



December 2, 2016

Mr. Emilio Álvarez Icaza Longoria
Executive Secretary
Inter-American Commission on Human Rights
1889 F. Street, N.W.
Washington, D.C. 20006

Re: Request for Precautionary Measures Pursuant to Article 25 of the IACHR Rules of Procedure Concerning Serious and Urgent Risks of Irreparable Harm Arising Out of Construction of the Dakota Access Pipeline

Honorable Mr. Álvarez:

By this request, the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, and the Yankton Sioux Tribe (the “Tribes”) respectfully request that this Commission call on the United States to adopt precautionary measures to prevent irreparable harm to the Tribes, their members, and others resulting from the ongoing and imminent construction of the Dakota Access Pipeline (“DAPL”), and from the harassment and violence being perpetrated against people gathered in prayer and protest in opposition to DAPL.

The construction and operation of DAPL would cause serious and irreparable harm to lands and waters that are sacred to the Tribes, central to the survival of their culture, and essential to their physical integrity and health. As such, granting the easement allowing the final stage of construction would cause imminent, serious and irreparable violations of the Tribes’ rights to culture, life, liberty and personal security, health, water, property, and equality before the law. Because the United States has failed to meaningfully consult with the Tribes in granting permits for the pipeline, or to perform an adequate assessment of the environmental and social effects of granting the permits, granting the final easement would also seriously and irreparably violate the Tribes’ rights to information and participation in government. Finally, ongoing and escalating violence and harassment of peaceful protesters by state and local police forces, and private security guards, and the continued failure of the United States to ensure the safety of the protesters, pose an immediate threat of grave and irremediable violation of the Tribes’ and others’ rights to life, liberty and personal security, health, peaceable assembly, association, and protection from arbitrary arrest.

I. Beneficiaries

The beneficiaries of this request are the members of the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, the Yankton Sioux Tribe, as well as some members of other tribes, and other individuals, peacefully praying and protesting in opposition to DAPL.

II. Facts

A. The Tribes and Their Lands and Waters

Since time immemorial, the *Oceti Šakowiy* – the “Seven Council Fires” or the Great Sioux Nation – has lived in the northern Great Plains of North America in what are now the states of North Dakota, South Dakota, Montana, Wyoming, and Nebraska. In two treaties signed in 1851 and 1868, the *Oceti Šakowiy* reserved land rights “set apart for the absolute and undisturbed use and occupation” of the Indians. The unilateral abrogation of these treaties and other acts of the U.S. government ultimately resulted in the creation of nine much smaller Sioux reservations, including the current Standing Rock, Cheyenne River, and Yankton Sioux Reservations.



Locations of the treaty lands, and of the Standing Rock Sioux, Cheyenne River Sioux, and Yankton Sioux reservations.

The Standing Rock Sioux Reservation in North Dakota and South Dakota is the sixth largest Indian reservation in the United States. The Standing Rock Sioux Tribe has approximately 18,000 enrolled members. The Cheyenne River Sioux Reservation is adjacent to the Standing Rock Sioux Reservation to the south. Like Standing Rock, Cheyenne River's eastern border is Lake Oahe. The Cheyenne River Sioux Reservation is the fourth largest Indian reservation in the United States. The Cheyenne River Sioux Tribe has 16,000 enrolled members. The Yankton Sioux Reservation borders the Missouri River in southern South Dakota. The Yankton Sioux Tribe has approximately 9,000 members.

The culture and identity of the Tribes are deeply connected to the land and waters of their traditional territories. Because of a history of colonization, dispossession, and genocidal government policies, the Tribes have lost, or nearly lost, important parts of their land, language, stories, and history. Their connection to sacred, cultural and historical sites associated with their traditional territories is essential to maintaining what remains of their culture and identity.

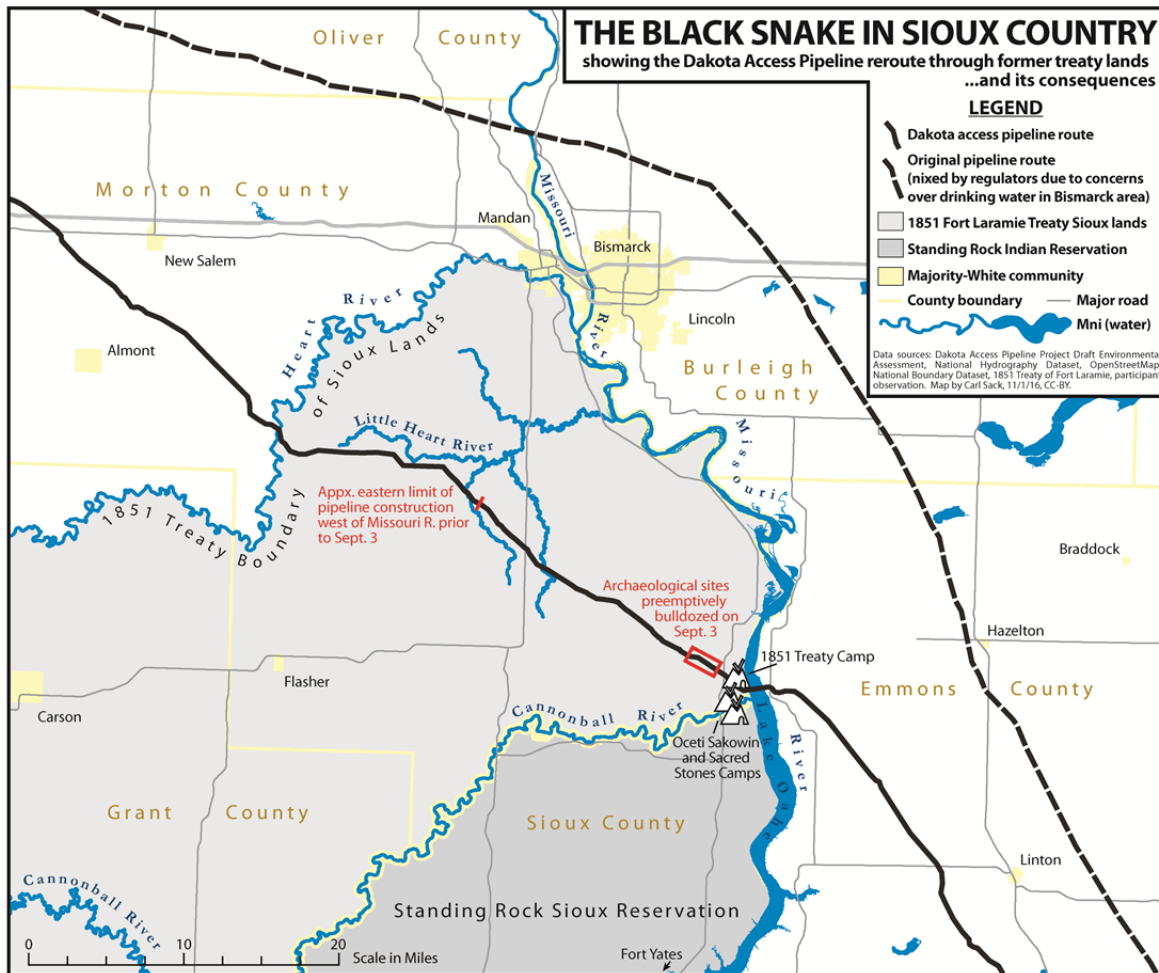
The Sioux understand that all beings are connected, that all life – the people, animals, and plants, the air, land, and water – has a spirit and is related. Central to this cultural and spiritual understanding is the Sioux's relation to water. Water is considered to be sacred medicine – *Mni Wiconi* or Water of Life. It is known as the “first medicine,” as we are all born from the water in our mothers' wombs. As part of their sacred obligation to the next seven generations, the Tribes are responsible for ensuring that the waters remain clean and uncontaminated. This concept is reflected in the Lakota saying, “*Le makoce kin teunkilapi sni ki, hehan un Lakotapi kte sni,*” “When we no longer cherish the land, we will no longer be Lakota.”

The waters of the Missouri River, or *Mni Šoše*, run through the heart of the Tribes' treaty territory. These waters are sacred to the Tribes and constitute the lifeblood of their spirituality and traditions. The treaties and legal doctrines that govern the Tribes' rights establish that the Tribes enjoy rights to waters that are clean and suitable for drinking, agriculture use, hunting, and fishing among other uses.¹ These property rights are subject to the special trust relationship between the United States and the Tribes which necessitates consultation when these rights and resources are threatened by federal action. The river provides drinking water for the people of all three reservations, and is a place where their members fish, swim, and conduct ceremonies. One of the Sioux's most important spiritual ceremonies, the Sun Dance, is often performed on the banks of the Missouri River.

B. The Dakota Access Pipeline

The Dakota Access Pipeline is a 1,168-mile-long pipeline that, if completed, would carry 570,000 barrels of crude oil daily from the Bakken region of North Dakota across four states to refineries in southern Illinois.² Dakota Access, LLC, a subsidiary of Texas-based Energy Transfer Partners, is building the pipeline. The pipeline intersects the treaty reservation and traditional territories of the Tribes, lands to which the Tribes continue to have strong cultural, spiritual, and historical ties.³ The pipeline also runs near the Missouri River, upstream of the water supply of numerous tribal nations, and crosses under the river at Lake Oahe, less than one

mile north of the Standing Rock Sioux Reservation and upstream from the primary water intake for the Standing Rock Sioux Tribe. The Cheyenne River Sioux Tribe also draws its drinking water directly from the Missouri River downstream of Standing Rock via a multi-million dollar federal-tribal water project called *Mni Wasté* or “good water.” The Yankton Sioux Tribe draws its drinking water from the Missouri River through two uptakes downstream of the proposed pipeline crossing, one in Pickstown, South Dakota, and another in Platte, South Dakota.



Source: Carl Sack

The U.S. Army Corps of Engineers (the “Corps”), an agency of the U.S. government, is responsible for issuing numerous permits necessary for construction of DAPL, including authorization to drill beneath the Missouri River at Lake Oahe. Before granting these permits, U.S. law requires that the Corps, in consultation with potentially affected indigenous peoples, assess potential environmental and social impacts of the project. This Commission has noted that international law requires the same.⁴ The Corps failed to adequately complete either form of assessment, or to include the participation of the Tribes, despite the Tribes’ consistent and continuing objection to construction of the pipeline because of the risks of irremediable harm its construction and operation pose to sacred and historical sites and resources, including the waters of the Missouri River.

This Commission has repeatedly indicated that when undertaking activities that affect indigenous peoples' right to property, it is necessary that the state ensure that the indigenous peoples have the opportunity to participate in the decision-making processes, have full information concerning the activities that might affect them, and have access to protection and judicial guarantees in case their rights are not respected.⁵ The Inter-American Court has specified that project assessments should be of a "social and environmental" character and "must go further than the strictly environmental impact studies normally required in order to evaluate and mitigate the possible negative impacts upon the natural environment" and allow the indigenous peoples to participate in the realization of prior environmental and social impact assessments.⁶ None of this occurred with respect to DAPL.

On February 17, 2015, almost six months *after* the Corps had selected a pipeline route – without tribal input – that put the Tribes' interests directly at risk, the Corps sent the Standing Rock Tribal Historical Preservation Office a generic form letter attempting to initiate a "consultation" as required under U.S. federal law.⁷ Immediately in response to the February 17 letter, and multiple times over the following months, the Standing Rock Sioux Tribe sent the Corps letters forcefully expressing concern about cultural impacts from DAPL, and seeking full consultation.⁸ Despite these letters, the Corps provided no response. After seven months of silence, on September 3, 2015, the Corps sent another form letter inquiring "if [the Tribe] would like to consult" and asking the Tribe to provide, within one month, any "knowledge or concerns regarding historic properties" that the Tribe wanted the Corps to consider.⁹ The Tribe again responded – twice – expressing its concerns and objections.¹⁰ On December 8, 2015, the Corps responded by approving a draft Environmental Assessment ("EA") that completely ignored the interests of the Tribes and incorrectly stated the Tribe's position on the project's impact on cultural resources.¹¹ Maps included in the draft EA omitted the presence of any tribal lands, and made no mention of the pipeline's proximity to the Standing Rock, Cheyenne River, or Yankton reservations, or that it would cross treaty lands. Since that time, although the tribal government has met with the Corps to discuss various issues, the Corps has failed to engage the Tribe in a good-faith or meaningful way.

The Cheyenne River Sioux Tribe also was not meaningfully consulted. Along with the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe participated in the public meeting process associated with the issuance of DAPL's permits and submitted technical comments on the environmental assessment of the Lake Oahe crossing. The Cheyenne River Sioux Tribe has repeatedly attempted to engage with the Corps on a government-to-government basis to discuss concerns related to DAPL. The Corps provided no more opportunity for real consultation with the Cheyenne River Sioux Tribe than it did for the Standing Rock Sioux Tribe.

In the case of the Yankton Sioux Tribe, there has been a complete absence of consultation or communication regarding DAPL's impact on cultural and natural resources.¹² After exchanging a series of letters through which the Yankton Sioux Tribe attempted to set a date for consultation with the Corps, the Tribe and the Corps finally agreed to meet on May 18, 2016.¹³ At that meeting, the Corps officials arrived late and stated that they only had a limited window of time to meet with the Tribe. The Corps and the Tribe therefore agreed that the May 18, 2016, meeting

would constitute a “pre-consultation” meeting, and that they would reconvene at a later date to conduct actual consultation.¹⁴ However, before the parties were even able to set a date for consultation, the Corps released the final EA with no input from the Yankton Sioux Tribe.¹⁵ Notably, the Yankton Sioux Tribe is not mentioned once in this document, highlighting the absence of assessment of the impacts of the project on the Tribe.

Without meaningful input from the Tribes or their experts, the Corps was unable to identify or understand the significance of cultural and spiritual resources that might be harmed by construction or operation of DAPL. In fact, when a former tribal historic preservation officer for the Standing Rock Sioux Tribe was finally invited to survey the pipeline route near the crossing at Lake Oahe on August 28, 2016, he documented five different cultural and religious sites, none of which had been recorded in previous archaeological surveys, including those done by paid consultants.¹⁶ These faulty cultural surveys had already been shown to have missed the discovery of significant religious and cultural sites directly in the pipeline’s proposed route in North Dakota and Iowa.¹⁷ For example, on October 17, 2016, pipeline officials found a previously undiscovered group of stone cairns – symbolic rock piles that traditionally mark burial grounds – on a site where construction was planned.¹⁸ Instead of stopping construction and notifying the proper authorities, Dakota Access continued work, only disclosing the existence of the sites ten days later when government officials inquired about the finding.

During the Corps’ consideration of the DAPL permits, three U.S. federal agencies expressed concerns about the Corps’ approval of DAPL in the absence of legitimate consultation and engagement with tribal governments. The Advisory Council on Historic Preservation described concern that the Corps’ lack of consultation regarding cultural resources violated domestic law, citing letters from the Tribes expressing objections to the project’s impacts on known burial sites and cultural artifacts.¹⁹ The Corps did not respond to these concerns for over seven months. The U.S. Environmental Protection Agency and the U.S. Department of the Interior also wrote letters questioning the Corps’ failure to meet the environmental review requirements for projects affecting indigenous natural resources, and calling for a full environmental impact statement that addresses DAPL’s threat to drinking water, which has yet to be completed.²⁰

Despite the lack of adequate social, cultural or environmental assessment, and the complete absence of consultation with or participation by the Tribes, on July 25, 2016, the Corps gave multiple domestic authorizations permitting the construction of DAPL. One such authorization permitted construction beneath the Missouri River at Lake Oahe, while another authorized the discharge of materials and waste into waters throughout the Tribes’ ancestral lands.

Construction of DAPL is over 90% complete. Final construction awaits only a single easement to allow drilling beneath the Missouri River at Lake Oahe. On September 9, 2016, in response to public outcry, lawsuits from the Tribes, and protest by thousands of water defenders, the federal government announced that it would consider whether to revisit its earlier decisions regarding the pipeline.²¹ Although the U.S. government claims to be considering rerouting the pipeline,²² the Tribes are aware of no concrete progress toward a rerouting plan, and a decision on the easement could take place at any time. Moreover, even if a rerouting plan were developed, there would be no time to implement it before U.S. President-elect Donald Trump takes office, at

which time his vow to “unleash” America’s oil reserves²³ and his financial ties to the DAPL parent company²⁴ strongly suggest that he will remove any remaining obstacles to completion of the pipeline.

C. Harassment and Violent Suppression of Water Defenders

The controversy surrounding DAPL has drawn thousands of people – members of the Tribes and many indigenous and non-indigenous members of civil society not formally associated with the Tribes – to the banks of the Missouri River outside of Cannon Ball, North Dakota, near where DAPL would cross under the river, for prayer and peaceful protest in defense of the lands, resources, cultural property, and waters threatened by DAPL. Spanning over 7 months, this gathering has been visited by representatives of indigenous communities from all over the world. At this point, the assembly represents the largest gathering of indigenous peoples in the United States in more than 100 years.

Although the Army Corps of Engineers granted a special use permit for gathering and demonstrations on a portion of land south of the Cannonball River,²⁵ the majority of the prayer and protest has taken place north of the Cannonball River, near where DAPL would cross the Missouri. Nevertheless, the entire gathering and all the prayers and protest are taking place on lands reserved to the Tribes by the 1851 Treaty of Fort Laramie.

The camp and all who visit have maintained a message of prayer and peace as they seek to protect the land and the water and uphold tribal sovereignty. The direct actions taken to protest DAPL have been almost completely non-violent and peaceful, despite continued escalation from law enforcement. The gathering has galvanized indigenous communities throughout the world, serving as a flashpoint for the shared experiences in protecting indigenous land and resources from extractive and infrastructure projects.



Photograph taken at DAPL protest, Sept. 3, 2016.
Source: Declaration of Ta’sina Sapa Win Smith (attached as Exhibit 17)

Despite the encampment’s foundation in peace and prayer, from its beginning, North Dakota state and county officials as well as private security employed by the pipeline company have threatened and violated the human rights of tribal members and their allies participating in the protests.²⁶ For example, North Dakota Governor Jack Dalrymple declared a “state of emergency” and deployed the Army National Guard to maintain a checkpoint on –

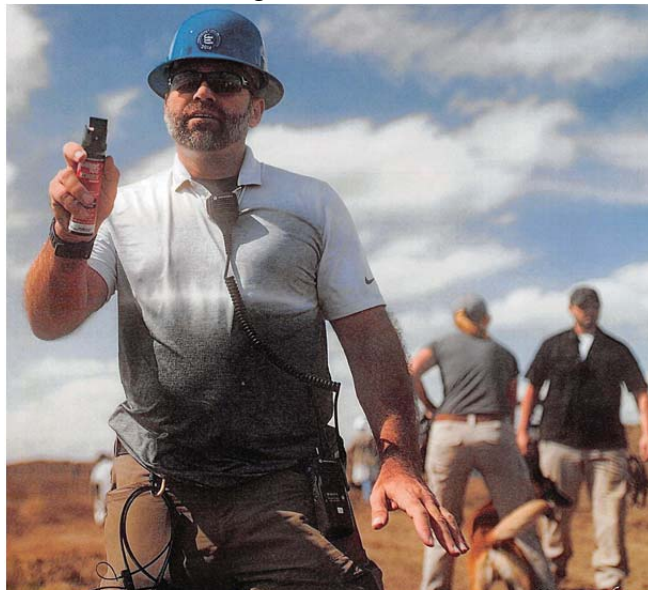
and periodically to block – Highway 1806, the primary road connecting the Standing Rock Sioux Reservation with Bismarck.²⁷

Members of the National Guard have used heavy-duty riot gear and military grade weapons to intimidate peaceful protesters.²⁸ Low-flying helicopters and planes operated by local law enforcement and private security companies have kept the protesters under constant surveillance, and there are reports that various law enforcement agencies have blocked cellular telephone service and recorded protesters' calls.²⁹ Private security forces hired by Dakota Access, LLC, the company developing DAPL, have attacked nonviolent demonstrators with pepper spray.³⁰ The private guards have used trained attack dogs to bite and cause serious injuries to at least eight nonviolent demonstrators, released dogs from their leashes to attack and cause fear, and allowed dogs to attack demonstrators' horses.³¹ Private security guards have also charged, body-slammed, and punched demonstrators.³²



Photograph taken at DAPL protest Sept. 3, 2016. Source: Declaration of Ta'sina Sapa Win Smith (attached as Exhibit 17)

Thus far, over 500 people, including a number of tribal elders and tribal government leaders, have been arrested and subjected to dehumanizing treatment by law enforcement officers including being strip searched, hooded, deprived of adequate food and water, confined in dog kennels, and having their bodies marked with numbers.³³ Journalists have also been targeted for arrest and harassment in apparent attempts to stifle media coverage. An arrest warrant was issued for one journalist in response to her role in



Photograph taken at DAPL protest, Sept. 3, 2016 . Source: Declaration of Ta'sina Sapa Win Smith (attached as Exhibit 17)

reporting the dog attacks on September 2, and a documentary filmmaker was arrested and charged with felonies that could result in as much as 45 years in prison.³⁴ Reports suggest that private property such as vehicles, video equipment, and sacred ceremonial objects taken from arrested protesters have been returned severely damaged, if at all.³⁵

The actions of the police have become more violent and militarized over time, as demonstrated by events on the night of November 20, 2016.³⁶ That night, a large number of people had gathered to pray and protest peacefully at a bridge on Highway 1806 north of the Standing Rock Sioux Reservation.³⁷ While they were there, police

from sheriffs' departments and a city police department arrived.³⁸ Although observers have testified that the people on the bridge were acting peacefully³⁹ and that they heard no warnings or orders to disperse from the police,⁴⁰ the police opened fire on them with an array of weapons, including concussion grenades, pepper spray, rubber bullets and beanbags, teargas, and chemical sprays.⁴¹ They also used long range acoustic devices known to cause hearing loss.⁴² The police shot people who were praying,⁴³ had their backs to the police,⁴⁴ were lying on the ground in a protective position,⁴⁵ or were trying to protect others.⁴⁶ The police appeared to target people's heads.⁴⁷ They also appeared to have continued firing on protesters they had encircled with barricades and police in riot gear.⁴⁸

Despite below-freezing temperatures and wind,⁴⁹ police also sprayed one or more high pressure water cannons at the water defenders.⁵⁰ The police sprayed these water cannons regularly, for extended periods of time, throughout the night,⁵¹ frequently targeting particular individuals.⁵² They continued to spray people after ice had formed on them.⁵³ One participant saw police behind a barricade fire the water cannon at a woman who was kneeling and praying about twelve feet from the barricade.⁵⁴ The police continued to spray her even after the water had knocked her down.⁵⁵

These attacks injured many people quite seriously. Medics at the encampment reported treating broken bones, chemical burns to the faces and bodies of protesters, as well as at least one cardiac arrest, and one seizure.⁵⁶ There were numerous blunt-force injuries, including a disproportionate number to people's heads.⁵⁷ Over one-hundred people were treated for hypothermia after having been indiscriminately sprayed with water.⁵⁸ At least one woman sustained a severe eye injury when she was hit in the eye with a teargas canister.⁵⁹ One man required 17 staples to seal a head-wound from being shot with a rubber bullet at close range.⁶⁰ And one young woman suffered serious injuries that may require amputation of her arm when a concussion grenade detonated near her during the confrontation.⁶¹



Wound from dog-bite suffered by DAPL protester, Sept. 3, 2016. Source: Declaration of Ta'sina Sapa Win Smith (attached as Exhibit 17)

On November 25, 2016, the Corps gave notice that, as of December 5, 2016, it would rescind its special use permit and close the land north of the Cannonball River to public access, and would establish a "free speech zone" in an area south of the Cannonball River.⁶² Although the Corps clarified two days later that it would not forcibly remove anyone from the northern area, it characterized as "unauthorized" anyone who chooses to stay, indicating that they will be in violation of federal, state, or local laws, and that safety measures "cannot be adequately provided" to people who remain.⁶³ On November 29, 2016, following the Corps' announcement, the Governor of North Dakota issued an "emergency evacuation" order that he said was effective immediately.⁶⁴

Although his office stated that the state would “not be using law enforcement or national guard to enforce the order,”⁶⁵ the local sheriff’s department has threatened to fine people who deliver supplies to the camp as much as \$1000.00.⁶⁶ Some protesters have already indicated their intention to remain,⁶⁷ which is not surprising because the construction that will violate the Tribes’ rights and that threatens the health of the Missouri River will happen north of the Cannonball River.

Thus, rather than ensuring that police, military, and private security forces do not harm or violate the rights of the people gathered to pray and protest peacefully, the United States has chosen to leave the protesters unprotected. Worse, despite evidence that abuse and violations of freedom of speech, association, and assembly are escalating, and despite requests for assistance from the chairmen of the Standing Rock and Cheyenne River Sioux Tribes,⁶⁸ as well as from the United Nations and others,⁶⁹ the United States has telegraphed to those who would harm the protesters that the federal government will not intervene to protect them. Such action by the United States substantially exacerbates the risk of serious harm to the protesters.

III. This Situation Merits the Granting of Precautionary Measures

The Rules of Procedure of the Inter-American Commission allow for precautionary measures in “serious and urgent situations presenting a risk of irreparable harm to persons....”⁷⁰

A. Seriousness

A “serious ... situation” “refers to a grave impact that an action or omission can have on a protected right.”⁷¹

1. The Dakota Access Pipeline

As noted above, it is nearly certain that, absent some intervention, the Corps will issue the final pipeline easement. Once it has done so, serious and irreversible harm to the Tribes is essentially inevitable.

The Missouri River is sacred to the Tribes; their cultural identity depends in part on their relationship to the river and their responsibility to protect and honor it. For this reason, simply constructing a pipeline under the river would violate the Tribes’ rights to culture, water, and property.

The Inter-American Court of Human Rights has explained that the cultural survival of indigenous peoples, and thus the protection of their right to culture,

entails much more than physical survival, rather it “must be understood as the ability of the [people] to ‘preserve, protect and guarantee the special relationship that [they] have with their territory’, so that ‘they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs

and traditions are respected, guaranteed and protected....’ That is, the term ‘survival’ in this context signifies much more than physical survival.”⁷²

This Commission has elaborated that, “since the requirement to ensure their ‘survival’ has the purpose of guaranteeing the especial relationship between [indigenous] peoples with their ancestral territories, reasonable deference should be given to the understanding that the indigenous and tribal peoples themselves have in regards to the scope of this relationship, as authorized interpreters of their cultures.”⁷³ The Commission has explained that states have a mandatory duty *not* to approve “any project that would threaten the physical or cultural survival of the group.”⁷⁴

In this case, the Tribes have clearly indicated that constructing a pipeline beneath the Missouri River violates their relationship with the river, threatens their cultural integrity, and thus violates their human right to culture.

In addition to the construction of the pipeline, its operation, which will begin as soon as construction is complete, poses a serious threat of oil spills that jeopardize the health of the Missouri River and other waters that are sacred to the Tribes and that provide them clean water and other gifts.

Water is life. This Commission has been explicit that access to water is essential to ensuring the rights to life and personal integrity, and to health.⁷⁵ State obligations to provide the basic conditions for a dignified life therefore include guaranteeing access to clean drinking water.⁷⁶

The right to access to water has special aspects in the context of indigenous peoples and their rights over their lands and the natural resources. The Inter-American Court has recognized that, for indigenous peoples,

access to their ancestral lands and to the use and enjoyment of the natural resources found on them is closely linked to ... access to clean water. In this regard, [the UN] Committee on Economic, Social and Cultural Rights has highlighted the special vulnerability of many groups of indigenous peoples whose access to ancestral lands has been threatened and, therefore, their possibility of access to means of obtaining ... clean water.⁷⁷

This Commission has noted that “one of the most severe violations that has been documented is how access to water by persons who are in the area of influence of projects, as well as by remote communities that depend on safe drinking water sources affected by extraction activities, is being undermined.”⁷⁸ The Tribes’ enjoyment of their rights to culture, life, health, property, and water thus depends on the health of the river.

Pipelines like DAPL frequently spill or leak oil. A spill into the Missouri River or its tributaries would contaminate the water the Tribes depend on for personal use, would threaten the survival of species they depend on and care for, and would violate their responsibility to care for the waters.

The likelihood of a spill from DAPL is not speculative. A sample of just a few of the more recent pipeline spills demonstrates how common spills are:

- On September 9, 2016, a 36-inch pipeline owned by Colonial Pipeline Company ruptured in Alabama, spilling an estimated 336,000 gallons of gasoline. The spill was not detected by the pipeline's leak-detection system but by an inspector who happened to be on unrelated business nearby.⁷⁹
- In June of 2016, nearly 30,000 gallons of crude oil spilled from a pipeline in a residential area, coating the riverbed, rocks, and plants.⁸⁰
- In May 2016 and September 2015, Shell Oil Company's San Pablo Bay Pipeline ruptured near Tracy, California. Each spill released about 20,000 gallons of crude oil.⁸¹
- In April 2016, the Keystone I Pipeline leaked nearly 17,000 gallons of diluted bitumen in South Dakota.⁸²
- In May 2015, a pipeline owned by Plains All American Pipeline spilled 143,000 gallons of crude oil near Santa Barbara, California.⁸³
- In January 2015, the Poplar Pipeline, which runs under the Yellowstone River as DAPL is proposed to run under Lake Oahe, spilled approximately 50,000 gallons of crude oil into the frozen river, contaminating the drinking water intake system for the city of Glendive, Montana.⁸⁴
- In September 2013, in one of the largest inland oil pipeline spills in the country, a Tesoro Logistics pipeline released more than 865,000 gallons of crude oil in Tioga, North Dakota, over several days without being detected by the company.⁸⁵

These spills demonstrate the inadequacies of U.S. domestic pipeline oversight and the inability of pipeline companies to protect the public from spills that threaten health and safety. The likelihood of a crude oil spill from DAPL is highlighted by a recent study that showed that Sunoco Logistics Partners LP, the future operator of DAPL, is responsible for over 200 pipeline spills and leaks since 2010 alone, more than any of its competitors.⁸⁶

A spill from DAPL would have grave consequences. Before routing DAPL near the Tribes' reservations, the Corps considered having the pipeline cross the Missouri River approximately 10 miles north of Bismarck, North Dakota's capital city. The Corps assessed the risk of a spill from the pipeline and concluded that this route was not viable, labeling the portion of the river above Bismarck a "high consequence area" due to its proximity to the municipal water supply.⁸⁷ Crude oil spilled into Lake Oahe near the intake for Tribal water use, or at any of the numerous crossings of upstream tributaries, could contaminate the Tribes' primary water supply, resulting in similarly high consequences, and violating their rights to life, health and water. Because of their spiritual and cultural relationship to the waters of the Missouri, such contamination would also violate the Tribes' right to culture.

Despite a risk to the Tribes' drinking water identical to the threat to Bismarck's water, the Corps has never even assessed this risk, much less taken steps to provide equivalent protection for the Tribes and their members as was granted the people of Bismarck.⁸⁸ This starkly contrasting treatment of the Tribes' interests, coupled with the failure to consult with the Tribes that is

described above, constitutes a violation of the Tribes' right to equality under the law, as established in Article II of the American Declaration of the Rights and Duties of Man. Approving DAPL without a full environmental and social assessment in consultation with the Tribes would constitute a further serious violation of this right.

This Commission has emphasized the importance of

[c]onducting prior, adequate, effective consultations with the peoples and communities ... whenever there are intentions to undertake any natural resource extraction activity or project on indigenous lands and territories or to draw up an investment or development plan of any other kind that would entail potential impacts on their territory, *especially with respect to possible impacts on the access to quality water in adequate amounts for a dignified life.*⁸⁹

As outlined in detail above, in allowing the continued construction of the pipeline, the United States has failed to meet its legal obligations. Despite domestic laws requiring a "government to government" consultation with tribal governments, the complete breakdown of communication and lack of meaningful involvement in the review of DAPL has rendered the existing regulatory framework insufficient, limiting information gathering and sharing, and prohibiting effective participation from the Tribes. Throughout the planning and permitting process of DAPL, the Corps has ignored the Tribes' requests for engagement in assessing the project, which poses grave and imminent threats to their vital cultural, spiritual, and physical resources. This is particularly concerning given the ongoing and threatened violations of the basic human rights of the Tribes and their members such as right to clean drinking water, cultural life and resources, property, health, access to information, and public participation in public decision-making.

Without actions to remedy the situation, the Tribes' cultural and natural resources are continually at risk of being destroyed, causing injury to the Tribes and their people grave and imminent harm. As this Commission has noted:

Infrastructure or development projects...as well as concessions for the exploration or exploitation of natural resources in ancestral territories, may affect indigenous populations with particularly serious consequences, given that they imperil their territories and the ecosystems within, for which reason they represent a mortal danger to their survival as peoples, especially in cases where the ecological fragility of their territories coincides with demographic weakness.⁹⁰

In light of the Corps' failure to consult with the Tribes, granting the final easement without meaningful consultation with the Tribes would violate the Tribes' right to be consulted, which is derived from their rights to property, to participate in government, and to a healthy environment.⁹¹ Moreover, because the risk of a spill from DAPL threatens harms related to "ecotoxicity, the generation of contaminants, [or] the use of toxic substances," this Commission has indicated that the project may be of sufficient intensity to necessitate obtaining the Tribes' consent.⁹²

2. *Harassment and Violent Suppression of Water Defenders*

As noted above, police, military and private security guards for the company constructing DAPL have threatened, harassed and injured people peacefully praying and protesting in defense of the waters and the Tribes' rights. Although with extremely few exceptions those gathered to pray and protest have acted peacefully, assaults and harassment by the police forces have been increasing in frequency and severity to include teargas, concussion grenades, rubber bullets, and other tools of force and injury. This conduct, and the failure of the U.S. government to protect the protesters, constitutes an extremely grave violation of the protesters' rights to life, physical integrity and personal liberty, security, health, protection against arbitrary arrest, and freedom of association and assembly. As noted above, the situation is exacerbated by the U.S. government's threat that protesters remaining north of the Cannonball River will be there illegally and that it will do nothing to protect them from harm.

The rights to assembly, expression and association are some of the primary and most important foundations of a democratic society, because, as this Commission has stated, "the undermining of freedom of expression directly affects the central nerve of the democratic system."⁹³ The Tribes, their members, and their supporters thus have the right to actively express opposition to DAPL. This includes the right to do so by organizing and engaging in peaceful acts of protest without active and hostile opposition from the State.⁹⁴ Perhaps predicting gatherings such as the one at the Cannonball River near the Standing Rock Sioux Reservation, the OAS Special Rapporteur for Freedom of Expression has recognized that

the most impoverished sectors of our Hemisphere face discriminatory policies and actions; their access to information on the planning and execution of measures that affect their daily lives is incipient and, in general, traditional channels to make their complaints known are frequently inaccessible. Confronting these prospects, in many of the Hemisphere's countries, social protest and mobilization have become tools to petition the public authorities, as well as channels for public complaints regarding abuses or human rights violations.⁹⁵

This Commission has forcefully addressed the right of people to peacefully protest projects associated with extractive development affecting indigenous peoples. In its 2015 report *Indigenous Peoples, Communities of African Descent, Extractive Industries*, the Commission recalled

that the right to assembly is protected by articles XXI of the American Declaration and 15 of the American Convention. As was signaled previously, the political and social participation which happens through the exercise of the right to assembly is an essential element for the consolidation of democratic life and, for this reason it amounts to an imperative social interest. The IACHR reiterates that peaceful social protest, as a manifestation of freedom of assembly, is a fundamental tool in the defense of human rights, is essential for engaging in political and social criticism of authorities' activities, as well as for establishing positions and plans of action with regards to human rights. The right to public protest is protected by the Convention so long as it is exercised peacefully

and without arms. *To comply with this obligation to respect and guarantee the right to assembly, States must not only avoid obstructing it, but also take positive measures to guarantee its exercise before, during and after a protest.* These measures must guarantee the exercise of this right from the moment authorities are informed of the intent to carry out a protest, during the protest protecting the rights of participants and involved third parties, and afterwards, to investigate and sanction any person, including state agents, who committed acts of violence against the right to life and physical integrity participants and involved third parties.”⁹⁶

The Commission specifically rejected the use of military force in response to protest by indigenous peoples: “The IACHR considers that the public interest does not justify military presence in indigenous territories to guarantee the feasibility of extraction or development plans and projects that have not been consulted with nor been consented to by indigenous peoples.”⁹⁷ The Commission has also noted “a pattern of criminalization of demonstrations or social protest by leaders of various indigenous and tribal peoples, linked to the defense of their rights against extractive or development projects.”⁹⁸ This is exactly what is happening at the encampment north of the Standing Rock Sioux Reservation. Police have targeted those they consider leaders of the encampment, and have charged them with felonies for actions that would, under normal circumstances, at most be deemed a misdemeanor.⁹⁹ Numerous water protectors have been cited with “rioting” for simply demonstrating, using only signs and their voices, at virtually isolated sites of construction in rural North Dakota.¹⁰⁰

The Commission has described specific measures states should take to guarantee these rights of expression and association, which include protecting demonstrators from physical violence by persons who may hold the opposite opinion, escorting mass gatherings to guarantee safety, and providing services to make the gathering possible.¹⁰¹

Despite numerous specific requests, the United States, the State of North Dakota, local governments, and the pipeline developer have taken none of these steps. As a result, extremely serious violations of the human rights of those gathering to protest and pray are certain to continue happening.

B. Urgency

The Commission may grant precautionary measures in an “urgent situation,” which “refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action.”¹⁰²

1. The Dakota Access Pipeline

As noted above, the only thing preventing the immediate completion of DAPL is an easement from the U.S. Army Corps of Engineers to allow drilling beneath federal lands adjacent to the Missouri River at Lake Oahe. With respect to the easement, the Corps has indicated that it wishes to take additional input from two tribes before making its decision, but it has not provided any sort of timeframe. If the Corps decides to grant the easement, it must submit its notice of

intent to do so to two Congressional bodies prior to actually issuing the easement. While Corps guidelines provide for a 14-day waiting period once the notice of intent is submitted to the Congressional bodies, this waiting period has been waived in the past.

The outgoing administration of President Barack Obama has just a short time to decide whether to deny the easement or reroute the pipeline. Whatever it decides, however, Donald Trump has disclosed political incentives as well as personal financial incentives to allow DAPL to go forward as planned. And, while it could take as long as several weeks or months, there is literally nothing preventing the new Trump administration from granting that easement on January 21.

Moreover, once the easement is granted, the pipeline company is almost certain to move forward immediately. For other segments of DAPL, the company has begun construction before the relevant authorization was granted, agreeing to assume the risk that the authorization would not be granted. There is nothing to suggest the company would move any more slowly to finalize the pipeline once it obtained the final easement allowing it to drill adjacent to the Missouri River. It is thus urgent that the Commission issue precautionary measures before the Trump Administration can act and before any easement is granted.

But the urgency is even greater than that. The best chance to prevent Donald Trump from immediately granting the DAPL easement is for the Obama Administration to deny the easement on the basis of a strong record that can help protect the decision against reversal. Urgent encouragement from this Commission would help ensure that the Obama Administration takes such action.

2. Harassment and Violent Suppression of Water Defenders

As noted, the police and National Guard are already using extremely violently tactics on people who are peacefully praying and protesting in defense of the water and the Tribes. Their tactics appear to be getting worse every week. Moreover, the Corps' recent closure of the area north of the Cannonball River – and particularly its irresponsible statement that people who choose to remain would be unprotected – substantially increases the likelihood of imminent harm to the protesters. The threats to the rights of these people could not be more urgent.

C. Irreparable harm

For the purpose of granting precautionary measures, “irreparable harm” refers to “injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.”¹⁰³

1. The Dakota Access Pipeline

Drilling under the Missouri River would permanently alter land that is sacred to the Tribes. It would permanently alter the Tribes' sacred relationship to the land and the waters. There can be no reparation of or compensation for violations of spiritual and cultural rights such as this.

While the waters and their ecosystem might recover from an oil spill in a matter of decades or possibly years, and the loss of drinking water might be compensated for financially or logistically, there can be no compensation for the spiritual injury that would occur if the waters became contaminated with toxic crude oil. Moreover, as long as the pipeline is in place, the likelihood of repeated spills, with their attendant spiritual and physical injuries, will persist.

2. Harassment and Violent Suppression of Water Defenders

Numerous water defenders have been physically injured; one may have to have her arm amputated. There is no true compensation for such serious injuries and related trauma, which are violations of the right to physical security and integrity, and health, and could escalate into violations of the right to life. As the violence by the police forces escalates, the likelihood of more frequent irreparable injuries grows. There is no remedy for such injuries.

IV. Precautionary Measures Requested

In light of the preceding information, we respectfully request that this Commission call on the Government of the United States to protect the rights of the Tribes by taking the following actions immediately:

1. Deny the easement allowing construction of the pipeline under the Missouri River at Lake Oahe as soon as possible;
2. Complete a full environmental impact statement in formal consultation with the Tribes;
3. Establish clear rules requiring that indigenous peoples who may be affected by government decisions have the opportunity for full and meaningful prior informed consent within the meanings established in the UN Declaration on the Rights of Indigenous Peoples and the jurisprudence of the Inter-American Court and this Commission;
4. Establish clear rules ensuring full environmental and social assessment of activities that may affect indigenous peoples, with the full participation of the affected indigenous peoples;
5. Immediately take all actions necessary to guarantee the safety of those engaging in peaceful prayer and protest concerning DAPL, and to ensure the full enjoyment of their rights to expression and assembly;
6. Any other action this Commission deems appropriate.

Respectfully,

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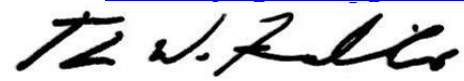
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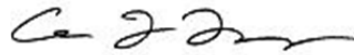
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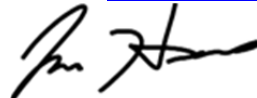
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NOTES

¹ See *Winters v. United States*, 207 U.S. 564 (U.S. Supreme Court 1908).

² For a timeline of the pipeline development and other issues described in this petition, see Timeline of Dakota Access Pipeline (attached as Exhibit 1). For a more detailed explanation of the facts of the pipeline planning and construction process, see Complaint for Declaratory and Injunctive Relief, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 1:16-cv-01534, U.S. District Court for the District of Columbia (July 27, 2016) (attached as Exhibit 2); Complaint for Declaratory and Injunctive Relief, *Yankton Sioux Tribe et. al. v. United States Army Corps of Engineers et al.*, 1:16-cv-01796, U.S. District Court for the District of Columbia (Sept. 8, 2016) (“Complaint, Yankton Sioux Tribe”) (attached as Exhibit 3); First Amended Complaint, *Standing Rock Sioux Tribe & Cheyenne River Sioux Tribe v. U.S. Army Corps of Engineers et al.*, 1:16-cv-01534, U.S. District Court for the District of Columbia (Sept. 8, 2016) (attached as Exhibit 4).

³ *Id.*

⁴ Inter-American Commission on Human Rights (IACHR), *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II, Doc. 47/15 <http://www.oas.org/en/iachr/reports/pdfs/extractiveindustries2016.pdf> (last accessed Nov. 29, 2016) (IACHR, Dec. 31, 2015), paras. 160 & 213 (IACHR, Human Rights & Extractive Activities).

⁵ IACHR, Human Rights & Extractive Activities, *supra* note 4, para. 156.

⁶ InterAmerican Court of Human Rights, *Case of the Saramaka People v. Suriname, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs*, Inter-Am. Ct. H.R., Judgment of August 12, 2008, Series C No. 185, paras. 16, 133.

⁷ Letter from Martha Chieply to Waste Win Young (Feb. 17, 2015) (attached as Exhibit 5).

⁸ See, e.g., Letter from Waste Win Young to Martha Chieply (Feb. 25, 2015) (attached as Exhibit 6); Motion for Preliminary Injunction, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 1:16-CV-1534 (U.S. District Court for the District of Columbia, Aug. 4, 2016) (attached as Exhibit 7), pp. 10-11.

⁹ Letter from John W. Henderson to Dave Archambault II (Sept. 3, 2016) (attached as Exhibit 8).

¹⁰ Letter from Waste’ Win Young to John W. Henderson (Sept. 28, 2016) (attached as Exhibit 9); Letter from Kelly Morgan to Martha Chieply (Dec. 8, 2015) (attached as Exhibit 10).

¹¹ The draft EA is over 900 pages long, and is not attached to this document. Petitioners would be happy to provide it if the Commission would like to review it.

¹² Complaint, *Yankton Sioux Tribe*, *supra* note 2, 17.

¹³ *Id.* at 18.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Supplemental Declaration of Tim Mentz, Sr. in Support of Motion for Preliminary Injunction, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 1:16-cv-01534, U.S. District Court for the District of Columbia (Sept. 2, 2016) (attached as Exhibit 11).

¹⁷ The Gazette, *Dakota Access disputes archaeologist’s findings that Bakken route crosses tribal burial grounds*, June 7, 2016, <http://www.thegazette.com/subject/news/government/dakota-access-disputes-archaeologists-findings-that-bakken-route-crosses-tribal-burial-grounds-20160607> (last accessed Nov. 29, 2016). See also, The Guardian, *Dakota Access: Company under scrutiny over sacred artifacts in oil*

pipeline's path, Nov. 5, 2016, <https://www.theguardian.com/us-news/2016/nov/05/dakota-access-oil-pipeline-native-american-artifacts-discovered> (last accessed Nov. 29, 2016).

¹⁸ *Dakota Access: Company under scrutiny over sacred artifacts in oil pipeline's path*, *supra*, note 17.

¹⁹ Letter from U.S. Advisory Council on Historic Preservation to the Army Corps of Engineers (March 15, 2016) (attached as Exhibit 12), at 2.

²⁰ Letter from U.S. Environmental Protection Agency to Army Corps of Engineers (March 11, 2016) (attached as Exhibit 13), at 4; Letter from U.S. Department of the Interior to Army Corps of Engineers (March 29, 2016) (attached as Exhibit 14), at 2.

²¹ Department of Justice, Office of Public Affairs, *Joint Statement from the Department of Justice, the Department of the Army and the Department of the Interior Regarding Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers* (Sept. 9, 2016), <https://www.justice.gov/opa/pr/joint-statement-department-justice-department-army-and-department-interior-regarding-standing> (last accessed Nov. 29, 2016).

²² See National Public Radio, *Obama: Army Corps Examining Possible Rerouting Of Dakota Access Pipeline* (Nov. 2, 2016), <http://www.npr.org/sections/thetwo-way/2016/11/02/500363689/obama-army-corps-examining-possible-rerouting-of-dakota-access-pipeline> (last accessed Dec. 1, 2016).

²³ *An America First Energy Plan*, <https://www.donaldjtrump.com/policies/energy> (last accessed Nov. 29, 2016).

²⁴ Forbes, *Where Trump will make an immediate impact on energy policy* (Nov. 14, 2016), <http://www.forbes.com/sites/rrapier/2016/11/14/where-donald-trump-will-make-an-immediate-impact-on-energy-policy/2/#57234ec4413f> (last accessed Nov. 29, 2016) (“Trump reportedly owns stock in Energy Transfer Partners, the parent company behind the Dakota Access Pipeline. The CEO of Energy Transfer Partners has also donated to Trump’s campaign.”).

²⁵ US Army Corps of Engineers, *US Army Corps of Engineers grants special use permit to Standing Rock Sioux* (Sept. 16, 2016), <http://www.nwo.usace.army.mil/Media/News-Releases/Article/947688/us-army-corps-of-engineers-grants-special-use-permit-to-standing-rock-sioux-tri/> (last accessed Nov. 29, 2016).

²⁶ See generally Letter from Standing Rock Sioux Tribe to U.S. Attorney General Loretta Lynch (Oct. 24, 2016) (attached as Exhibit 15).

²⁷ Bismarck Tribune, *North Dakota National Guard to Provide Backup for Law Enforcement* (Sept. 8, 2016), http://bismarcktribune.com/news/state-and-regional/north-dakota-national-guard-to-provide-backup-to-law-enforcement/article_57090461-12d0-5376-bf6b-041a4511ce4f.htm (last accessed Nov. 29, 2016).

²⁸ Democracy Now, *Standing Rock Special: Dallas Goldtooth on Police Violence and Repression of Movement against DAPL* (Nov. 24, 2016), https://www.democracynow.org/2016/11/24/standing_rock_special_dallas_goldtooth_on (last accessed Nov. 30, 2016).

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³⁰ Declaration of Ta’sina Sapa Win Smith, *Standing Rock Sioux Tribe & Cheyenne River Sioux Tribe v. Army Corps of Engineers et al.*, 1:16-cv-1534, U.S. District Court for the District of Columbia (Sept. 6, 2016) (“Smith Decl.”) (attached as Exhibit 17), para. 24 and attached photographs; Letter from Cheyenne

River Sioux Tribe to U.S. Attorney General Loretta Lynch (Sept. 14, 2016) (attached as Exhibit 16); Democracy Now, *FULL Exclusive Report: Dakota Access Pipeline Co. Attacks Native Americans with Dogs & Pepper Spray* (Sept. 6, 2016), https://www.democracynow.org/2016/9/6/full_exclusive_report_dakota_access_pipeline (last accessed Nov. 29, 2016).

³¹ Smith Decl., *supra* note 30, para. 28 and attached photographs.

³² Letter from Cheyenne River Sioux Tribe to Loretta Lynch, *supra* note 30.

³³ Democracy Now, *Dakota Excess Pipeline?: Standing Rock Protectors Strip-Searched, Jailed for Days* (Oct. 17, 2016), https://www.democracynow.org/2016/10/17/dakota_excess_pipeline_standing_rock_protectors (last accessed Nov. 29, 2016); The Intercept, *Video: Police Viciously Attacked Peaceful Protestors at the Dakota Access Pipeline* (Oct. 25, 2016), <https://theintercept.com/2016/10/25/video-police-viciously-attacked-peaceful-protestors-at-the-dakota-access-pipeline/> (last accessed Nov. 29, 2016); Los Angeles Times, *North Dakota pipeline activists say arrested protesters were kept in dog kennels* (Oct. 28, 2016), <http://www.latimes.com/nation/la-na-north-dakota-pipeline-20161028-story.html> (last accessed Nov. 29, 2016).

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³⁷ See *Vanessa Dundon v. Kyle Kirchmeier*, 1:16-cv-00406-DLH-CSM (U.S. District Court for the Western District of North Dakota 2016) (“*Dundon*”), available at <https://www.nlg.org/complaint-1983-class-action/> (last accessed Nov 2016).

³⁸ *Id.*, Declaration of R. Michael Flynn, *Dundon v. Kirchmeier*, Nov. 22, 2016, para. 5 (“Flynn Decl.”) (attached as Exhibit 18).

³⁹ *Id.*, paras. 4, 10; Declaration of Crystal Wilson, *Dundon v. Kirchmeier*, Nov. 22, 2016 (“Wilson Decl.”) (attached as Exhibit 19), paras. 10-11, 13; Declaration of Matthew Lonergan, *Dundon v. Kirchmeier*, Nov. 21, 2016 (“Lonergan Decl.”) (attached as Exhibit 20), para. 14; Declaration of Guy Dullknife III, *Dundon v. Kirchmeier*, Nov. 22, 2016 (“Dullknife Decl.”) (attached as Exhibit 21), para. 8.

⁴⁰ See Flynn Decl., *supra* note 38, para. 5; Wilson Decl., *supra* note 39, para. 14.

⁴¹ Flynn Decl., *supra* note 38, para. 4; Declaration of Jade Kalikolehuaokalani Wool, *Dundon v. Kirchmeier*, Nov. 22, 2016 (“Wool Decl.”) (attached as Exhibit 22), para. 8; Declaration of Vanessa Bolin Clemens, *Dundon v. Kirchmeier*, Nov. 21, 2016 (“Clemens Decl.”) (attached as Exhibit 23), paras. 9-10; Lonergan Decl., *supra* note 39, para. 13; Dullknife Decl., *supra* note 39, paras. 8, 10.

⁴² Wilson Decl., *supra* note 39, para. 11; Lonergan Decl., *supra* note 39, para. 10; Clemens Decl., *supra* note 41, para. 33. *See also*, The Washington Post, *Police Defend use of water cannons on Dakota Access protesters in freezing weather* (Nov. 21, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/11/21/police-citing-ongoing-riot-use-water-cannons-on-dakota-access-protesters-in-freezing-weather/> (last accessed Nov. 29, 2016).

⁴³ Declaration of Noah Michael Treanor, *Dundon v. Kirchmeier*, Nov. 21, 2016 (“Treanor Decl.”) (attached as Exhibit 24), paras. 5-7.

⁴⁴ Declaration of Israel Hoagland-Lynn, *Dundon v. Kirchmeier*, Nov. 21, 2016 (“Hoagland-Lynn Decl.”) (attached as Exhibit 25), para. 9; Treanor Decl., *supra* note 43, para. 6.

⁴⁵ Hoagland-Lynn Decl., *supra* note 44, para. 10.

⁴⁶ Dullknife Decl., *supra* note 39, para. 8 *et seq.*; Hoagland-Lynn Decl., *supra* note 44, para. 9.

⁴⁷ Clemens Decl., *supra* note 41, para. 19.

⁴⁸ Flynn Decl., *supra* note 38, para. 6.

⁴⁹ *Id.*, para. 4; Wilson Decl., *supra* note 39, para. 11; Wool Decl., *supra* note 41, para. 5; Lonergan Decl., *supra* note 39, para. 5.

⁵⁰ Flynn Decl., *supra* note 38 para. 4; Treanor Decl., *supra* note 43, para. 7.

⁵¹ *Id.*; Wilson Decl., *supra* note 39, para. 13; Wool Decl., *supra* note 41, para. 10; Clemens Decl., *supra* note 41, para. 11; Lonergan Decl., *supra* note 39, para. 16.

⁵² Dullknife Decl., *supra* note 39, para. 8; Wool Decl., *supra* note 41, paras. 11-12.

⁵³ Clemens Decl., *supra* note 41, para. 37.

⁵⁴ Dullknife Decl., *supra* note 39, para. 8.

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⁵⁸ The Guardian, *Dakota Access pipeline: 300 protesters injured after police use water cannons* (Nov. 21, 2016), <https://www.theguardian.com/us-news/2016/nov/21/dakota-access-pipeline-water-cannon-police-standing-rock-protest> (last accessed Nov. 30, 2016); The Intercept, *Medics Describe How Police Sprayed Standing Rock Demonstrators with Gas and Water Cannons* (Nov. 21, 2016), <https://theintercept.com/2016/11/21/medics-describe-how-police-sprayed-standing-rock-demonstrators-with-tear-gas-and-water-cannons/> (last accessed Nov. 29, 2016).

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⁶⁰ Hoagland-Lynn Decl., *supra* note 44, para. 15.

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⁶⁸ Letter from Standing Rock Sioux Tribe to Loretta Lynch, *supra* note 26; Letter from Cheyenne River Sioux Tribe to Loretta Lynch, *supra* note 30; NBC News, *Tribe Asks DOJ to Intervene in Dakota Access Pipeline Protests* (Oct. 24, 2016), <http://www.nbcnews.com/storyline/dakota-pipeline-protests/tribe-asks-doj-intervene-escalating-dakota-access-pipeline-protests-n671541> (last accessed Nov. 29, 2016).

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⁷⁴ *Id.*, para. 160.

⁷⁵ IACHR, *2015 Annual Report*, Chapter IV.A, “Access to Water In The Americas: An Introduction To The Human Right to Water in the Inter-American System” (IACHR Access to Water), para. 30, <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-agua-EN.pdf> (last accessed Nov. 29, 2016).

⁷⁶ I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay. Interpretation of the Judgment on the Merits, Reparations and Costs*, Judgment of Feb. 6, 2006, Series C No. 142, para. 161; I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations and Costs*, Judgment of Mar. 29, 2006, Series C No. 146; I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations and Costs*, Judgment of Aug. 24, 2010, Series C No. 214, paras. 194-217.

⁷⁷ I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgment of June 17, 2005., Series C No. 125, para. 167 (citing The right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) (29th session 2002), para. 16).

⁷⁸ IACHR Access to Water, *supra* note 75, para. 4.

⁷⁹ Letter from Honor the Earth, Sierra Club, and Indigenous Environmental Network, Re: Submission of New Information on the Environmental Impacts on the Proposed Dakota Access Pipeline Project; Request for Additional Review under the National Environmental Policy Act and Clean Water Act; and Request for Stay Pending Review, Oct. 10, 2016,

https://d3n8a8pro7vhmx.cloudfront.net/honorearth/pages/2295/attachments/original/1477095838/DAPL_Letter_to_Corps_10.10.16_SC_HTE_IEN.pdf?1477095838 (last accessed Nov. 29, 2016) (citing Dennis Pillion, *Alabama pipeline leak: What we know so far about the spill, gas shortages and more*, Sept. 18, 2016, http://www.al.com/news/birmingham/index.ssf/2016/09/how_alabama_pipeline_leak_led.html).

⁸⁰ *Id.* (citing Matt Hamilton, Joseph Serna & Veronica Rocha, *Ventura oil spill misses the ocean, but damage on land is unclear*, June 23, 2016, <http://www.latimes.com/local/lanow/la-me-ln-ventura-county-oil-spill-20160623-snap-story.html>).

⁸¹ *Id.* (citing Ted Goldberg, *Pipeline at Center of Altamont Pass Oil Spill Also Ruptured Last September*, May 24, 2016, <http://ww2.kqed.org/news/2016/05/24/pipeline-at-center-of-altamont-pass-oil-spill-also-ruptured-lastseptember>).

⁸² *Id.* (citing Alan Neuhauser, *Keystone Leak Worse Than Thought*, Apr. 8, 2016, <http://www.usnews.com/news/articles/2016-04-08/keystone-pipeline-leak-worse-than-thought>).

⁸³ *Id.* (citing Joseph Serna, *Refugio oil spill may have been costlier, bigger than projected*, Aug. 5, 2015, <http://www.latimes.com/local/lanow/la-me-ln-refugio-oil-spill-projected-company-says-20150805-story.html>).

⁸⁴ *Id.* (citing EPA Region 8, “Bridger Pipeline Release,” <https://www.epa.gov/region8/bridgerpipeline-release>).

⁸⁵ *Id.* (citing New York Times, *Oil Spill in North Dakota Raises Detection Concerns*, Oct. 23, 2013, http://www.nytimes.com/2013/10/24/us/oil-spill-in-north-dakota-raises-detection-concerns.html?_r=0).

⁸⁶ *Id.* (citing *Dakota Access operator Sunoco has terrible spill record*, September 26, 2016, <http://www.eenews.net/greenwire/2016/09/26/stories/1060043413>).

⁸⁷ The Bismarck Tribune, *Pipeline plan first called for crossing north of Bismarck* (Aug. 18, 2016), http://bismarcktribune.com/news/state-and-regional/pipeline-route-plan-first-called-for-crossing-north-of-bismarck/article_64d053e4-8a1a-5198-a1dd-498d386c933c.html (last accessed Nov. 29, 2016).

⁸⁸ Letter from Honor the Earth, *et al.*, *supra* note 79.

⁸⁹ IACHR, Access To Water, *supra* note 75, para. 152.

⁹⁰ IACHR, Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II, Doc. 56/09, Dec. 30, 2009, para. 205, <http://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf> (last accessed Nov. 29, 2016).

⁹¹ *See generally* IACHR, Human Rights & Extractive Activities, *supra* note 4, paras. 172-212.

⁹² *See id.*, para. 189.

⁹³ InterAmerican Commission on Human Rights, Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.124, Doc. 7 (Feb. 27, 2006), Chapter V, para. 93, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=662&IID=1> (last accessed Nov. 29, 2016) (citing numerous decisions of the U.S. Supreme Court).

⁹⁴ *See generally, id.*, Chapter V.

⁹⁵ *Id.*, Chapter V, para. 1.

⁹⁶ IACHR, Human Rights & Extractives Activities, *supra* note 4, para. 303 (emphasis added).

⁹⁷ *Id.*, para. 193.

⁹⁸ *Id.*, para. 297.

⁹⁹ Morton County Sheriff's Department, "Felony Charges Pursued in DAPL Protest Activities" (News Release Sept. 14, 2016), <http://www.unicornriot.ninja/wp-content/uploads/2016/09/9-14-release-on-protest-felony-arrests.pdf> (last accessed Nov. 30, 2016); Common Dreams, *Peaceful Dakota Access Protesters Face Felony Charges, Escalating Police Violence* (Sept. 15, 2016), <http://www.commondreams.org/news/2016/09/15/peaceful-dakota-access-protesters-face-felony-charges-escalating-police-action> (last accessed Nov. 30, 2016).

¹⁰⁰ New York Times, *Tension Between Police and Standing Rock Protesters Reaches Boiling Point* (Oct. 28, 2016), http://www.nytimes.com/2016/10/29/us/dakota-access-pipeline-protest.html?_r=0 (last accessed Nov. 30, 2016); New York Times, *Judge Rejects Riot Charge Against Amy Goodman of "Democracy Now" Over Pipeline Protest* (Oct. 17, 2016), <http://www.nytimes.com/2016/10/18/us/judge-rejects-riot-charge-against-amy-goodman-of-democracy-now-over-pipeline-protest.html> (last accessed Nov. 30, 2016).

¹⁰¹ Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, Doc. 57, 31 Dec. 2009, para. 193, <https://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf> (last accessed Nov. 29, 2016).

¹⁰² IACHR, *Rules of Procedure of the Inter-American Commission on Human Rights* (effective Aug. 1, 2013), art. 25.2b, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp> (last accessed Nov. 29, 2016).

¹⁰³ *Id.*, art. 25.2c.