

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STANDING ROCK SIOUX TRIBE,)	
)	
Plaintiff,)	
)	
and)	
)	
CHEYENNE RIVER SIOUX TRIBE,)	
)	
Intervenor-Plaintiff)	Case No. 1:16-cv-1534-JEB
)	
v.)	
)	
U.S. ARMY CORPS OF ENGINEERS,)	
)	
Defendant-Cross-Defendant)	
)	
and)	
)	
DAKOTA ACCESS, LLP,)	
)	
Intervenor-Defendant-)	
Cross-Claimant)	
_____)	

**GREAT PLAINS TRIBAL CHAIRMANS' ASSOCIATION BRIEF AS *AMICUS CURIAE*
IN SUPPORT OF INTERVENOR-PLAINTIFF CHEYENNE RIVER SIOUX TRIBE'S
MOTION FOR TEMPORARY RESTRAINING ORDER**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to and LCvR 7(o) and FRAP 29(c)(1), Amicus Curiae Great Plains Tribal Chairman's Association ("GPTCA") makes the following disclosure:

- 1) For non-governmental corporate parties please list all parent corporations: None.

- 2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock: None.

- 3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:
Counsel for GPTCA is aware of no such corporation.

/s/ Richard A. Guest

Dated: February 10, 2017

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INTEREST OF AMICI CURIAE

The Great Plains Tribal Chairman's Association ("GPTCA") is comprised of the elected leadership of the sixteen (16) federally recognized Indian tribes¹ located in the states of North Dakota, South Dakota and Nebraska. The primary purposes of the GPTCA is to unify to defend the Tribes' inherent rights reserved under our Treaties with the United States, to promote the welfare of the People, and to protect the Sovereignty of each Tribe.

The GPTCA is uniquely positioned to assist the Court in understanding the historical context for its consideration of the types of irreparable harm, as well as providing the Court with another perspective for determining the degree of irreparable harm, stemming from the recent reversal of decisions by the Army Corps of Engineers and the resumption of drilling by Dakota Access, LLP. In short, in addition to the irreparable harm to the free exercise of Native religious beliefs caused by the defendants in this matter, there is also irreparable harm in the form of historical trauma and psychological distress which stems from the consistent failure of the United States to live up to its obligations under its Treaties with Indian tribes generally, and under its Treaties with the Great Sioux Nation specifically. Although the Standing Rock Sioux Tribe and the Cheyenne River Sioux Tribe are the named plaintiffs in this case, the actions taken and the harms created by the defendants in this case directly impact and deeply injure the interests and rights of all the member tribes of the GPTCA.

¹ The sixteen federally recognized tribes are: Three Affiliated Tribes of the Fort Berthold Reservation, Spirit Lake Sioux Tribe, Standing Rock Sioux Tribe, Turtle Mountain Band of Chippewa Indians, Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Yankton Sioux Tribe, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Flandreau Santee Sioux Tribe of South Dakota, Omaha Tribe of Nebraska, Santee Sioux Nation, Ponca Tribe of Nebraska, and Winnebago Tribe of Nebraska.



Chairman Gillette Weeps. George Gillette, Mandan, Hidatsa, and Arikara Nation Chairman, and the Business Council witnessing the sale of 155,000 acres of land for the Pick-Sloan Project in North Dakota. <http://ndstudies.gov/garrison-dam>

ARGUMENT

I. INTRODUCTION

History matters. The battlefield for Indian tribes of the Great Plains against the United States in their long struggle to uphold the promises secured in the Treaties – as the “supreme law of the land” – has now moved into this federal courthouse. U.S. Const. art. VI. In his preeminent treatise, *HANDBOOK OF FEDERAL INDIAN LAW*, Felix Cohen recognized that “[h]istorical perspective is of central importance in the field of federal Indian law.” *See COHEN’S HANDBOOK FEDERAL INDIAN LAW* § 1.01, at 5 (Nell Jessup ed. 2012) (Cohen’s). In other words, historical context for treaties, statutes, regulations, and cases must be provided as background for understanding and resolving current legal conflicts. *Id.*

The centuries-old relationship based on conflict between Indian tribes and the United States, in particular, the U.S. Department of the Army, is well-documented. *See e.g.*, ROXANNE DUNBAR ORTIZ, *AN INDIGENOUS PEOPLES’ HISTORY OF THE UNITED STATES* (2014); JEROME A.

GREEN, LAKOTA AND CHEYENNE: INDIAN VIEWS OF THE GREAT SIOUX WAR, 1876-1877 (2000); BILL YENNE, INDIAN WARS: THE CAMPAIGN FOR THE AMERICAN WEST (2006); THOMAS POWERS, THE KILLING OF CRAZY HORSE (2010); MARC H. ABRAMS, SIOUX WAR DISPATCHES: REPORTS FROM THE FIELD 1876-1877 (2012); MARK FELTON, TODAY IS A GOOD DAY TO FIGHT: THE INDIAN WARS AND THE CONQUEST OF THE WEST (2009); DEE BROWN, BURY MY HEART AT WOUNDED KNEE: AN INDIAN HISTORY OF THE AMERICAN WEST (1970); ELLIOT WEST, THE LAST INDIAN WAR: THE NEZ PERCE STORY (2009); JOHN D. McDERMOTT, A GUIDE TO THE INDIAN WARS OF THE WEST (1998); J. BRETT CRUSE, BATTLES OF THE RED RIVER WAR: ARCHEOLOGICAL PERSPECTIVES ON THE INDIAN CAMPAIGN OF 1874 (2017); ROBERT LINCOLN, SECRETARY OF WAR, S. DOC. NO. 123, at 92 (1882) (detailing ten –year expenses of the United States for wars with Native Nations).

However, the contemporary relationship – one based on government-to-government dealings and a firm recognition of Indians’ distinct legal standing and unique political status – finds its roots in the Treaties which were intended to bring peace and security. The contemporary rights at issue in this case derive from this historic legal standing and political status. For example, the right to consultation stems from the United States’ treaty and trust relationships with Indian tribes and the requirement that consent be obtained prior to taking land. *See generally* Robert J. Miller, *Consultation or Consent: The United States’ Duty To Confer With American Governments*, 91 N.D. L. Rev. 37 (2015); Colette Routel & Jeffrey Holth, *Toward Genuine Tribal Consultation in the 21st Century*, 46 U. Mich. J.L. Reform 417 (2013). In this instance, the 1851 Treaty of Fort Laramie provided, *at a minimum*, for extensive consultation whereas the United States promised to “protect” the Native Nations “against the commission of all depredations by the people of the said United States[.]” Treaty of Fort

Laramie with Sioux, 11 Stat. 749, art. 3 (1851)². Regrettably, the US has failed miserably, hundreds of times over, to protect the Native people of the Great Plains.

Although time and space do not permit amicus to paint a complete picture of the relevant history, some broad brush strokes may be helpful to this court in understanding the nature and scope of the irreparable harm suffered by the Standing Rock Sioux, the Cheyenne River Sioux, and other Native peoples of the Great Plains as a result of the recent reversal of decisions by the Army Corps of Engineers and the resumption of drilling by Dakota Access, LLP. Over the course of the U.S. history, federal policies towards Native peoples shape-shifted, subject to the political winds of the time: Post-Contact and Pre-Constitutional Development (1492-1789); the Formative Years (1789-1871); Allotment and Assimilation (1871-1928); Indian Reorganization (1928-1942); Termination (1943-1961); and Self-Determination and Self-Governance (1961-

² The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), endorsed by the United States in 2010, a document endorsed by virtually the entire world, confirms the right of Indigenous Peoples to participate in decisions affecting them and the obligation of nation states to consult with them in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. Arts. 18, 19. STATE DEPARTMENT, ANNOUNCEMENT OF U.S. SUPPORT FOR THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: INITIATIVES TO PROMOTE THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP & IMPROVE THE LIVES OF INDIGENOUS PEOPLES (2010) available at <https://web.archive.org/web/20150714042417/http://www.state.gov/documents/organization/184099.pdf> (the current administration has removed the statement from the State Department Website, but the page is archived at this address). UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx> While the argument will be made that the UNDRIP is not legally binding, compare *Roper v. Simmons*, 543 U.S. 551, 561 (2005), where the Supreme Court considered the Convention on the Rights of the Child even though the US was not signatory, noting the “necessity of referring to ‘the evolving standards of decency that mark the progress of a maturing society.’”

present).³ Cohen's at 7-8. The Great Plains tribes were not immune from these policies and they help to explain the situation that they are in today.

The Fort Laramie Treaties between the United States and the Great Sioux Nation and other Native Nations were negotiated and agreed upon during the Formative Years. *See e.g.* Treaty of Fort Laramie with Sioux etc. 11 Stat. 749 (Sept. 17, 1851); Treaty with the Sioux and Arapaho, 15 Stat. 635 (1868). The unilateral and illegal taking of Treaty land by statute occurred in the Allotment and Assimilation era. *See, e.g.* Act of February 28, 1877, 19 Stat. 254 (1877); Act of March 2, 1899, 25 Stat. 889 (1889). The Pick-Sloan project by the Army Corps that flooded hundreds of thousands of the best Native lands along the Missouri River occurred during the Termination era. *See Impact of the Flood Control Act of 1944 on Indian Tribes Along the Missouri River: Hearing Before the Senate Committee on Indian Affairs*, 110th Cong. (2007); Michael L. Lawson, DAMMED INDIANS: THE PICK-SLOAN PLAN AND THE MISSOURI RIVER SIOUX, 1944-1980 (1982); Peter Capossela, *Impacts of the Army Corps of Engineers' Pick-Sloan Program on the Indian Tribes of the Missouri River Basin*, 30 J. Env'tl. L. & Litig. 143 (2015). The scholar Vine Deloria, Jr., an enrolled member of the Standing Rock Sioux Tribe, described Pick-Sloan as "the single most destructive act ever perpetuated on any tribe by the United States." *Id.* at 157-58.

From this history, a pattern emerges wherein the United States consistently utilizes the legal narrative of the time to segregate, take from, and discriminate against Indian tribes. DAPL is simply the latest example of Native peoples of the Great Plains being subjected to varying legal

³ Some argue that we are now moving into the human rights era of Indian law and policy. *See, e.g.* Walter Echo-Hawk, *The Human-Rights Era of Federal Indian Law: The Next Forty Years*, 62 Fed. Law 32 (2015). Whether this is an era of affirming human rights versus an era of abusing human rights, only time will tell.

standards and shifting political winds to justify the subordination of Indian treaty rights to non-Indian pecuniary interests.⁴

As more fully discussed below, in addition to the irreparable harm to the free exercise of Native religious beliefs caused by the Army Corp and DA in this matter, there is also irreparable harm in the form of historical trauma and psychological distress which stems from the consistent failure of the United States to live up to its obligations under its Treaties with Indian tribes generally, and under its Treaties with the Great Sioux Nation here specifically. Treaties matter.

II. IRREPARABLE HARM

In the brief in support of their motion for a temporary restraining order, the Cheyenne River Sioux Tribe laid bare the irreparable harm to the exercise of their religious beliefs and ceremonies resulting from the recent decisions and actions of the Army Corps and DA. There should be no doubt that engaging in the described ceremonies is religiously motivated conduct which encompasses the water from Lake Oahe as a sacred element. The affidavits presented to the court clearly illustrate that constructing the pipeline results in desecration of Lake Oahe's waters, making them wholly unsuitable for religious ceremonies. Accordingly, the continuation of pipeline construction poses a substantial burden on their religious exercise in two ways: (1) by preventing conduct motivated by a sincerely held religious belief, and (2) by forcing Native American religious adherents to choose between violating their religion by using impure water for ceremony, or forgoing the ceremony altogether. *See Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1315 (10th Cir. 2010); *Yellowbear v. Lampert*, 741 F.3d 48, 55 (10th Cir. 2014). Thus,

⁴ This also includes rejection by the Army Corps of the North Bismarck route alternative which crossed through or in close proximity to several wellhead source water protection areas that were identified and avoided in order to protect areas that contribute water to municipal water supply wells. Environmental Assessment ("EA") at 19-20.

the burden shifts to the United States to demonstrate that its approval of the easement authorizing the construction of the pipeline under Lake Oahe actually furthers a compelling government interest by the least restrictive means – the most demanding test known to constitutional law. *See City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

In addition, federal courts have recognized that harm to treaty rights is irreparable harm. *United States v. State of Michigan*, 508 F. Supp. 480, 492 (W.D. Mich. 1980), *aff'd*, 712 F.2d 242 (6th Cir. 1983); *United States v. Washington*, 20 F. Supp. 3d 777, 785 (W.D. Wash. 2004); *Nez Perce Tribe v. U.S. Forest Serv.*, No. 3:13-CV-348-BLW, 2013 WL 5212317, at *7 (D. Idaho Sept. 12, 2013) (the court found “that [the Tribe and conservation group] are likely to suffer irreparable harm if no injunction is issued. The plaintiffs are not seeking damages; they are seeking to preserve their Treaty rights along with cultural and intrinsic values that have no price tag.”) The Great Plains Tribes retain treaty hunting and fishing rights to the Missouri River that have been harmed by the approval of DAPL. *See* Solicitor’s Memorandum re Tribal Treaty and Environmental Statutory Implications of the Dakota Access Pipeline, Dec. 4, 2016 (See M-37038) at 10-22. As the Solicitor noted, there has never been any relinquishment or taking of the hunting and fishing rights from the Great Sioux Nation and in fact these rights have been statutorily confirmed. *Id.* at 6, 10-13. The Solicitor also correctly noted that the July 25, 2016 Environmental Assessment summarily concluded, without analysis or explanation, that there will be no impacts to treaty hunting and fishing rights. *Id.* at 18-19.

In this case, irreparable harm occurred when the Army Corps issued notice of its intent to terminate the process for the Environmental Impact Statement which would have – in compliance with the federal government’s treaty and trust obligations – fully analyzed the nature and scope of the Tribe’s treaty rights, including but not limited to adverse impacts on the

Tribe's reserved water rights, its treaty fishing and hunting rights, and its treaty right to be secure in their homeland. The approval of the easement without a more robust analysis and consultation on the tribal hunting and fishing rights in order to mitigate or avoid impacts to those rights has irreparably harmed those rights.

But in addition to the irreparable harm to the treaty rights, there exists a separate and distinct injury which results from the well-worn and still trodden trail of treaty violations visited upon the Indian tribes of the Great Plains.

III. DAPL IS THE LATEST IN A LONG LINE OF HARMS INFLICTED UPON THE INDIAN TRIBES OF THE GREAT PLAINS CONTRIBUTING TO HISTORICAL TRAUMA AND PSYCHOLOGICAL DISTRESS.

On January 24, 2017, the American Psychological Association ("APA") issued a statement: "APA Urges Trump Administration to Safeguard Standing Rock Sioux in Response to Memorandum on Dakota Access Pipeline." A full copy of the statement is available at <http://www.apa.org/news/press/releases/2017/01/trump-dakota-pipeline.aspx>. In urging the Army Corps to search for alternative routes, the APA advises: "Native Americans have been historically marginalized and mistreated by the United States. Research has linked historical trauma to health disparities, including increased likelihood of early death due to substance abuse, unintentional injuries, assault, homicide and suicide." This statement was the continuation of vigorous discussion as evidenced by a November 16, 2016, posting by Susan McDaniel, PhD, 2016 APA President, "Historical Trauma in the Present: Why APA Cannot Remain Silent on the Dakota Access Pipeline." See <https://psychologybenefits.org/2016/11/16/why-apa-cannot-remain-silent-on-the-dakota-access-pipeline/>. Doctor McDaniel explains:

Native Americans have been historically marginalized and mistreated by the United States. For instance, not all States recognized Native Americans' right to vote until 1957 and many tribes experienced great loss of life, land and culture as the result of State and Federal legislation.

According to the psychological literature, chronic, systemic loss and mistreatment, as described above, may lead to historical trauma in which the pain experienced by one generation is transferred to subsequent generations through biological, psychological, environmental and social means. Studies show that historical trauma is linked to health disparities, including increased likelihood of early death due to chronic liver disease and cirrhosis, unintentional injuries, assault/homicide, and suicide.

Id. See also Kathleen Brown-Rice, Professional Counselor: Research & Practice, vol. 3, issue 3, at 117 (2013) (copy available at <http://tpcjournal.nbcc.org/examining-the-theory-of-historical-trauma-among-native-americans/>) (“To explain why some Native American individuals are subjected to substantial difficulties, Brave Heart and DeBruyn (1998) utilized the literature on Jewish Holocaust survivors and their descendants and pioneered the concept of *historical trauma*.”).

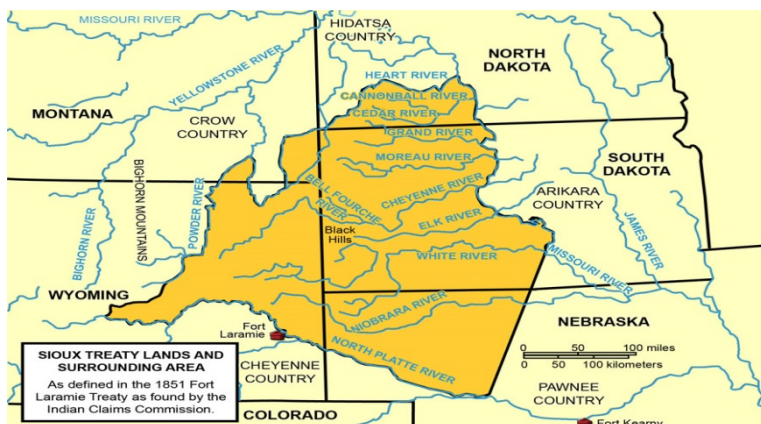
The Indian tribes of the Great Plains, including Standing Rock Sioux and Cheyenne River Sioux, are clearly among those who have experienced great loss at the hands of the United States. As the U.S. Supreme Court pointed out with regard to the Great Sioux Nation, “[a] more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history, which is not, taken as a whole, the disgrace it now pleases some persons to believe.” *United States v. Sioux Nation of Indians*, 448 U.S. 371, 388 (1980) (quoting *United States v. Sioux Nation of Indians*, 518 F.2d 1298, 1302 (Ct. Cl. 1975)).

c. THE TAKING OF THE BLACK HILLS

Before official contact between the Indian tribes of the Great Plains and the United States, the Tribes controlled and laid claim to large portions of what would become Minnesota, Iowa, North Dakota, Nebraska, and almost all of South Dakota, among other areas. See Edward Lazarus, *Black Hills/White Justice: The Sioux Nation Versus the United States, 1775 to the*

Present, 5 (1991) (“Lazarus”). In 1804, the Lewis and Clark expedition was one of the first official contacts with the various bands of the Great Sioux Nation. *Id.* at 9. Lewis and Clark announced that the United States had acquired sovereignty over the Louisiana Territory, including all of the lands of the Great Sioux Nation. *Id.* While Lewis and Clark would refer to the Lakota as the “vilest miscreants of the savage race,” the Lakota could not fathom that their entire domain was purportedly purchased or previously owned by another European country. *Id.* For the next hundred years, the United States would utilize this mind-set to lead various unsuccessful military campaigns in an attempt to dispossess the Lakota of their rightful claim to their lands.

These military campaigns would be peppered with talks of peace. Promises of gifts and goods would bring many Indians together in 1851 to talk peace. *Id.* at 16. That peace talk culminated in the 1851 Fort Laramie Treaty, which became the vehicle the United States’ utilized to secure safe passage for non-Indians and the means to segregate the Indians. *Id.* Within the 1851 Fort Laramie Treaty, the Sioux Nation reserved a vast area of land with promises that they would be secure in their territory. *See generally* Treaty of Fort Laramie with Sioux, 11 Stat. 749 (1851).



http://www.ndstudies.org/resources/IndianStudies/standingrock/images/1851treaty_lands_large.jpg

In the 1851 Treaty of Fort Laramie, the Great Sioux Nation agreed to peace, and the United States agreed to protect the Indians from non-Indian incursions in their homeland and to make compensation for the disruption of their lives. Lazarus, *supra* at 17.

But the pressures of westward expansion would prevail. New Gold Rushes in the Great Plains would make confrontation inevitable. *Id.* at 27. In 1862, The Sioux Wars started. *Id.* One of the first confrontations led to the largest hanging in U.S. history of 38 Sioux. *Id.* The wars culminated in Red Cloud's war, which led to the signing of the 1868 Fort Laramie Treaty that reduced the Sioux Nation lands. *See generally* Treaty with the Sioux and Arapaho, 15 Stat. 635 (1868). The Sioux People reserved the land therein for the Natives' absolute and undisturbed use and occupation, and in exchange for the ceding of more land, the Tribes preserved their right to hunt and fish throughout the remainder of their territory. *United States v. Sioux Nation of Indians*, 448 U.S. at 374-75. The years following the 1868 Treaty brought peace until it was discovered that the Black Hills contained vast quantities of gold and silver. *Id.* at 376. The United States failed to protect the rights to the Black Hills, believing such efforts to be futile. *Id.* at 378.

Although the United States initially sought to purchase the Black Hills, thus complying with the treaty requirement to obtain tribal consent, when the Great Sioux Nation refused to sell their sacred lands, the United States unilaterally abrogated the 1868 Treaty, and effectively stole the Black Hills away from the Great Sioux Nation. *Id.* at 382-83; *see also* Act of February 28, 1877, 19 Stat. 254 (1877). This greed for the lands of the Great Sioux Nation festered further, eventually leading Congress to act once again in violation of the Treaties. By Act of March 2, 1889, ch. 405, 25 Stat. 889, the United States unilaterally reduced the Great Sioux Reservation, dividing the Tribes onto six separate Indian reservations, taking tens of millions of acres of prime

land. The effects of this divide-and-conquer tactic of breaking the Great Sioux Nations into constituent bands are still felt today on the reservations.

d. THE PICK-SLOAN FLOODING

Although promises were given that the Tribes would be secure on their separate reservations, the United States was not finished in taking lands in violation of the Treaties and breaking the spirit of Native people. The Pick-Sloan project, a massive infrastructure scheme to construct dams and reservoirs in the Missouri River Basin, caused more destruction to the land and economy of Native Nations than any public works project in history. Capossela, *supra*, at 167. The project impacted Tribes on seven reservations: Fort Berthold, Cheyenne River Sioux, Standing Rock, Lower Brulé, Crow Creek, Yankton, and Santee Sioux. *Id.* at 155-56. Through the project, the Army Corps of Engineers forcibly displaced families, flooded entire communities, and inundated the best and most fertile tribal lands, thereby destroying the livelihood of farmers and ranchers, important natural and cultural resources, and critical community infrastructure. *Id.* at 167-68. Over 350,000 acres of reservation land was permanently flooded. *Id.* at 145. *Impact of the Flood Control Act of 1944*, *supra* at 5-6 (statement of Robin Nazzaro, Director, Natural Resources and Environment, Government Accountability Office); Lawson, *supra* at 50-56.

Over one-third of tribal members from five Sioux reservations (Cheyenne River, Standing Rock, Lower Brulé, Crow Creek, and Yankton) were forcibly displaced by the projects. Lawson, *supra* at 55-56. “I remember what it looked like before the flood,” said LaDonna Brave Bull, whose family was forced from its land by the Army Corps. *See* Trymaine Lee, *No Man’s Land: The Last Tribes Of The Plains*, MSNBC, <http://www.msnbc.com/interactives/geography-of-poverty/nw.html> (last visited Feb. 10, 2017).

The troubling history surrounding the creation of the Pick-Sloan project by the Army Corps illuminates the present-day trauma and psychological distress as a shared experience by the Native people of the Great Plains and beyond. The distrust of the Army Corps is at the core of this experience – a knowing that in the end the United States will again place the interests of non-Indians who seek profit over the treaty-protected interests of the Indians.

The decisions and actions of the Army Corps in relation to the approval process for the Dakota Access Pipeline are filtered by Indian people through the lens of history. In the late 1940s through the 1960s, the Army Corps deliberately forced Tribes to accept the Pick Sloan project without proper notice or an opportunity to oppose the project. Lawson, *supra* at 18. Congress candidly acknowledged that the Oahe Dam would benefit mostly the non-Indian communities below the lake, and that “no benefits will accrue to the Indians.” *Id.* at 65. In the initial stages of construction of the Oahe Dam, the Corps attempted to condemn portions of Standing Rock land without actual condemnation authority to do so. Michael L. Lawson, THE OAH DAM AND THE STANDING ROCK SIOUX 218 (1976). The Tribe sued and a Court ruled in 1958 that the Corps’ actions were “wholly repugnant to the entire history of Congressional and judicial treatment of the Indians.” *Id.* In other areas, the Corps altered portions of the Pick-Sloan project, without authorization, to protect non-Indian communities and inundate Indian communities. Lawson *supra*, at 59. The devastating effects of this project on the land, economy, and culture of the Great Plains tribes cannot be overstated.

The operation of the project continues to negatively impact tribal lands to this day. *See* Capossela, *supra*, at 180. As a result of the Corps’ operation of the Missouri River, the various lakes in North and South Dakota “experience huge fluctuations in their water levels.” Capossela, *Id.* at 188. “This has significant impacts on the water supply, aesthetics, and natural environment

of the Great Plains Tribal communities along the upper Missouri River. . . .” *Id.* The ability to utilize reserved water rights is also impacted by the Corps’ operation. *Id.* The Corps, again, favors “downstream navigation and water intakes to the detriment of water uses on Indian reservations.” *Id.* at 197. This can result in extremely low levels of water, resulting in silt deposits that destroy public water systems on reservations and result in the loss of water for weeks at a time. *Id.*

The Corps’ operation also detrimentally affects cultural and environmental resources. *Id.* at 199. The operation of the dams has resulted in the erosion of grave sites and other historical sites. *Id.* Native American human remains and other cultural objects “routinely wash up on the shores of the Missouri River.” *Id.* The staggering poverty that resulted from the program lives on across the Dakotas today.

The approval of DAPL without fully involving the affected tribes and seeking their free, prior, and informed consent, and without considering treaty hunting, fishing, protectorate, and water rights is another in a long line of actions that place the interests of non-Indians above the interests of Native peoples of the Great Plains to the detriment of the Tribes.

IV. CONCLUSION

Based on the foregoing, *Amicus Curiae* Great Plains Tribal Chairman's Association urges this Court to grant Intervenor-Plaintiff Cheyenne River Sioux Tribe's Motion for a Temporary Restraining Order.

Respectfully submitted,

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