

January 19, 2021

President-Elect Joseph Biden  
United States of America  
Washington, D.C.

Dear President-Elect Biden:

The undersigned elected leaders of the Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, Oglala Sioux Tribe, and Yankton Sioux Tribe (collectively, “Tribes”) write requesting quick, decisive action on the Dakota Access Pipeline (DAPL) within the first ten (10) days of your Administration. DAPL crosses Lake Oahe on treaty lands of the Great Sioux Nation, just ½ mile upstream of the current boundary of the Standing Rock Sioux Tribe. It poses a grave threat to the safety and sanctity of our water, to our hunting and fishing rights, and to our cultural and religious practices. Further, DAPL is currently operating without an easement required by the Mineral Leasing Act. We ask that, in the initial days of your Administration, you instruct the United States Army Corps of Engineers (Corps) to stop the continued operation of the DAPL given that it has no easement and take other steps to protect the Tribes. It is time for the United States to finally honor the Treaties that it made with our Tribes and respect our lands and our waters, and stop this illegal pipeline.

The Tribes are bands of the Great Sioux Nation (*Oceti Sakowin*). Since time immemorial, the people of the Great Sioux Nation have lived, hunted, fished, and engaged in ceremonies adjacent to the Missouri River – *Mni Sose* in Lakota. Starting in the mid-1800s, the Sioux and the U.S. government entered into treaties in which a substantial portion of the Great Plains were permanently reserved for the “absolute and undisturbed use and occupation” of the Sioux. See Fort Laramie Treaty of 1851, 11 Stat. 749; Fort Laramie Treaty of 1868, 15 Stat. 635. After gold was discovered in the Black Hills, the government violated the treaties, and Congress enacted statutes that stripped vast areas of land out of the Reservation. *U.S. v. Sioux Nation of Indians*, 448 U.S. 371, 388 (1980) (“A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history...”). In the 20th century, the U.S. compounded this legacy of dispossession by building the Oahe Dam on the Missouri, inundating the best lands on the Standing Rock and Cheyenne River Reservations and forcing hundreds of families from their homes. The Oahe Dam destroyed more Indian land than any other single public works project in the history of the United States. The taken lands were the most productive lands remaining on the Standing Rock and Cheyenne River Reservations, supplying 90% of the timber, wild berries and plants essential to the Tribe’s diet and ceremonies, habitat for animals hunted

for subsistence, and fertile lands for growing food. S. Rep. No. 102-267, at 188 (1992). These losses devastated the Tribes' economies and culture, and their effects are still felt profoundly. *Id.*

The Tribes hold senior water rights in the Missouri River. *Winters v. United States*, 207 U.S. 564, 577 (1908); *Arizona v. California*, 460 U.S. 605, 616 (1983). Reserved *Winters* water rights are a property right that entails both a sufficient quantity and quality of water to meet the beneficial purposes for which the right to water was reserved. See, e.g., *United States v. Gila River Valley Irrigation Dist.*, 920 F. Supp. 1444, 1448 (D. Ariz. 1996), aff'd 117 F.3d 425 (9th Cir. 1997). The Tribes rely upon the waters of Lake Oahe for fishing, hunting, and gathering, for homes, hospitals, clinics, schools, businesses, and government buildings throughout their Reservations, for agriculture (both farming and grazing), for drinking water, and for industrial purposes. The waters of the Missouri are also sacred to the Tribes and are central to their members' cultural and spiritual practices.

DAPL proposed to traverse the Missouri River just a half mile upstream of the Standing Rock Reservation, crossing lands stolen by the U.S. government. The Oahe crossing site is rich in cultural significance, and placing a massive crude oil pipeline along and beneath the River posed a grave threat to ceremonies essential to Tribal identity as well as to Tribal health, fishing, hunting, and drinking water. The proposal to build the pipeline in that location triggered an unprecedented indigenous-led opposition movement that garnered global attention.

In December 2016, during the Obama Administration, the Assistant Secretary of the Army for Civil Works correctly halted the process for issuing an easement for the DAPL to cross Lake Oahe, until such time as the Corps prepared an Environmental Impact Study (EIS). Previously, the Corps had instead simply conducted, and was moving forward on, a much less stringent review known as an Environmental Assessment. The memorandum announcing the decision stated: "I have concluded that a decision on whether to authorize the [DAPL] to cross Lake Oahe at the proposed location merits additional analysis, more rigorous exploration and evaluation of reasonable alternatives, and greater public and tribal participation and comments as contemplated in the CEQ's [NEPA] implementing regulations . . . ,” and that the “robust consideration of reasonable alternatives that I am directing together with an analysis of potential spill risk and impacts, and Treaty rights, is best accomplished... by preparing an Environmental Impact Statement.”

Unfortunately, on January 24, 2017, just four days after taking office, President Trump issued the “Presidential Memorandum Regarding Construction of the Dakota Access Pipeline,” which resulted in a reversal of the Obama Administration’s aforementioned decision and the rushed authorization of the easement for DAPL to cross Lake Oahe without first reviewing any of the issues and concerns raised by the Tribes. We have spent the entirety of the Trump Administration using our scarce resources to fight the Corps, represented by the United States Department of Justice, over its decision at the behest of President Trump to move forward based on a wholly inadequate analysis of our rights and environmental concerns. Ultimately, we prevailed. In March 2020, the district court ruled that the Tribes demonstrated that there was significant controversy concerning the environmental impacts of the pipeline, and that the Corps violated the National Environmental Protection Act (NEPA) by failing to prepare an EIS prior to

granting the easement. In July 2020, the district court ordered the easement vacated until the EIS was prepared, and ordered the pipeline to shut down. The Corps appealed those decisions to the D.C. Circuit. Unfortunately, however, the Trump Administration has refused to stop the oil from flowing in the DAPL, instead seeking and obtaining a temporary stay of the shutdown order from the D.C. Circuit while its appeal is pending. (DAPL's owner, Dakota Access, LLP, also appealed and requested the stay.)

The Corps has indicated in court that it is now treating DAPL as an "encroachment" on federal lands, and that it is allowing DAPL to continue to operate while it prepares the EIS and considers what to do about the encroachment under its encroachment regulations. It is wrong and unjust to treat DAPL as a mere 'encroachment' that the Corps can allow to operate notwithstanding the requirements of the Mineral Leasing Act and NEPA. Ours is a hollow victory if Dakota Access, LLP can continue to operate and profit from DAPL as a trespasser.

We ask you to recognize that this is wrong and to take decisive action to right this wrong during your first ten days in office. You can do this by:

- (1) instructing the Corps to stop the continued operation of the DAPL given that it has no easement,
- (2) instructing the Department of Justice to withdraw the appeal of the district court decision,
- (3) withdrawing the January 24, 2017 "Presidential Memorandum Regarding Construction of the Dakota Access Pipeline,"
- (4) instructing the Corps to provide a robust NEPA process with meaningful Nation-to-Nation consultation with the Tribes and scrutiny of alternatives including no DAPL, and
- (5) instructing the Department of the Interior to reinstate the December 4, 2016 opinion of the Solicitor of the Interior entitled "Tribal Treaty and Environmental Statutory Implications of the Dakota Access Pipeline," which was withdrawn by the Department during the Trump Administration.

We note that by requesting these immediate actions, we do not by any means agree that, once the EIS is completed, the Corps may grant the easement. We strongly oppose the grant of the easement, because DAPL poses a grave threat to our drinking water, our hunting and fishing rights, and our ceremonies essential to Tribal identity. We will be contacting you separately setting out in more detail the grounds for denial of the easement. We write now on the above actions that should be undertaken immediately.

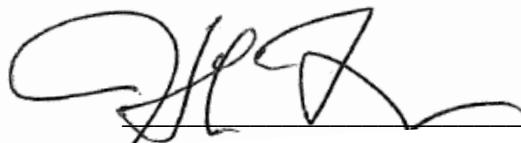
We look forward to your swift action on this important issue, which is grounded in treaty rights, Nation-to-Nation consultation, environmental justice, and climate and environmental concerns. It is beyond time for the United States to fulfill the promises that it made in the Treaties and stop the illegal trespass of our lands and waters.

Please do not hesitate to call on us if you would like to discuss this matter.

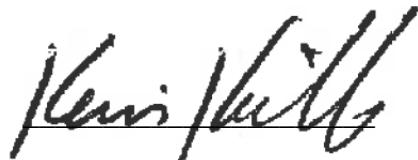
Sincerely,



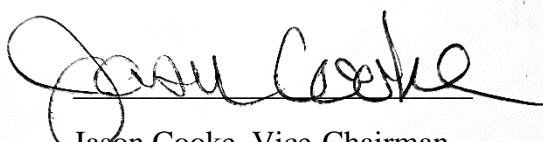
Mike Faith, Chairman  
Standing Rock Sioux Tribe



Harold Frazier, Chairman  
Cheyenne River Sioux Tribe



Kevin Killer, President  
Oglala Sioux Tribe



Jason Cooke, Vice-Chairman  
Yankton Sioux Tribe