequate to fulfill the State Department's legal duty to consult. Please refer to comments submitted by the Yankton Sioux Tribe and the Ihanktonwan Treaty Steering Committee during purported "consultations" and in the record to the State Department during its reviews of the proposed project following TransCanada's submissions of both the 2008 and the 2012 Presidential Permit applications for detailed criticisms of the consultation process.

IV. Consultation to Develop the Programmatic Agreement

In addition, the State Department has failed to consult with the Ihanktonwan Dakota in the development of a Programmatic Agreement for the proposed project as required by federal law. Because the State Department determined that the effects of the proposed project cannot be fully ascertained prior to the issuance of a Presidential Permit, the State Department executed a Programmatic Agreement ("PA") for the proposed project. A PA for the proposed Keystone XL pipeline was first executed in 2011 during the review of TransCanada's first Presidential Permit application. The PA was then amended following TransCanada's submission of a second Presidential Permit. The amended PA was executed in December 2013.

Pursuant to 36 C.F.R. § 800.14(b), a federal agency may negotiate a PA as an alternative to the "normal section 106 process" pursuant to the National Historic Preservation Act under certain circumstances. Where, as here, a PA is used to address potential adverse effects of a complex project, 36 C.F.R. § 800.14(b)(3) requires the federal agency to engage in consultation to develop the PA using the standards contained in 36 C.F.R. § 800.6. This means that Indigenous Nations, or "Indian tribes," must be consulted *as the PA is being developed*, so that their input is included in the development of the document. Presentation of a developed document and invitation to concur with a developed document do NOT constitute consultation pursuant to 36 C.F.R. §§ 800.6 and 800.14(b)(3). This is, however, all that was meaningfully offered to the Ihanktonwan Dakota and other "consulting tribes" with respect to the PA for TransCanada's proposed project.

Although consultation for the PA pursuant to 36 C.F.R. § 800.14(b)(3) must follow § 800.6, it is still a separate and distinct process and must occur as such because the development of a PA pursuant to 36 C.F.R. § 800.14(b)(3) and the consideration of potential impacts of the proposed project pursuant to 16 U.S.C. § 470(d)(6)(B) are separate and distinct duties with separate and distinct purposes. The State Department has failed, however, to treat the two duties as such and even the lengthy record of so-called "consultation" contained in the FSEIS does not identify which, if any, of the recorded interactions pertained to development of the PA. This is

presumably because the State Department did not in fact engage in tribal consultation to develop the PA as required by federal law.

As a result of the State Department's failure to develop the PA in meaningful consultation with Indigenous Nations, the PA that was executed in 2011 and the amended PA that was executed in 2013 are coercive to Indigenous Nations and violate the most basic norms of fair play and substantial justice.

The 2013 PA is an agreement among eleven (11) federal agencies which are identified as "signatory parties," four (4) state historic preservation officers ("SHPOs") which are also identified as "signatory parties," two (2) state agencies which are identified as "invited signatories," and TransCanada Keystone Pipeline, LP which is also identified as an "invited signatory." Although the unique interests of Indigenous Nations would arguably be the interests most at risk within the scope of the PA, Indigenous Nations have been excluded from that agreement. The title of the PA lists the parties among which the agreement was made, and only state and federal agencies and TransCanada are included. The parties identified in the PA as "signatory parties" and "invited signatories" (the federal and state agencies plus TransCanada) are the only parties granted meaningful rights and authority by the PA. Both signatory parties and invited signatories have certain rights to amend or terminate the PA pursuant to Stipulations XII and XIII of the PA.

A third category of so-called-"parties" labeled "concurring parties" does exist under the PA. Concurring "parties," however, do not have any rights to amend or terminate the PA and they are not actually considered "parties" under the title or the terms of the agreement. The only rights concurring "parties" have are limited to dispute resolution measures, should they object to how the PA is being carried out. Because certain Indigenous Nations have consultative roles in the "section 106 process" with respect to the proposed project, these Indigenous Nations have been invited to concur with the PA. By concurring with the PA, an Indigenous Nation would thereby attain concurring "party" status under the PA.

The PA in effect attempts to coerce the Ihanktonwan Dakota and other Indigenous Nations to consent to its terms. Section X of the PA addresses the resolution of disputes regarding proposed actions or the manner in which the terms of the PA are implemented. However, the right to object under this provision is reserved for signatory parties, invited signatories, and concurring parties. Because the Ihanktonwan Dakota, or "Yankton Sioux Tribe," disagreed with the terms of the PA and therefore refused to sign the PA as a concurring "party," it has been afforded no rights to dispute resolution under the PA. Because the Ihanktonwan Dakota refused compromise its principles, it was forced to forgo such rights. This provision, like the PA as a whole, is unconscionable and unlawful.

Only the federal agencies and SHPOs have the power to stop the PA from going into effect. Only federal and state agencies, SHPOs, and TransCanada have the power to seek amendments or terminate the PA. Because DOS did not designate Indigenous Nations as signatory parties or invited signatories, the Ihanktonwan Dakota, or “Yankton Sioux Tribe,” has none of these rights.

The State Department’s designation of the status of Indigenous Nations as inferior to the status of federal agencies, state agencies, and even TransCanada, as well as its blatant attempt to coerce tribal concurrence with the PA, violate treaties, the U.S. Constitution, federal statutes, federal regulations, and President Obama’s directive to his own administration. The Presidential Permit application review process must therefore be halted immediately unless and until such defects have been remedied.

V. Premature Release of the Federal Supplemental Environmental Impact Statement

Finally, the Final Environmental Impact Statement fails to take into account all relevant and necessary information because it was released prematurely, before all such information had become available. The FSEIS shows that more than 1,015 acres of the proposed project area have not yet been properly surveyed. 36 C.F.R. § 800.2(c)(2)(ii)(A) requires the State Department to ensure that the Ihanktonwan Dakota Nation is provided “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, [and] articulate its views on the [proposed project’s] effects on such properties...” No such opportunity was provided with respect to the lands that have not yet been surveyed, as the survey itself is an integral part of this process. The FSEIS does not give a precise figure for the unsurveyed area, as even the amount of land unsurveyed remains “undetermined.” This is not the only information that should be included in the FSEIS but that instead has yet to be determined. “Attachment I” to the PA, titled “Summary of Government-to-Government Consultation with Indian Tribes Since September 2012,” states that “[Number TBD] Indian tribes informed the DOS that they would like to sign as Concurring Parties.” The FSEIS was clearly issued prematurely, as significant amounts of crucial information were not yet available at the time of its issuance and therefore were excluded from the State Department’s analysis of the proposed project.

In addition, the FSEIS does not analyze the pipeline’s impact on tribal reserved water rights. The Ihanktonwan Dakota water rights claim is premised upon the *Winters* decision or the reserved rights doctrine. An implied reserved water right for an Indigenous Nation will be found where it is necessary to fulfill the purposes of the tribal land. *See U.S. v. Winters*, 207 U.S. 564

(1908). However, the FSEIS does analyze the water supply for the thirty-three (33) water pumps that will be installed in the Treaty territory and how this will impact tribal reserved water rights. Furthermore, the FSEIS ignores the impact of an oil spill on *Winters* rights, water rights that superior to the rights of subsequent appropriations. The FSEIS is inadequate because it fails to consider the impacts to Ihanktonwan Dakota water rights that will result from construction of the pipeline or an oil spill.

Too many rights are at stake, and too many laws have been violated during this process, for a National Interest Determination to be made at this time. The State Department has a duty both to the Ihanktonwan Dakota and to the American people in general to fulfill its responsibilities as the “lead agency” and conduct itself as such according to law. Furthermore, President Obama has a duty both to the Ihanktonwan Dakota and to the American people in general to refrain from making any decision regarding the National Interest Determination for the proposed project until after the State Department has resolved the problems identified above through true nation-to-nation consultation with Indigenous Nations, securing all relevant information, and providing an unbiased assessment of all such information in accordance with law.

For the health, safety, and welfare of the American people, and in the interest of protecting the rights of Indigenous Nations and the integrity of treaties and the U.S. Constitution, the State Department and the President of the United States must ultimately conclude that the proposed Keystone XL pipeline project is NOT in the national interest.

Yankton Sioux Tribe
Resolution No. 2014-041,
Attachment 2 to the March 10,
2014 Comment Submission



OFFICERS:
ROBERT FLYING HAWK, CHAIRMAN
JEAN ARCHAMBEAU, VICE CHAIRWOMAN
GLENFORD "SAM" SULLY, SECRETARY
LEO O'CONNOR, TREASURER

COUNCIL:
QUENTIN "JB" BRUGUIER JR.
JASON COOKE
EVERDALE SONGHAWK
JUSTIN SONGHAWK
MONA WRIGHT

**YANKTON SIOUX TRIBE
RESOLUTION NO. 2014-041**

- WHEREAS:** The Yankton Sioux Tribe is an unincorporated Tribe of Indians that is not subject to the Indian Reorganization Act of 1934; and
- WHEREAS:** The Yankton Sioux Tribe is an unincorporated Tribe of Indians operating under an amended Constitution and By Laws approved on April 24, 2963; June 16, 1975 and March 23, 1990: and
- WHEREAS:** The General Council is the inherent governing body of the Yankton Sioux Tribe and is the body that represents any Nation to Nation consultations, unless other parties have been designated for each specific purpose; and
- WHEREAS:** The Yankton Sioux Tribe's Business and Claims Committee is the elected body constituted for the purpose of conducting day to day business of and serving the best interest of the Yankton Sioux Tribe; and
- WHEREAS:** the United States Department of State has proposed the construction of the Keystone XL pipeline for transporting tar sands sludge across Alberta Canada to Nebraska; and
- WHEREAS:** The Yankton Sioux Tribe's General Council has enacted several resolutions since 2008 opposing the KXL Pipeline and in 2013 created an International Treaty against the KXL and Tar Sands which has been signed by other Native Nations (attached); and
- WHEREAS:** The proposed construction route of the TransCanada XL Pipeline crosses lands within and adjacent to the lands within the Treaty boundaries of 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie. The tribal nations of the Great Sioux Nation, Oceti Sakowin have retained aboriginal and treaty rights to those lands, including protection of grave sites and sacred sites, (Native American Graves Protection and Repatriation Act, 25 U.S.C. Section 3001 et. seq., Pub. L. 101-601), protection of cultural, religious and historical sites, (National Historic Preservation Act of 1966, 16 U.S.C. Section 470 et. seq., Pub. L. 89-665), and protection of the Oglala Aquifer from contamination of potential catastrophic levels, and protection of our lands and waters on the tribal aboriginal treaty lands from desecration from tar sands sludge spills. **The**

Yankton Sioux maintains that they retain this aboriginal and treaty rights in the 1851 Treaty area, which includes western South Dakota and a part of Nebraska.

WHEREAS: Appendix A of the Tribal Monitoring Plan, amended Programmatic Agreement, includes a map of the proposed construction route of the Keystone XL Pipeline, mistakenly identifies only the area of Tripp County as an area of tribal concern of the Yankton Sioux Tribe. This is a mistake as the whole western area of South Dakota is an area that lies within the original boundaries of the 1851 Treaty of which Yankton and other Lakota Tribes such as Rosebud are Signators. The 1868 Treaty of Fort Laramie contains tracts of tribally-owned and allotted lands within the jurisdiction of the Rosebud Sioux Tribe enhancing the need for their presence. We affirm that both tribes retain aboriginal and treaty rights to all areas affected by the Keystone. This stance is supported by the legislation enacted by the Native American Graves Protection and Repatriation Act. Yankton is committed to working with Lakota tribes to protect these rights.

WHEREAS: The construction corridor would run through areas in close proximity to the Rosebud Sioux Tribe Reservation and cross lands within and adjacent to the lands within the Treaty boundaries of 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie.; and

WHEREAS: By Article 2 of the 1851 Fort Laramie Treaty the Dahcotah Nation (Yankton Sioux) “do hereby recognize the right of the United States Government to establish roads, military and other posts within our respective territories” but such acknowledgement does not include the XL pipeline; and

WHEREAS: “In consideration of the rights and privileges acknowledged in the preceding article, the United States bind themselves to protect the aforesaid Indian nations against the commission of all deprivations”; and

WHEREAS: The Yankton Sioux Tribe joins the Rosebud Sioux Tribe, Oglala Sioux Tribe, Crow Creek Sioux Tribe, Cheyenne River Tribe, Lower Brule Tribe, Standing Rock Tribe and Santee Tribe on behalf of the twenty-five original members of the Oceti Sakowin, Great Sioux Nation, to state their unified opposition to the proposed construction of the TransCanada XL Pipeline; and

WHEREAS: The Yankton Sioux Tribe officially acknowledges the amended Programmatic Agreement should recognize the Rosebud Sioux Tribe as the tribe that should be consulted pursuant to the Section 106 process, National Historic Preservation Act; and the Yankton Sioux Tribe pursuant to the 1851 Treaty and aboriginal lands; and

WHEREAS: The Yankton Sioux Tribe officially does not acknowledge the amended Programmatic Agreement as representative or helpful to the rights of the Yankton Sioux Tribe and has submitted continual comments to the Department of State objecting to such flawed Programmatic Agreement; and

WHEREAS: The Yankton Sioux Tribe continues to seek Nation to Nation consultation with the Department of State with our General Council of the Yankton Sioux Tribe pursuant to the Section 106 process, National Historic Preservation Act; and

WHEREAS: We assert that this consultation needs to take place on Yankton Sioux lands, nation to nation; and

WHEREAS: The amended PA does not meet the goal of consultation required by Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 et. seq., with the proper Indian Tribe, to identify historic properties potentially affected by construction of the Keystone XL Pipeline, assess its affects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

WHEREAS: The Yankton Sioux Tribe opposes the construction of the Keystone XL Pipeline for the protection of treaty and aboriginal rights and protection of cultural, historic and burial sites that may be located within the boundaries of member Nations of the Great Sioux Nation, and the Yankton Sioux Tribe is a signatory band to the 1851 Treaty of Fort Laramie, a treaty between the Great Sioux Nation and the United States and reaffirms its continuing opposition to the construction of the Keystone XL Pipeline; and

THEREFORE BE IT RESOLVED, the Yankton Sioux Tribe objects to and refuses to sign the amended PA for the construction of the Keystone XL Pipeline and furthermore objects to the Environmental Impact Statement finding no significant impact on cultural, historic and burial sites that may be destroyed by the construction of Keystone XL Pipeline; and

BE IT ALSO RESOLVED, that the Yankton Sioux Tribe authorizes and directs the Chairman of the Yankton Sioux Tribe or his authorized delegate to respond to the United States Department of State's Environmental Impact Statement finding no significant impact on cultural, historic and burial sites that may be destroyed by the construction of Keystone XL Pipeline; and

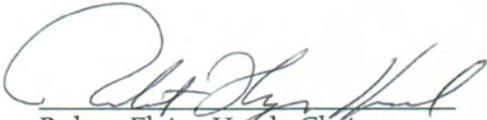
BE IT FURTHER RESOLVED, that comments will also be submitted by the Treaty Council of the Yankton Sioux Tribe in support of the official tribal position; and

BE IT FURTHER RESOLVED, that Robert Flying Hawk, Chairman and Glenford "Sam" Sully, Secretary of the Yankton Sioux Tribe's Business and Claims Committee are hereby authorized to execute documents on behalf of the Yankton Sioux Tribe.

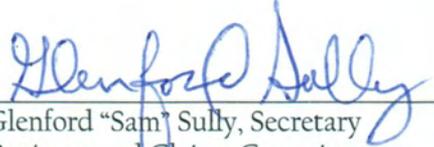
CERTIFICATION

THIS IS TO CERTIFY AND AFFIRM, the above and foregoing resolution was duly authorized and passed by the Yankton Sioux Tribe's Business and Claims Committee on the 10 day of March, 2014 at a meeting held at Tribal Headquarters, Wagner, South Dakota on the Yankton Sioux Reservation, by a vote of 4 in favor, 0 opposed, 1 abstain, 4 absent, MOTION CARRIED.

ATTEST



Robert Flying Hawk, Chairman
Business and Claims Committee
Yankton Sioux Tribe



Glenford "Sam" Sully, Secretary
Business and Claims Committee
Yankton Sioux Tribe

Yankton Sioux Tribe
Resolution NO. 2014-042,
Attachment 3 to the March 10,
2014 Comment Submission

OFFICERS:
ROBERT FLYING HAWK, CHAIRMAN
JEAN ARCHAMBEAU, VICE CHAIRWOMAN
GLENFORD "SAM" SULLY, SECRETARY
LEO O'CONNOR, TREASURER



COUNCIL:
QUENTIN "JB" BRUGUIER JR.
JASON COOKE
EVERDALE SONGHAWK
JUSTIN SONGHAWK
MONA WRIGHT

**YANKTON SIOUX TRIBE
RESOLUTION NO. 2014-042**

- WHEREAS:** The Yankton Sioux Tribe is an unincorporated Tribe of Indians that is not subject to the Indian Reorganization Act of 1934; and
- WHEREAS:** The Yankton Sioux Tribe is an unincorporated Tribe of Indians operating under an amended Constitution and By Laws approved on April 24, 1963; June 16, 1975 and March 23, 1990; and
- WHEREAS:** The General Council is the inherent governing body of the Yankton Sioux Tribe and is the body that represents any Nation to Nation consultations, unless other parties have been designated for each specific purpose; and
- WHEREAS:** The Yankton Sioux Tribe's Business and Claims Committee is the elected body constituted for the purpose of conducting day to day business of and serving the best interest of the Yankton Sioux Tribe; and
- WHEREAS,** the United States Department of State has proposed the construction of the Keystone XL pipeline for transporting tar sands sludge across Alberta Canada to Nebraska; and
- WHEREAS:** The Yankton Sioux Tribe's General Council has enacted several resolutions since 2008 opposing the KXL Pipeline and in 2013 created an International Treaty against the KXL and Tar Sands which has been signed by other Native Nations (attached); and
- WHEREAS,** The proposed construction route of the TransCanada XL Pipeline crosses lands within and adjacent to the lands within the Treaty boundaries of 1851 Treaty of Fort Laramie and the 1868 Treaty of Fort Laramie. The tribal nations of the Great Sioux Nation, Oceti Sakowin have retained aboriginal and treaty rights to those lands, including protection of grave sites and sacred sites, (Native American Graves Protection and Repatriation Act, 25 U.S.C. Section 3001 et. seq., Pub. L. 101-601), protection of cultural, religious and historical sites, (National Historic Preservation Act of 1966, 16 U.S.C. Section 470 et. seq., Pub. L. 89-665), and protection of the Oglala Aquifer from contamination of potential catastrophic levels, and protection of our lands and waters on the tribal aboriginal treaty lands from desecration from tar sands sludge spills. **The**

Yankton Sioux maintains that they retain this aboriginal and treaty rights in the 1851 Treaty area, which includes western South Dakota and a part of Nebraska.

WHEREAS, Appendix A of the Tribal Monitoring Plan, amended Programmatic Agreement, includes a map of the proposed construction route of the Keystone XL Pipeline, mistakenly identifies only the area of Tripp County as an area of tribal concern of the Yankton Sioux Tribe. This is a mistake as the whole western area of South Dakota is an area that lies within the original boundaries of the 1851 Treaty of which Yankton and other Lakota Tribes such as Rosebud are Signators. The 1868 Treaty of Fort Laramie contains tracts of tribally-owned and allotted lands within the jurisdiction of the Rosebud Sioux Tribe enhancing the need for their presence. We affirm that both tribes retain aboriginal and treaty rights to all areas affected by the Keystone. This stance is supported by the legislation enacted by the Native American Graves Protection and Repatriation Act. Yankton is committed to working with Lakota tribes to protect these rights; and

WHEREAS, a previous Yankton THPO was coerced by the DOS to participate in a botched TCP survey which did not meet tribal or federal standards and was nothing more of a narrative of areas traveled. This individual was coerced to compromise any form of adequate identification of cultural historic properties on aboriginal, ancestral or ceded lands due to a flawed, confused, rushed and ever changing process driven by Transcanada. This THPO has been discharged from their duties and the narrative is not recognized by the Yankton Sioux Tribe as a valid TCP. We hereby reject its existence as a valid document as it was not approved by the General Council. This is a reflection of Transcanada not respectful of tribal governmental processes which has affected not only Yankton, but Rosebud and other affected Lakota tribes. The refusal of Transcanada and their contractors to communicate intertribally has prevented tribes from sharing important relevant information on historic properties and contributes to division.

WHEREAS: The Yankton Sioux Tribe has repeatedly reiterated the need for a new survey of the KXL corridor to include areas of Yankton 1851 Treaty land and aboriginal areas that were not properly surveyed and the Department of Justice has not replied to Yankton's requests; and

THEREFORE BE IT RESOLVED, the Yankton Sioux Tribe objects to and refuses to sign the amended PA for the construction of the Keystone XL Pipeline and furthermore objects to the Environmental Impact Statement finding no significant impact on cultural, historic and burial sites that may be destroyed by the construction of Keystone XL Pipeline **because an adequate survey of affected lands has not been conducted and no intertribal cooperation was allowed.**

BE IT ALSO RESOLVED, that the Yankton Sioux Tribe authorizes and directs the Chairman of the Yankton Sioux Tribe or his authorized delegate to respond to the United States Department of State's Environmental Impact Statement finding no significant impact on cultural, historic and burial sites that may be destroyed by the construction of Keystone XL Pipeline; as reiterated in other resolutions.

BE IT FINALLY RESOLVED, that Robert Flying Hawk, Chairman and Glenford "Sam" Sully, Secretary of the Yankton Sioux Tribe's Business and Claims Committee are hereby authorized to execute documents on behalf of the Yankton Sioux Tribe.

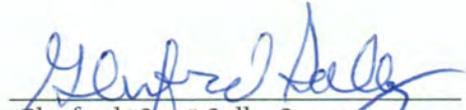
CERTIFICATION

THIS IS TO CERTIFY AND AFFIRM, the above and foregoing resolution was duly authorized and passed by the Yankton Sioux Tribe's Business and Claims Committee on the 6 day of March, 2014 at a meeting held at Tribal Headquarters, Wagner, South Dakota on the Yankton Sioux Reservation, by a vote of 4 in favor, 0 opposed, 1 abstain, 4 absent, MOTION CARRIED.

ATTEST



Robert Flying Hawk, Chairman
Business and Claims Committee
Yankton Sioux Tribe



Glenford "Sam" Sully, Secretary
Business and Claims Committee
Yankton Sioux Tribe

January 11, 2015 Great Plains
Tribal Chaiman's Association
Letter to President Obama
Regarding Veto Legislation to
Approve the Keystone XL
Pipeline



GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION

Mailing Address: US Post Office Box 988, Rapid City, SD 57701

Phone: (605) 721-6168

Physical Address: 321 Kansas City Street, Rapid City, SD 57701

Fax: 605) 721-6174

January 11, 2015

The Honorable Barack Obama
President
United States of America
1600 Pennsylvania Avenue NW
Washington, DC 20500

RE: Veto Legislation to Approve the Keystone XL Pipeline and DO NOT Approve a Permit for the Pipeline.

Dear President Obama:

The Great Plains Tribal Chairman's Association (GPTCA) is made up of the 16 Sovereign American Indian Tribes in the States of North Dakota, South Dakota and Nebraska. All of our Tribes have signed Treaties with the United States in which the United States pledged to protect Indian Tribes, guarantee the right to Self-Government and obligated itself to undertake Trust Responsibility. The Great Plains Tribal Chairman's Association stands in solidarity with the First Nations of Canada and with Tribal Nations in the United States in opposing the Keystone XL pipeline

We are writing to alert you that TransCanada Keystone Pipeline, LP (TransCanada) is in the midst of the recertification process of its 2010 permit from the South Dakota Public Utilities (SDPUC) for the Keystone XL pipeline. While we are aware the Nebraska Supreme Court issued a decision to vacate a lower court decision that held a Nebraska statute concerning the Keystone XL pipeline unconstitutional, we write to urge you to consider the fact that TransCanada's permit to traverse South Dakota is still under review and does not authorize construction of the project in South Dakota unless and until the SD PUC grants certification.

Four Federally Recognized Tribes have signed on as Party Intervenors in the SD PUC proceedings as well as numerous Native and nonnative concerned citizens. The Tribes include the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe and the Yankton Sioux Tribe. Other Great Plains Tribes are poised to comment and are monitoring the proceedings. The pipeline is planned to traverse through our homelands that still possess substantial treaty obligations, cultural and natural resources and water rights for all the Great Plains tribes. These are also the homelands of numerous animals, birds and fish including several endangered species.

Under South Dakota law, TransCanada must declare that the conditions under which the permit was issued in 2010 remain the same despite submitting along with its application a matrix of 30 Changed Conditions. These 30 Changed Conditions show that significant design and construction changes are planned for the pipeline that make it substantially different in our eyes. The 2010 permit was also issued with 50 Special Permit Conditions that TransCanada also must prove it still meets before it can legally

commence construction of the project. While there is an evidentiary hearing currently set for May 2015, it is unclear when a final decision will be issued in that case.

We therefore urge you, consistent with your stance on the previously pending Nebraska litigation, to refrain from making any decision regarding whether the Keystone XL pipeline would be in the national interest until you have all the necessary facts before you. Tribal leaders request you deny the permit as contrary to the national interest.

It is the position of the GPTCA that your administration does in fact have incontrovertible evidence that the proposed Keystone XL pipeline would be a detriment to the American public and the national interest regardless of whether the SD PUC ultimately authorizes construction under TransCanada's 2010 permit due to the risks the project poses regardless of the particular route through South Dakota. The GPTCA urges you to deny the Presidential Permit for the reasons set forth in the attached GPTCA Resolution among others. However, should you have reservations about denying the Presidential Permit at this time, please grant South Dakota the same respect you accorded Nebraska and refrain from making your decision until after the legal processes regarding the South Dakota permit have been resolved. We strongly urge you to veto any legislation passed by Congress that mandates the issuance of a presidential permit to TransCanada. We believe, consistent with federal separation of powers, that a decision to deny TransCanada a federal permit must be made by your Executive branch and it is not appropriate for legislation.

We further assert that construction of any pipeline violates the Fort Laramie Treaties of 1851 and 1868, which impact the greater population of the Oceti Sakowin or the Seven Council Fires of the Lakota, Dakota and Nakota Tribes. We are known to many as the Great Sioux Nation and are the keepers of the sacred, cultural and natural resources located in the KXL corridor. Literally, thousands of sacred and cultural resources that are important to our life-ways and for our future generations will potentially be destroyed or compromised by the pipeline construction. Many of these sacred sites have not been surveyed by outsiders less they be looted or plundered but are known to those designated by our people considered to be sacred keepers of this knowledge. The Programmatic agreement entered into for compliance with the National Historic Preservation Act acknowledges that construction of the pipeline would cause destruction to many sacred and cultural sited.

With regards to our tribal federally reserved water rights in the Great Plains Basin, the pollution risk via benzene and other carcinogens from the tar sands sludge spilling into the tributaries that lead into the Missouri River or leaching into the Oglala Aquifer, should a pipeline break occur, is too great. The Missouri River is the source of drinking water for many communities along the Missouri River main-stem. The Oglala Aquifer supplies drinking water throughout the Great Plains region. All of this development further impacts reserved rights of our Oceti Sakowin which were unceded by treaties, including the right to live in a safe manner and be in control of our human, cultural and natural resources as outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Consultation has not occurred in a manner that recognizes free, prior and informed consent for the construction of this pipeline. We believe it is our Human Right to live safely on our homelands with clean water and lands.

Very importantly, the KXL Pipeline and the continued development of the Alberta tar sands will increase the carbon footprint in our sacred lands for the enrichment of foreign countries and oil companies. As you know, climate change will impact and affect all of us including the generations to come unless we do something to stop it now. The Oceti Sakowin tribes are making important strides toward renewable energy with the Oceti Sakowin Power Project (OSPP) that recognizes fossil fuels are relics that contribute to phenomenal climate change. The OSPP leaders met with the White House representatives in our effort to turn the tide against globing warming through solar and wind development on our lands. We do not

have to be held prisoners of fossil fuels but can create stories of redemption for Mother Earth through exciting renewals development, not in the future but now.

Because of the dire concerns outlined above, we request an emergency meeting with Department of Interior Secretary Sally Jewell, who as our Trustee, has a responsibility to hear directly from tribal leaders in a government-to-government meeting. We are prepared to put forth our concerns for inclusion in the forthcoming Final Environmental Impact Statement (FEIS) regarding the impacts the Keystone XL pipeline may have on Tribal homelands as well as our sacred sites, cultural resources, natural resources and water rights protected by treaty and other agreements.

The Executive Director of the GPTCA, Ms. Gay Kingman-Wapato, is the contact for the GPTCA and is empowered to work with your administration staff to coordinate a meeting at Secretary Jewell's earliest convenience. She can be reached at Cell: 605-484-3036 or e-mail, Kingmanwapato@rushmore.com

Sincerely,

A handwritten signature in black ink that reads "John Steele". The signature is written in a cursive style with a large, sweeping initial 'J'.

John Steele
President, Oglala Sioux Tribe
Chairman, Great Plains Tribal Chairman's Association

cc: Interior Dept. Secretary Sally Jewell
State Dept. Secretary John Kerry
Senator John Thune (R-SD)
Senator Michael Rounds (R-SD)
Congresswoman Kristi Noemi (R-SD)
Senator Lisa Murkowski (R-AK)
Senator Heidi Heitkamp (D-ND)
Senator John Hoeven (R-ND)
Congressman Kevin Cramer (R-ND)
Senator Deb Fisher (R-NE)
Senator Ben Sasse (R-NE)
Congressman Jeff Fortenberry (R-NE)
Congressman Brad Ashford (D-NE)
Congressman Adrian Smith (R-NE)
Ms. Jodi Gillette
GPTCA member Tribes

Great Plains Tribal Chairman's
Association Resolution No. 30-
9-928-11



GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION

1926 Stirling St, Rapid City, SD 57702

Phone: 605-388-5375 Fax: 605-343-3074

Resolution No. 30-9-28-11

GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION (GPTCA)

Opposition to Keystone XL ("Keystone II") Pipeline now being considered for authorization by the United States Department of State, on the basis that construction of such pipeline is not in the national interests of the United States

WHEREAS, The Great Plains Tribal Chairman's Association (GPTCA) is composed of the elected Chairs and Presidents of the 16 Sovereign Indian Tribes and Nations recognized by Treaties with the United States that are within the Great Plains Region of the Bureau of Indian Affairs; and

WHEREAS, The Great Plains Tribal Chairman's Association was formed to promote the common interests of the Sovereign Tribes and Nations and their members of the Great Plains Region which comprises the states of North Dakota, South Dakota, Nebraska; and

WHEREAS, The United States has obligated itself both through Treaties entered into with the sovereign Tribes and Nations of the Great Plains Region and through its own federal statutes, the Snyder Act of 1921 as amended, the Indian Self-Determination Act of 1976 as amended, and the Indian Health Care Improvement Act of 1976 as amended; and

WHEREAS, Indian Tribes are governments that pre-date the United States, and through the Indian Commerce, Treaty and Apportionment Clauses and the 14th Amendment, the United States recognizes the status of Indian Tribes as sovereigns and the status of American Indians as tribal citizens; and

WHEREAS, In treaties, the United States pledged to protect Indian Tribes, guaranteed the right of Tribal self-government, and has undertaken a trust responsibility to promote the viability of Indian reservations and lands as permanent homelands for tribes; and,

WHEREAS, On September 28, 2011, the Tribal Chairmen and the Tribal Council representatives from the Tribal Nations that are members of the Great Plains Tribal Chairman's Association, have been meeting at the GPTCA/BIA/USACE Tribal Water Management Summit , discussing issues of great importance to the Indian Tribal Nations of the Great Plains Region and their members; and

WHEREAS, a major oil transmission pipeline is planned to extend from northern Alberta, Canada, from areas that have sand mixed with tar and oil, called "tar sands", to refineries in the United States; and

WHEREAS, the route of the pipeline, called Keystone II, or Keystone XL, because it is the second oil transmission pipeline to be constructed by the same company that built the first Keystone pipeline, crosses through Indian country in northern Alberta, Saskatchewan, Montana, North Dakota, South Dakota and Nebraska, near and potentially over, many culturally significant areas for Tribal Nations within those provinces and states; and

WHEREAS, based on the relatively poor environmental record of the first Keystone pipeline, which includes numerous spills, U.S. regulators shut the pipeline down in late May, 2011, and, therefore, based on the record of the first Keystone pipeline, and other factors, it is probable that further environmental disasters will occur in Indian country if the new pipeline is allowed to be constructed; and

WHEREAS, the First Nations of Canada, representing the vast majority of First Nations impacted by "tar sands" development, have unanimously passed resolutions supporting a moratorium on new "tar sands" development and expansion until a "cumulative effects management system" is in place, and are also in opposition to the pipeline; and

WHEREAS, many U.S. Tribal Nations are also in opposition to the Keystone XL pipeline, including several Tribal Nations in the Great Plains, because it would threaten, among other things, the Oglala aquifer and other major water aquifers, rivers and water ways, public drinking water sources, including the Mni Wiconi Rural Water System, agricultural lands, animal life, cultural sites, and other resources vital to the peoples of the region in which the pipeline is proposed to be constructed; and

WHEREAS, Indian tribes including the Affiliated Tribes of Northwest Indians are also in opposition to the Exxon-Imperial "Heavy Haul" proposal to transport "tar sands" equipment through the Nez Perce Reservation and across scenic highways, and several Indian tribes have joined in litigation to stop this proposal; and

WHEREAS, the pipeline is unnecessary as a number of other pipelines are not at full capacity to carry oil from Canada to refineries in the U.S., and the oil is also not likely to end up on the U.S. market but will be exported to foreign countries; and

WHEREAS, Tribal Nations and First Nations within Indian country near the route of the proposed pipeline have already stated their opposition to the proposed route of the pipeline, and because of earlier opposition from both Tribes and environmental groups, a supplemental environmental impact statement has been required by the United States Environmental Protection Agency from the

proposed operators of the pipeline, a draft of which is now available for public comment; and

WHEREAS, since the pipeline is designed to cross the U.S.-Canadian border, the United States Department of State is the lead U.S. agency in evaluating whether the pipeline should be allowed to be constructed in the U.S.; and

WHEREAS, the First Nations of Canada and Tribal Nations within the U.S. have a long history of working to ensure protection of their environment, and the Keystone XL pipeline poses grave dangers if it is constructed; and

WHEREAS, the U.S. Department of State is continuing to accept public comments until October 7, 2011, but despite the concerns of the numerous Tribal Nations and the First Nations of Canada has recently received notice from the U.S. Environmental Protection Agency of a “Finding of No Significant Impact” from the proposed pipeline; and

WHEREAS, the U.S. Department of State did not properly consult with the Tribes along the route of the Keystone XL Pipeline and, as a result of the mechanisms used for what consultation was provided, the affected Tribal Nations were not provided the opportunity for “free and informed consent” regarding the construction of the pipeline; and

WHEREAS, the GPTCA hereby urges all its member Tribal Nations to submit comments to the U.S. Department of State regarding the Keystone XL project as not in the tribal nor the national interest; and

WHEREAS, Tribal Government Chairs and Presidents, Traditional Treaty Councils, and US property owners, met with the First Nations Chiefs of Canada, impacted by TransCanada’s proposed Keystone XL tar sands pipeline and tar sands development present at the Rosebud Sioux Tribe Emergency Summit, September 15-16, 2011, on the protection of Mother Earth and Treaty Territories, developed the Mother Earth Accord for sign on by all First Nations and Tribal Nations.

NOW, THEREFORE, BE IT RESOLVED, that the Great Plains Tribal Chairman’s Association stands in solidarity with the First Nations of Canada and with Tribal Nations in the United States in opposing the Keystone XL pipeline and the Exxon-Imperial Heavy Haul proposal and their negative impacts on cultural sites and the environment in those portions of Indian country over and through which it is proposed to be constructed, and disagrees with the Finding of No Significant Impact issued by the U.S. Environmental Protection Agency, and agrees to file these comments regarding this opposition to the Keystone XL pipeline with the Secretary of State as soon as possible; , and

BE IT FURTHER RESOLVED that the Great Plains Tribal Chairman’s Association approves the Mother Earth Accord among the First Nations of Canada and the Tribal Nations within the United States; and

BE IT FURTHER RESOLVED that the United States is urged to reduce its reliance on the world’s dirtiest and most environmentally destructive form of oil – the “tar sands” – that threatens Indian country in both Canada and the United States and the

way of life of thousands of citizens of First Nations in Canada and American Indians in the U.S., and requests the U.S. government to take aggressive measures to work towards sustainable energy solutions that include clean alternative energy and improving energy efficiency; and

BE IT FINALLY RESOLVED that the Great Plains Tribal Chairman's Association requests a meeting with the Tribal Leaders and Hilary Clinton, Secretary of State, and the Administration to present the Mother Earth Accord and voice the concerns of the US Tribal Nations and the First Nations of Canada opposing the construction of the Keystone XL Pipeline across Treaty Lands as not in the national interest.

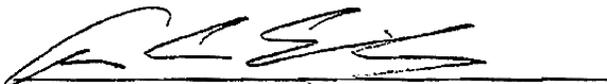
NOW, THEREFORE BE IT FINALLY RESOLVED that this resolution shall be the policy of the Great Plains Tribal Chairman's Association until otherwise amended or rescinded or until the goal of this Resolution has been accomplished.

Resolution No. 30-9-28-11

CERTIFICATION

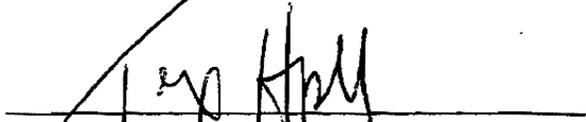
This resolution was enacted at a duly called meeting of the Great Plains Tribal Chairman's Association held at Rapid City, SD on September 28, 2011 at which a quorum was present, with 10 members voting in favor, 0 members opposed, 0 members abstaining, and 6 members not present.

Dated this 28th. Day of September, 2011.



**Secretary,
Great Plains Tribal Chairman's Association**

Attest:



**Chairman, Tex Hall, Chairman, Mandan, Hidatsa and Arikara Nations (Three
Affiliated Tribes)
Great Plains Tribal Chairman's Association**

Meeting Request to Secretary
Jewell regarding the Keystone
XL Pipeline

Dear Secretary Jewell:

I am writing on behalf of the 16 Sovereign American Indian Treaty Tribes in the States of North Dakota, South Dakota, and Nebraska, who are members of the Great Plains Tribal Chairmen's Association, to urgently request a meeting with you, next week, to discuss our very real concerns regarding the forthcoming National Interest Determination on the Keystone XL Pipeline. We have been advised that the U.S. State Department has given the Department of the Interior (DOI) until February 2, 2015 to submit its comments on this critically important document yet, to date, our Tribes have not been afforded meaningful tribal consultation with the State Department, DOI, or any other relevant federal agency on this important matter.

As our Trustee, DOI has a specific duty to insure that its comments and positions on this National Interest Determination accurately reflect the very real potential impacts that this Project may have on our historical Tribal homelands, sacred sites, cultural resources and water rights, all of which are protected by applicable federal law and our Treaties with the United States. While many of our Tribes have submitted comments on this document, the State Department's unwillingness to sit down with us on a government to government basis to discuss our concerns has led us to question whether that Department really respects our legal roles as elected officials of federally recognized sovereign tribes. These concerns are so serious that the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, the Rosebud Sioux Tribe and the Yankton Sioux Tribe have all become party interveners in the South Dakota Public Utility Commission's proceedings challenging its 2010 action permit for this project.

Madame Secretary, we know that you have many important demands on your schedule, but meaningful government to government consultation, especially on matters of this importance, is assured to us by President Obama's Tribal Consultation policy of November 5, 2008, as well as by Executive Order Number 13175. President Clinton issued that Executive Order to "establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications [and] to strengthen the United States government-to-government relationship with Indian tribes" (emphasis added). President Obama re-committed federal agencies to this duty through a Memorandum for the Heads of Executive Departments and Agencies issued on November 5, 2009, in which he declared: "My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through a complete and consistent implementation of Executive Order 13175" (emphasis added). To prepare final DOI comments on a document of this magnitude without affording us the opportunity for a *meaningful* face to face/government to government meeting is a flagrant violation of President Obama's directive in 2009 and of the commitments President Obama has made to us as recently as last December.

Our tribal leaders can be available in Washington, D.C. anytime next week and we will be prepared to present a clear and concise set of points. Please make every effort to fit this important tribal meeting into your schedule. At that time, we will be prepared to present you with both oral and written comments that we believe must be included in your February 2, 2015 response to the U.S. Department of State.

Because she is located in Washington, D.C., and we have a time difference, we have asked tribal attorney Patricia Marks of the law firm of Fredericks, Peebles and Morgan, L.L.C. to assist our Executive Director Ms. Gay Kingman in coordinating this meeting with your office. Gay can be reached at 605-484-3036 or e-mail, kingmanwapato@rushmore.com and Patty Marks can be reached at 202-450-4887 and at email pmarks@ndnlaw.com.

Thank you in advance for your kind attention to this important request.

Cordially,

John Steele, President



Braegelmann, Carol <carol_braegelmann@ios.doi.gov>

Addressing the TransCanada Keystone Pipeline

1 message

Sydney Campbell <scampbell@fortpecktribes.net>

Wed, Jan 28, 2015 at 10:05 AM

To: "Carol_Braegelmann@ios.doi.gov" <Carol_Braegelmann@ios.doi.gov>

I had to reword the first response, It's not that we are against the whole project but Fort Peck Tribes is declining and against the relocation of the TransCanada Keystone Pipeline. The relocation of the pipeline is taking it over to the west end of the Fort Peck Reservation by the Fort Peck Dam & Spillway, rather than through the Fort Peck Reservation, which could be a major disaster for our natural & water resources, should anything happen to the pipeline such as breaks or leaks it would be causing major water contamination for the surrounding communities on the west end of our reservation. It also makes issues of employment come up as well for those who may want be employed to work on helping install the pipeline. Such as transportation, gas, mileage, weather, etc. If you have any questions from Fort Peck Tribes Chairman Stafne please give our office a call. Thank You.

Sydne E. Campbell

Chairman's Assistant

Fort Peck Tribes

P.O. Box 1027

Poplar, MT 59255

(406) 768-2301 Direct

(406) 768-5478 Fax

scampbell@fortpecktribes.net

On Tue, Jan 27, 2015 at 1:16 PM, <jmflysdwn@gmail.com> wrote:

January 27, 2015 1:27 PM

Melissa:

Prior to 1888, the Keystone Pipeline Route North of Missouri River to the Canadian Border, was part of the Blackfeet Indian Reservation. In short, the area is traditional Blackfeet Territory. Based upon the previous two sentences, and Blackfeet THPO's concern for the environment, in question, beyond archaeological sites for such cultural properties as plants communities, animal & avian migration and habitat, certain paint minerals and water, Blackfeet THPO is OPPOSED to the issuance of a Department of State or Presidential permit for the Keystone XL Pipeline.

John Murray, THPO
Blackfeet Tribe
P.O. Box 850
Browning, Montana 59417