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September 22, 2021

Col. Mark R. Himes, Commander and District Engineer
U.S. Army Corps of Engineers
Omaha District
1616 Capitol Avenue
Omaha, Nebraska 68102-9000

Subject: Cooperating Agency Standing Rock Sioux Tribe's Comments on the July DEIS

Dear Colonel Himes:

The Standing Rock Sioux Tribe submits this comment package on the initial draft environmental impact statement ("DEIS") prepared by the U.S. Corps of Engineers for the Lake Oahe crossing site of the Dakota Access Pipeline ("DAPL"). At this juncture, the Tribe has elected to keep its comments more general than specific, as we have submitted extensive information, on several occasions, on matters pertinent to this EIS process. Because the primary problem with the DEIS is that it ignores virtually all of that information, we are including several of our previous comments and expert input, and ask yet again that it be considered and included, as appropriate for a cooperating agency. We enclose as part of this letter the Tribe's Comments on the Scoping Report, including the voluminous attachments to this document. (Hereinafter "SRST Comments on the Scoping Report," (Enclosure 1))¹ Related to our request that this EIS process start anew is that we believe it is imperative that a Memorandum of Understanding

¹The citation to documents included as attachments to the SRST's Comments on the Scoping Report will be referenced by their original attachment designation.

between the Corps and the Cooperating Agencies be developed and signed by the parties. This is necessary to understand the roles and responsibilities, timeline, and dispute resolution process as it relates to this EIS process. This Memorandum of Understanding should have been drafted at the beginning of the EIS process and the fact that one was not is just another indication of this flawed process. It is all the more important with the recent addition of other federal Cooperating Agencies to this process.

I. Introduction

In 2020, after over four years of litigation, the U.S. District Court in Washington, D.C. confirmed what the Tribe has been arguing from the inception of this process: the impacts of the decision to route DAPL yards upstream of the Tribe's reservation was significant enough to warrant a full EIS. *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 440 F. Supp.3d 1 (D.D.C. 2020). That decision was affirmed unanimously on appeal. *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032 (D.C. Cir. 2021), reh'g en banc denied (April 23, 2021). The Tribe was heartened that its long-standing position was so fully validated, and looked forward to engaging in good faith with the Corps on a valid EIS that fully assessed the risks and potential impacts of operating a massive oil infrastructure project at the Tribe's doorstep.

Our review of the initial draft reveals that the Corps has fundamentally misunderstood the courts' directive and the requirements of the law. It has insulted us with a document that largely ignores the last five years of history and the thousands of pages of detailed technical and cultural material shared by the Tribe. Instead of a good faith examination of the critical issues of siting this pipeline next to the Tribe, this is an advocacy document that appears to have been prepared by the proponent for a single purpose: to justify issuance of a new easement of the pipeline at its current location. In example after example, the document simply ignores critical information that we have presented and slants information in favor of permit issuance.

Moreover, as during the last Court-ordered remand, the Corps is withholding virtually all of the key technical materials and analysis from the Tribe, relying on the conclusions of proponent-prepared technical materials without subjecting them to any external scrutiny. No explanation for the decision to keep these key documents secret has been provided to us, even though this has been a key area of dispute for many years.

At this early stage of the process, the Corps is already gravely off track. While the Corps stated it was going to rely the entire record of the DAPL pipeline from the EA, the legal proceeding, and the remand report, this DEIS seems not to have

considered any of the information the Tribe and its experts have provided and which the courts relied upon in ordering this EIS. Instead, the DEIS is a pro-DAPL advocacy paper, filled with major errors, omissions, and misstatements. It cannot be repaired. We urge you to start the process over, with a new consultant or internal staff, and by treating the Tribe as a Nation that is due access to all the relevant information.

II. Purpose of EIS

As we have emphasized, the EIS is not a paperwork formality, but is intended to inform a substantive permit decision—issuance of an authorization under the Mineral Leasing Act (“MLA”). The D.C. Circuit confirmed the vacatur of the existing easement, which means that the Corps will have to decide whether or not to issue a new easement for the pipeline to continue operating. In many respects, the MLA “imposes a higher and more specific bar” for analysis than NEPA itself. *Sierra Club, Inc. v. United States Forest Service*, 897 F.3d 582, 604 (4th Cir. 2018)

The MLA provides the Corps with discretionary authority to issue pipelines—it does not, unlike some other statutes, mandate a permit upon the satisfaction of some criteria. The Corps has the discretionary authority to deny an easement, meaning that a full and fair analysis of the risks and benefits of the project is crucial to inform that decision. The MLA centers the protection of the environment, giving the Corps broad authority to impose conditions and limits to protect water, air, wildlife, and people “who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.” 185 U.S.C. § 185(h)(2)(D). Of course, this describes the members of our Tribe.

The question before the courts was whether the impacts of DAPL at Lake Oahe were “significant” enough to trigger an EIS. That threshold question has been conclusively answered in the affirmative. This means that the EIS must meet all the requirements of a valid EIS, not just as to the specific issues that the Court presented. This is particularly true for issues that were litigated but not decided, such as issues pertaining to Treaty rights, environmental justice, and adequate consultation.

The MLA calls for a determination as to whether the proponent has the “technical and financial capability” to operate the project. *Id.* § 185(j). This further highlights the need for a close examination of: a) ETP’s abysmal safety record; b) the safety violations identified by PHMSA in its enforcement action; and c) DAPL’s persistent failure to comply with leading industry safety standards. We have identified all of these issues repeatedly over several years. Some of them formed the basis for the court ruling against the Corps. And yet the Corps continues to fail to closely examine

them. *See also id.* § 185(o) (authorizing termination of easement in cases of non-compliance).

III. Failures in the EIS Process

At the outset, we wish to highlight some of the deep flaws in the process the Corps has adopted for the completion of this EIS. There are several key issues.

First, the Corps has relied on an external consultant—Environmental Resource Management (“ERM”)—to handle drafting of many of the NEPA documents throughout this process. Given that both the original environmental assessment (“EA”) and subsequent Court-ordered remand report have been found to have violated NEPA, the Corps’ continued loyalty to ERM is hard to fathom. Indeed, the company’s failed history in this case, and its close ties to the oil industry, render it incapable of providing the honest and candid “hard look” at DAPL’s risks and impacts that the law requires. While use of consultants is not prohibited, the Corps has a duty to independently evaluate its findings and ensure their accuracy. 40 C.F.R. § 1506.5. This has never happened.

Indeed, we recently learned that ERM is a member of the American Petroleum Institute—an entity devoted to the promotion of oil and gas. API’s mission is to “influence public policy in support of a strong, viable U.S. oil and natural gas industry.” ERM staff also testified in favor of DAPL’s permit before state agency commissions. This alone reveals a conflict of interest that is wholly unacceptable. Implementing regulations require contractors to disclose such conflicts in writing. *Id.* § 1506.5(d). If ERM has failed to submit such a statement, that is ground alone to disqualify them. If they have, the existence of the conflict also disqualifies them. Either way, they cannot continue to oversee this EIS process.

Second, there are plainly lines of communication between the consultant and DAPL itself—communications which are not available to the public and opportunities to shape the outcome that are not available to others, including us. In many places, the DEIS relies on information provided by DAPL. *See, e.g.*, DEIS 3-135 (“Dakota Access provided the following information indicating the economic losses resulting from the shut down and removal of the pipeline from service.”). Where is that information? How will DAPL’s self-interested submittals be subject to scrutiny? What independent checks has the Corps provided on this information? The Tribe has submitted extensive detailed technical information showing that a closure of DAPL would have limited impacts on oil markets and even North Dakota production. That information is not reflected anywhere in the DEIS, even though better documented and more credible.

We are unaware of any steps the Corps has taken to ensure the integrity of the process, for example, by limiting or requiring the disclosure of communications between the proponent and the consultant. To the best of our knowledge, DAPL has an open door with the consultant to exchange information, and we do not. That is fundamentally unfair and violates the spirit and letter of NEPA.

Third, for reasons that have never been explained, the Corps is continuing its practice of not disclosing technical material underlying the EIS. This problem plagued the remand process, during which the Corps relied on spill risk and fate analyses prepared by DAPL but never shared that information with the Tribe until after the remand was complete. Once Tribal experts had the opportunity to review that information, the flaws and mistaken assumptions became apparent. But because they had been withheld from the Tribe, the remand conclusions suffered from this lack of input. The result was the invalidation of the Corps' remand decision by the courts.

We are mystified why the Corps would repeat this mistake. Yet again, the DEIS relies on analysis and data, prepared by DAPL, which we have had no opportunity to review and comment on. *See, e.g.*, DEIS at 1-11 (Corps "performed additional analysis and independent research, and received supplemental information from Dakota Access"); 3-80 (citing 2020 RPS oil spill study); 3-65 (citing DAPL 2020 geographic and facility response plans). This failure is even more acute given that now the Corps is evaluating an expanded operations plans with daily volumes of 1.1 million barrels per day—an analysis that has never been previously conducted as far as the Tribe is aware. DEIS at 3-199. Simply seeing DAPL's self-interested conclusions parroted in the DEIS is no substitute. We ask that you immediately turn over the underlying documents and analytical support for review and comment, as appropriate for a Tribal Nation.

In sum, the process that the Corps has followed to date is irretrievably flawed. It does not appear to us possible to fix it. We ask that you start over, with appropriate transparency and an appropriate consultant (if any), selected in cooperation with the Tribe, and providing the Tribe with the information it needs to play its part.

IV. Incorrect Scope and Purpose and Need

The DEIS is bungled at the outset with a deeply flawed scope. The document disclaims any responsibility to assess the impacts of the pipeline on the production or consumption of crude oil, asserting that the Corps "is not an energy planner and did not propose the DAPL project." DEIS 1-10. This odd justification has no basis in the NEPA process. Rather, NEPA requires the Corps to consider and disclose the direct, indirect, and cumulative impacts of operating a major crude oil pipeline with a 1.1

million barrel-a-day (“bbl/d”) capacity—*roughly equivalent to 10% of the nation’s total oil production.*

During the litigation, both the Corps and DAPL repeatedly insisted that closure of the pipeline would result in significant changes to oil production in North Dakota and have broad market impacts. *See supra* § IX. In this document, the Corps reverses course, claiming that such matters are outside of the scope of its concern. No explanation is offered why the agency can deploy potential impacts on oil production when it serves to keep the pipeline open, but then sidestep the issue when required to analyze impacts under NEPA. In any event, the DEIS gets it exactly wrong: of course, the potential impact of the pipeline on oil production and consumption is an “indirect effect” of the Corps’ decision and it should be fully analyzed and disclosed.

Whether or not this pipeline will cause more oil to be produced, transported, shifted around, exported, and used is a key question that lies at the heart of this EIS process. This Administration has made addressing the climate crisis a key priority. It cannot make an informed decision as to whether the project is in the public interest without such consideration.

V. Spill Risk

It is unclear what new technical analysis has been conducted to support this DEIS. In many respects it looks like the DEIS relies on analyses which the Tribe has repeatedly shown to be flawed, incomplete, or inadequate—yet its conclusions are repeated without any consideration of the critiques. For example, the DEIS repeats the conclusions of a 9-factor risk analysis prepared by DAPL. DEIS 3-187. The Tribe has submitted extensive technical material challenging those conclusions, but the DEIS acts as if none of that critique ever occurred. *See*, Prefiled Testimony of Donald Holmstrom, Case No. PU-19-204 (NDPSC) (November 1, 2019) (Enclosure 2); Second Declaration of Donald Holmstrom, Filed in *Standing Rock*, 1:16-cv-1534-JEB, ECF, 342-1 (March 23, 2018) (Enclosure 3); Third Declaration of Donald Holmstrom, Filed in *Standing Rock*, 1:16-cv-1534, ECF, 525-27 (May 5, 2020) (Enclosure 4); *See*, SRST’s Comments on the Scoping Report, Attachments O, P, Q, R, S (Enclosure 1).

Similarly, the DEIS repeatedly states that failures from various sources are “unlikely.” *See* DEIS 3-189. The DEIS also repeats various statistical estimates of the risk of a spill (e.g., 1 in a million) but does not support those estimates with any data or information. That is not a risk analysis, it is a baseless and conclusory dismissal of a key issue that does not inform the actual risk. While the Court previously observed that the risk of a spill is low, it has also found the Corps’ analysis of multiple risk factors—for

example, the operator's safety record—to be arbitrary and capricious. *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 255 F. Supp.3d 101 (D.D.C. 2017). The DEIS relies on the former finding but ignores the latter one, violating any duty of candor or fairness.

As the Tribe has documented with hundreds of pages of material, the Corps needs to consider ETP's dismal safety record in assessing risk. The Court even agreed that this was a basis for setting aside the permit. And while the DEIS includes a section entitled "safety record," it simply repeats DAPL's litigation position that the pipeline itself has not suffered any major spills, implying that this is a suitable amount of analysis for this serious issue. DEIS 3-191. It is not. As the Tribe has documented, ETP itself has one of the worst safety records in the nation, and a well-documented record of noncompliance with safety laws and regulations. *SRST*, 440 F. Supp.3d at 19 (finding that "the operator's history did not inspire confidence"). Indeed, as noted above, PHMSA itself has found DAPL to be out of compliance with numerous safety standards. *See*, PHMSA Notice of Probable Violation Proposed Civil Penalty and Proposed Compliance Order (July 22, 2021). The DEIS's statements that the pipeline "is in compliance with all applicable pipeline safety regulations" is obviously false and its inclusion in this document deeply problematic. DEIS 3-191. The shifting of responsibility between the State Agency, i.e. North Dakota Public Service Commission, and the federal government as to safety is nonsensical. This essentially means that there is no regulatory agency that is accountable for ensuring the safety and efficacy of this pipeline. *See*, Findings of Fact and Conclusion of Law, Case No. PU-19-204, NDPSC (February 19, 2020). (Enclosure 5). Otherwise, PHMSA monitors pipelines once they are built and as their record makes clear this pipeline is not safe and its operator is not in compliance with federal pipeline safety laws and yet there is no mention of this in the DEIS.

Similarly, the DEIS baselessly rejects the Tribe's recommendation in its remand report of using more specific pipeline data to calculate the risk of a release. *See*, *SRST's* Comments on the Scoping Report, Attachment B (Enclosure 1). Instead, it asserts that the pipeline "is considered to be better constructed than the average pipeline"—an assumption that is not explained or supported and is clearly false in light of ETP's record of accidents and safety violations at its other pipelines. Spills from other pipelines—which may have a tiny fraction of DAPL's monumental 1.1 million bpd capacity—do little to inform spill risk of this pipeline in this place.

Shockingly, the DEIS still focuses primarily on the risk of a pipeline spill in the HDD segment only. DEIS at 3-30. While leaks and spills in the HDD segment are obviously a concern, the Tribe has consistently documented that a spill *anywhere*

adjacent Lake Oahe, for example stream or river crossings that feed into Lake Oahe, could contaminate the Lake, harming the Tribe and its Treaty-protected rights. The pipeline in these areas is much more shallowly buried, meaning it is at risk of spill from events that would be potentially less likely for a deeply buried pipeline. Yet while the DEIS briefly mentions this possibility, no analysis is provided as to its likelihood or potential magnitude, other than a conclusory dismissal as a low-risk event. That is not adequate analysis and misses the entire point of the NEPA process. *SRST*, 440 F. Supp.3d at 17 (Corps must adequately resolve controversy over technical issues).

As it has from the beginning, the DEIS focuses almost exclusively on an implausible full-bore rupture (“FBR”) under the lake. A more plausible, and profoundly worrying, scenario is a slow leak deep in the HDD segment, which would be largely undetectable until oil appears on the water surface. *SRST*, 440 F. Supp. at 18 (finding Corps had not addressed expert comments about slow leak detection). While the risk of a slow leak is mentioned, there is virtually no discussion or analysis. For example, the DEIS oddly concludes that such a scenario would be detected in “days to weeks rather than months to years” — a conclusion with zero empirical or logical support. DEIS 3-203. Nor does it provide any meaningful assessment of the risk of such an event. Given the fact that HDD is a relatively new technology, the historical record is not dispositive: there may indeed be multiple pipelines with similar slow leaks already that have never been detected. As we have emphasized for years, the EIS needs to give a meaningful discussion of the risk of undetectable slow leaks. This one still does not.

We have carefully documented what the Corps needs to consider in a valid risk assessment, many times. This material has been entirely ignored. The Corps must start anew.

VI. Spill Impacts

The picture here is no better. It is truly disheartening to see how, after five years of trying to explain to the Corps what the impacts of a spill in this location would be, how little has changed. It appears that the Corps has learned virtually nothing from everything we have shared, and from losing repeatedly in court.

First, the Corps has applied a new “worst-case discharge” (“WCD”) at the heart of its impact analysis. DEIS 3-80. That number is marginally higher than the one it previously used, but the Corps has not provided any transparency on how this volume was calculated, especially in light of the expanded volume of 1.1 million bpd. DEIS 3-199. The Tribe cannot comment on a WCD volume that is barely explained. For

example, the DEIS makes no effort to explain why EPA's Mid-Missouri WCD estimate is still several times larger. *SRST*, 440 F. Supp. at 15. Given the many problems with the Corps' previous efforts to propose a reasonable and lawful WCD, and the Courts' findings that the previous WCD was unlawful, the burden to explain, justify, and accept comment on its new WCD is substantially increased. While the Corps has chosen to keep the WCD secret, there is little indication that they have learned from any of the extensive criticisms that we have made about the previous WCD, which was found to be unlawful. *SRST*, 985 F.3d at 1048-49.

Relatedly, the reasonable detection time for discovery of a leak or spill has also been a critical issue, one in which the courts have agreed that the Corps failed to address. *Id.* at 1048, The Tribe has submitted voluminous evidence that detection is a key issue, especially for smaller leaks, and provided countless examples of spills that take days or weeks to detect. *See*, *SRST's* Comments on the Scoping Report, Attachments O, Q (Enclosure 1) Instead of discussing these risks in any meaningful way, the Corps provides a conclusory paragraph (at 3-199) justifying a *three-minute* detection time. While this is an improvement over its previous estimate of literally instantaneous detection, there is no data of any kind justifying such a rapid detection time nor any explanation of how why it is consistent in light of the multiple real-world examples of much longer events. The potential impacts of a spill need to consider reasonable detection times and a legitimate WCD, neither of which is the case here.

It remains baffling why the DEIS continues to focus exclusively on impacts to the Tribal water supply as the only adverse impact of an oil spill. (DEIS 3-30). We have spent the last five years trying to explain the existential threat of a spill to the Tribe's culture, economy, and way of life. *SRST's* Comments on the Scoping Report, Attachments B, C, D, G, H, K, L, M, P (Enclosure 1). It goes far, far deeper than just potentially closing the water facility – which would be a monumental impact to be sure, one that cannot be mitigated if DAPL “develop(s) a plan for supplying an alternative source of clean, safe water.” DEIS 3-33. Indeed, the notion that the impacts of any oil in Lake Oahe could be mitigated by providing bottled water to the affected Tribal communities is profoundly insulting.

The ability to determine the effects of a spill and to restore affected habitats is limited by the extent of ecological knowledge of affected habitats prior to the damaging event. As natural habitats have a high degree of natural variability (due, for example, to the high degree of inter-annual variability in the weather, at a minimum), ecosystems at risk of contamination should be monitored for several years to develop the necessary baseline of ecological knowledge necessary to monitor for impacts and restore damaged areas in the event that damage should occur.

At all sites subject to long-term, continuous monitoring, additional ecological insights have been gained that could not have been gained at any shorter temporal scale. For example, at sites in the Galapagos Islands or Farallon Islands, periods of study exceeding 25 years have not been enough to develop really determinate ecological knowledge. For our purposes on Lake Oahe, such long-term, intensive study is not feasible. Instead, primary stakeholders should agree to cooperate in developing the necessary ecological knowledge of the reaches of Lake Oahe most likely to be affected by spills, both in ongoing ordinary operations (e.g., like NDGF fisheries evaluations in Oahe) and in studies dedicated specifically to developing the required ecological knowledge.

The standard of restitution in the event of a spill is restoration to the original condition, documentation of the original condition is key to obtaining restitution, and currently the cost of this documentation falls on SRST and others who are at risk should a spill happen. In summary:

"Oil-spill experts point out that the ideal approach to such an accident is to not have one in the first place. But barring that, preparedness is key, they say. And scientists have realized the importance of having baseline data on the ecology of areas near oil rigs and transport routes so they can tell exactly how the oil affects a region and its inhabitants should a spill occur. Scientists also can work with responders, helping them think through and come up with solutions to likely scenarios before they happen."

As currently written, the DEIS focuses on preventing spills and other pipeline safety measures, modeling of spills (which is inherently difficult and dubious scientifically, and some measures of preparedness for spill detection and containment but focuses little on the actual field environmental and ecological monitoring that is the key component of preparedness that enables restitution in the event of a spill. In the view of SRST (tribal biologists), this cost should be borne by the party that generates the risk, which is the pipeline company, not by the parties that endure the risk, like the Tribe and others downstream.

Most of the Corps' dismissal of the impacts of a spill event is predicated on technical analyses performed by DAPL that the Corps refuses to share with the Tribe, meaning that the Tribe cannot meaningfully comment on it. As discussed elsewhere, the Corps should turn over all technical materials to the Tribe, so that it can provide meaningful input. Anything less reveals this enterprise to be a sham.

VII. Alternatives

The Tribe appreciates that the DEIS considers both abandonment of the pipeline and rerouting to the North Bismarck route. However, the DEIS effectively collapses these alternatives by assuming, with no basis, that if the easement is denied that: a) DAPL will simply build a new pipeline in a different place, and/or b) without the pipeline, the identical amount of oil will continue to be transported under some form of transportation. Both assumptions are unsupported, both are likely factually incorrect, and both significantly impact the conclusions of the EIS.

First, it is not at all clear that DAPL's owners would elect to build a new pipeline if the Oahe easement is denied. As the Tribe's experts have documented, the Bakken oil play is entering the "bust" phase of the boom-and-bust cycle, with declining production and a dearth of new investment. *See*, Declaration of Marie Fagan, filed in *Standing Rock*, 1:16 cv-01534 (May 5, 2020) ECF, 525-2 (Enclosure 6) "Fagan Report"; Exhibit A to the Second Declaration of Marie Fagan filed *Standing Rock*, 1:16 cv-01534 (October 16, 2020) ECF, 569-3 (Enclosure 7); Declaration of Ian Goodman filed in *Standing Rock*, 1:16-cv-01534 (August 7, 2017) ECF, 272-5 (Enclosure 8) "Goodman Declaration." New pipelines are expensive to build, and this one—wherever located—is controversial. It would require new federal and state permits and new eminent domain proceedings against private landowners, both of which would be hotly contested. Rather than immediately reroute a controversial and expensive pipeline serving a declining oil play, DAPL's owners may well just elect to abandon the project.

To have a meaningful comparison of alternatives, the DEIS should consider the impacts of abandonment separate from the impacts of rerouting. Only in this manner can the impacts of the options be fully understood.

Moreover, as discussed further below, the DEIS assumes—again without support or foundation—that 100% of the oil that DAPL carries will shift to other modes of transportation, primarily rail. DEIS 3-205, 212; *see also id.* 3-162 (asserting that "there is insufficient infrastructure to accommodate the entire DAPL Project volumes via rail" and hence "some amount of truck transport would be required"). Again, as the Tribe has documented, this is highly unlikely. *See*, Fagan Report, Enclosure 6. (documenting "modest need, if any" to increase rail transportation). Truck transportation is particularly unlikely given its cost and other disadvantages. The Tribe agrees that the DEIS should include a market analysis to assess the impact of closing the pipeline, but this draft includes only unsupported assumptions that favor DAPL. Indeed, it simultaneously concludes that: a) closure of DAPL will result in the same amount of oil as is carried by DAPL being transported via other means; and b) closure of DAPL will

result in a collapse of North Dakota oil production. Both of those things cannot logically be true. In reality, neither of them is true.

Finally, we observe that the DEIS engages in a highly one-sided and inaccurate depiction of rail impacts, essentially parroting DAPL's rejected litigation positions that pipelines are inevitably safer than rail. As the Tribe has documented and the Court has agreed, a comparison of rail and pipeline impacts is nuanced. *See*, Goodman Declaration, (Enclosure 8). Of particular concern to the Tribe is the possibility of a slow undetected leak underground which, by the time it is discovered, is all but impossible to remediate. That is a risk of an entirely different order than a rail-related spill which would be limited in volume and immediately detectable. The DEIS must include a balanced depiction of the relative risks of pipeline and rail transportation, not just repeating DAPL's litigation position.

VIII. Environmental Justice

The issue of Environmental Justice has been a key feature of this fight since its inception. In 2017, the district court held that the Corps violated the law by failing to grapple with the environmental justice implications of siting a major pipeline at the Tribe's doorstep. *SRST*, 255 F. Supp.3d at 136. On remand, the agency only compounded those flaws, leading to another legal challenge. Amazingly, in the DEIS, it is as if none of this ever happened, and the Corps simply repeats the fiction that there are no environmental justice implications of siting this pipeline on stolen lands yards upstream from the reservation boundary.

First, the Corps continues to disregard key aspects of the study that the Tribe submitted to the Corps in 2018 entitled *An Environmental Justice Analysis of Dakota Access Pipeline Routes* ("Study"). (Enclosure 9). Indeed, the Study is not even mentioned in the DEIS. The Study correctly compared the racial and socioeconomic compositions of the Lake Oahe and North Bismarck crossings to find a clear environmental injustice in siting DAPL at Lake Oahe. The Corps never expressly acknowledges the obvious environmental injustice here—DAPL is located in an area where American Indians, very low-income households, and other socioeconomically vulnerable population groups are disproportionately located.

Further, the Corps misses the mark in finding that impacts to environmental justice communities would be minor for the North Bismarck crossing because such crossing involves private land, which subsistence harvesters cannot access. DEIS at 3-161. More obvious is the fact that the North Bismarck crossing area is not in an environmental justice community and does not pose an environmental injustice. It is in

an area with very low minority percentages and lower average poverty rates compared to the Lake Oahe site. The Corps never expressly confirms the obvious and indisputable disproportionate impact on the Tribe from siting DAPL at Lake Oahe.

Second, the environmental justice section is replete with inconsistencies and references to secret documents favoring DAPL, much like the rest of the DEIS. For example, the Corps brazenly concludes that the potential for a crude oil release at the Missouri River during operation at the North Bismarck site would be “minor to moderate” and for some reason also states that such potential would be “similar to the risk of a release at the Lake Oahe crossing.” DEIS at 3-161. The Corps so concludes even though it admits it cannot assess the likelihood of a release at the Missouri River “without additional details such as burial depth and overlying soil types.” *Id.* at 3-162. In contrast, the Corps readily asserts that the risk of crude oil release at Lake Oahe is “negligible” (not “minor to moderate”) because the likelihood of a spill is “remote.” The Corps finds such a “remote” likelihood based on a 2020 RPS oil spill study prepared by DAPL which we have not had an opportunity to review or comment upon. The Corps then uses this “remote” likelihood as a reason for finding no significant impact on environmental justice communities for the Corps’ chosen alternative, which is to leave the pipeline in place.

Third, the Corps persists in absurdity by increasing its “buffer” area of 0.5 miles to 1 mile to capture the environmental effects on low-income, minority, and tribal populations from a potential crude oil release. *Id.* at 3-146. This arbitrary increase to merely 1 mile is unexplained and unsupported, especially given that the Corps discusses the impacts of spills further downstream in other sections of the DEIS, including where it clearly benefits DAPL, such as 160 miles downstream when analyzing the potential impacts of removing the existing unpermitted pipeline. *Id.* at 5-4. Such an arbitrary increase to a mere 1 mile is further inappropriate considering that the communities downstream, which are entirely within the Tribe’s reservation, will bear the impact of an oil spill. As the Tribe has already pointed out to the Corps, in the environmental justice analysis for the EIS for the Keystone XL project, the agency took a far broader approach, assessing environmental justice impacts a full 14 miles downstream of areas wherever the pipeline crossed water. *See, Standing Rock*, 1:16-cv-01534, Memorandum in Support SRST’s Motion for Partial Summary Judgement, at 39 n. 16, ECF, 117-1. Another pipeline EIS looked at spill impacts 40 miles downstream. *See, Standing Rock*, 1:16-cv-01354, Response Motion at 32 n. 23, ECF, 195. Although the Corps briefly analyzes the downstream effects of certain spill scenarios at the Lake Oahe site, it finds the likelihood of such spill scenarios remote and therefore negligible based on the secretive 2020 RPS oil spill study prepared by DAPL which we have not seen. Importantly, we must point out that the only government capable of responding

to a spill has not been consulted on the response plan. Nevertheless, the Tribe has prepared a plan. *See*, SRST's Comments on the Scoping Report, Attachments U, V (Enclosure 1).

Fourth, despite acknowledging that Executive Order 12,898 requires federal agencies to identify the human health effects of federal actions on tribes and find ways to provide protections for tribes, the Corps completely sidesteps any analysis of historical trauma. DEIS at 3-148. The Corps simply defines historical trauma and asserts that "a health impact assessment in the area of psychology is beyond the analysis that can be performed in this EIS." A psychological assessment of each Tribal member is not required to examine and conclude that historical trauma, as evidenced through historical loss symptoms, plagues the Tribe and its members from the intergenerational disruptions by the federal government to their way of life. Indeed, where certain data are lacking elsewhere in the DEIS, the Corps readily performs "desktop research" to fill in any alleged gaps. *Id.* at 3-151. Here, however, the Tribe has submitted historical trauma information that the Corps simply chooses to ignore. *See*, SRST's Comments on the Scoping Report, Attachments K, L, M (Enclosure 1). The cumulative and indirect impact on the physical and mental health of the Standing Rock people by this pipeline must be assessed. It is like a looming cancer for our children, that we all see, but the Corps chooses to blithely dismiss.

Finally, the Corps fails to do any analysis of traditional, cultural, or spiritual practices or traditional knowledge, despite the Tribe's repeated submission of such information. SRST's Comments on the Scoping Report, Attachments D, H, L, M (Enclosure 1). It is hard to imagine the Corps making a no significant impact determination for all but one alternative supposedly without having analyzed such information.

IX. Market Impacts

As noted previously, a key underlying premise of the EIS is that the decision to permit the pipeline will have no impact on the amount of oil that is produced or transported. No analytical support is offered for this premise nor does it appear to be valid. To the contrary, it appears well understood that the existence or non-existence of a major crude oil pipeline impacts both the production and consumption of oil. And the law is clear that such impacts must be disclosed in an EIS. *See, e.g., WildEarth Guardians v. Zinke*, 368 F.Supp.4d 41 (D.D.C. 2019) (agency must disclose downstream GHG emissions from oil and gas production since "the entire purpose" of leasing is to generate oil and gas for consumption); *Western Org. of Resource Councils v. U.S. Bureau of Land Mgmt.*, 2018 WL 1475470 (D. Mont. 2018) ("NEPA requires BLM to consider in

the EIS the environmental consequences of the downstream combustion of the coal, oil and gas resources potentially open to development under” their permitting decision).

Courts have consistently rejected agency arguments, under NEPA and other statutes, that infrastructure or production decisions will have no impacts on markets or GHG emissions because some other source will substitute in the exact same amounts. *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 870 F.3d 1222, 1234 (10th Cir. 2017) (rejecting as unsupported agency argument that other coal will “substitute” for coal if federal mine is not constructed) ; *Mid-States Coalition for Progress v. STB*, 345 F.3d 520 (9th Cir. 2003) (agency must consider impact of rail construction on coal consumption it was designed to serve). Just recently, a federal appeals court rejected an EIS for a pipeline that omitted GHG emissions from the “downstream” use of the oil. *Center for Biological Diversity v. Bernhardt*, 982 F.3d 723 (9th Cir. 2020).

An agency, must at a minimum, “estimate the amount of ... carbon emissions that [a] pipeline will make possible.” *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017). The project’s purpose is to transport crude oil, and the purpose of crude oil is primarily to burn it. *Id.* Those emissions are consequently reasonably foreseeable and must be disclosed in a NEPA analysis. *Id.* An agency may not circumvent this disclosure just because other oil supplies may be used in its stead. *Birckhead v. FERC*, 925 F.3d 510 (D.C. Cir. 2019).

Indeed, the Corps directly contradicts statements made by the proponent when the Court was considering closing the pipeline. The pipeline “encourages oil production—and hence employment—by North Dakota producers.” *See, Standing Rock*, 1:16-cv-01534, Memorandum Brief Regarding Remedy at 20, ECF, 260; *id.* at 23 (shutting down pipeline will cause wells to be “shut in”); *id.* Hanse Decl. ¶ 4-6, ECF, 260-1 (opening of DAPL “had a direct impact in encouraging Bakken crude oil producers to continue to develop or even ramp up production”). The state of North Dakota similarly complained that shutting down DAPL will cause oil production in the state to plummet. *See, Standing Rock*, 1:16-cv-01534, Memorandum of the State of North Dakota, ECF, 537. The American Fuel & Petrochemical Manufacturers Association (“AFPMA”) bluntly stated that the arrival of DAPL allowed Bakken producers to “grow production considerably,” *Standing Rock*, 1:16-cv-01534, AFPMA Amicus Brief at 17, ECF, 508-1, while “shutdown would cause further reductions in production levels.” *Id.* at 24 (“The closure of DAPL, in other words, would result in a downward spiral throughout the region, prompting the closure of even more production wells...”). Of course, the DEIS mostly ignores this relationship.

Oddly, in a few places where it supports issuance of a new permit, the DEIS acknowledges that the pipeline's existence is causally related to the amount of oil produced. For example, while in most places the DEIS asserts that all of the crude volume currently carried by DAPL will shift to rail, in other places it claims that closure of the pipeline would cause oil production to plummet. Of course, both of those things cannot be true. Courts uniformly reject agency attempts to weigh impacts in one context but disavow them in another. *See, e.g., Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 342 F. Supp.3d 1145 (D. Colo.2018) ("It is arbitrary and capricious for a government agency to use estimates of energy output for one portion of an EIS but then state that it is too speculative to forecast effects based on those very outputs."): *WildEarth Guardians v. Zinke*, 2019 WL 2404860 (D. Mont. 2019) (rejecting NEPA document that quantified benefits but not associated costs).

Finally, there is another key issue that is absent from the EIS. A significant volume of crude oil from the Bakken region is shipped to the Gulf for export. For example, as recently as July 2019, Bakken crude was exported—including from facilities owned by ETP—at a rate of 316,659 barrels/day.² If accurate, DAPL does not serve domestic energy needs—which its original NEPA documentation claimed—but rather serves only to generate profit for private companies. Simply put, this project pits Treaty rights and tribal livelihoods against crude oil production and use—not just for national needs but for export. This should be disclosed and analyzed as part of the broad assessment of the projects risks and benefits that will inform the Corps MLA decision.

X. Cultural Resources

The Tribe has well documented that the Corps failed to conduct proper Nation-to-Nation consultation regarding the scoping of this EIS, and would urge once again, as a Cooperating Agency, beginning with Nation-to-Nation consultation. With regard to the scope of analysis as it relates to historical and cultural resources the Corps must comply with 36 CFR §800.16(d), as well as the Advisory Council Historic Preservation's (ACHP) (the agency charged with implementing the National Historic Preservation Act) direction and guidance regarding the execution of this EIS. *See*, SRST's Comments on the Scoping Report, Attachment J (Enclosure 1). We also enclose with this letter Mr. Thomas King's analysis outlining in detail the serious deficiencies in the Corps' analysis with regard to the cultural resources impacted by the DAPL pipeline. (Enclosure 10). We also attach the comments of Jon Eagle, Sr. the Tribe's Historic Preservation Officer, on the DEIS. (Enclosure 11).

² <https://www.spglobal.com/platts/en/market-insights/blogs/oil/071420-bakken-crude-exports-fall-prices-pressured-as-closure-of-major-pipeline-looms>

In addition to compliance with federal regulations and the ACHP's requirements, the scope of review of impacts on cultural properties must also now include the site of the largest gathering of indigenous people in modern history and the first gathering of the Oceti Sakowin since the 19th century. See, Wes Enzinna, "I Didn't Come Here to Lose": How a Movement Was Born at Standing Rock, MOTHER JONES, (Feb. 2017), <https://www.motherjones.com/politics/2016/12/dakota-access-pipeline-standing-rock-oil-water-protest/>; Leah Donella, *The Standing Rock Resistance is Unprecedented (It's Also Centuries Old)*, NPR, (Nov. 22, 2016, 11:18 AM), <https://www.npr.org/sections/codeswitch/2016/11/22/502068751/the-standing-rock-resistance-is-unprecedented-it-s-also-centuries-old>. The gathering that took place in 2016 has been well documented as the catalyst to one of the largest ever environmental protests to defend the rights and interests of indigenous people around the world. William Yardley, *Last Holdouts are Cleared from Main Dakota Access Pipeline Protest Camp*, L.A. TIMES, (Feb. 23, 2017, 2:55 PM), <https://www.latimes.com/nation/la-na-standing-rock-20170223-story.html>.

Specifically, this site has been fundamental to the culture and history of the Standing Rock Tribe since time immemorial. See, SRST's Comments on the Scoping Report, Attachment J (Enclosure 1); International Human Rights Advocacy Workshop at University of Arizona Rogers College of Law, *Report to the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz: Indigenous Resistance to the Dakota Access Pipeline Criminalization of Dissent and Suppression of Protest*, 1 (2018). The integrity of this ceremonial relationship that the Standing Rock people have with the area is strong and it demonstrates its importance, contemporary and historical, in the performance of their cultural and religious practices. The 2016 gathering was ceremonial in nature and was meant to be a reaffirmation of centuries of traditional religious and cultural practices. Saul Elbein, *The Youth Group That Launched a Movement at Standing Rock*, (Jan. 31, 2017), <https://www.nytimes.com/2017/01/31/magazine/the-youth-group-that-launched-a-movement-at-standing-rock.html>.

The confluence of the Inyan Wakan Kagapi Wakpa and the Mni Sose, including the site of the 2016 gathering, satisfy more than one of the specific National Register Criteria. This area is strongly associated with the Standing Rock Sioux Tribe's history and culture, as well as with their recent history in the momentous protest that occurred in 2016. Moreover, the sacred sites at the confluence of the Mni Sose and the Inyan Wakan Kagapi Wakpa and the traditions practiced there are essential to the Tribe's culture and could yield important information in future efforts towards its revitalization. See, SRST's Comments on the Scoping Report, Attachment J (Enclosure 1).

In short, the events of 2016 at this site now make the site, which has always been a site of great cultural and ceremonial importance to the Tribe, a site of significant historical and cultural importance to people around the world, and as such this site must be examined for its eligibility for inclusion on the National Register of Historic Places, as it is a place that will impact future lives and inspire the movements of future generations. *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 440 F.Supp. 3d 1, 5 (D.D.C. 2020); Kevin Sullivan, *Voices from Standing Rock*,

WASHINGTON POST, (Dec. 2, 2016), https://www.washingtonpost.com/sf/national/2016/12/02/voices-from-standing-rock/?itid=lk_inline_manual_5.

XI. Treaty Rights

For over five years, the Tribe has sought to contextualize the siting of this pipeline on stolen Treaty lands within the history of U.S. government-sponsored dispossession of Sioux resources and violation of Treaty rights. We have prepared countless letters, declarations and other materials describing this terrible history. We have devoted extensive discussion to Treaty issues in our remand report, our scoping comments, and our litigation filings. It appears that the Corps has never bothered to read any of it. We will not repeat that discussion here but have attached the relevant materials and ask that you review them, and start anew on your discussion of Treaty impacts.

For example, in the opening sentence in the environmental justice section, the DEIS states that the pipeline crosses “ceded lands.” DEIS 3-148. It is hard to fathom how the Corps could make such a grave mistake. The pipeline does not cross “ceded” lands. SRST Comments on the Scoping Report, Attachment C, at 8 (Enclosure 1) (DAPL “was allowed to plow right through the unceded Treaty land, crossing the Heart River into Sioux Nation treaty territory). It crosses lands reserved as the permanent homelands of the Great Sioux Nation and subsequently stolen by the United States government. The Corps’ failure to internalize any of the facts of this case, after many years of conflict, is disheartening. Similarly, the notion that the Tribe’s Treaty rights could be mitigated in the event of a spill by a DAPL-prepared “food distribution” plan is profoundly offensive. DEIS 3-161.

DEIS fails to adequately consider the impact of siting this pipeline in a High Consequence. *See*, SRST’s Comments on the Scoping Report, Attachment G (Enclosure 1). Another example of the significant deficiencies of the DEIS, is its analysis of impacted species. Instead of doing the necessary work to identify impacted species, the Corps relies on DAPL provided information. DEIS 3-87. DEIS’s assertion that there are only two unoccupied bald eagle nests that the Corps identifies as “poor and likely abandoned” is inaccurate. *Id.* There are numerous pairs of nesting eagles that will be impacted by this pipeline. It is not incumbent on the Tribe to assess and determine the federally protected species impacted by this pipeline, the Corps must conduct this assessment and it has failed to do so here.

In another example, the DEIS asserts that closing the pipeline would have no impact on Treaty rights. DEIS 3-159. But closure of the pipeline would have a huge

impact on Treaty rights, as the Tribe's rights would be protected from the risk of a spill. Similarly, there are major differences between the current pipeline route and the alternative Bismarck routing in terms of Treaty impacts: the current route far more directly threatens the Tribe's Treaty-protected resources than the more northern route, which is more distant. This distinction must be clearly articulated and called out, and should provide an ample basis for denying a new easement at the current location.

The Tribe's Treaty rights should lie at the heart of this EIS. The pipeline represents an existential threat to the Tribe and its members—if a leak or spill were to occur immediately upstream of the Reservation, it would violate the federal government's obligation to protect and hold inviolate the Tribe's land and water rights. Such an incident is simply not tolerable. The location of the pipeline at the doorstep of the Tribe's reservation changes the applicable legal framework and raises the importance of ensuring no spill or leak will ever occur. As the DEIS admits, the risk of an incident compromising the integrity of the Tribe's Treaty rights is not zero. DEIS 3-203.

XII. Natural Resource Impacts

As we stated, DEIS fails in its analysis of the impacts on a federally listed species. Again, it is not incumbent on the Tribe to do this assessment, but we have prepared an interim assessment that highlights the deficiency of the DEIS. Interim Draft [Study in Progress] Natural Resource Baseline Information an Assessment of Existing Natural Resource Conditions in the Vicinity of the Cannonball River and Missouri River on Standing Rock Indian Reservation, North Dakota (Enclosure 12). As highlighted in this report, it is apparent the Standing Rock Indian Reservation eco-region, specifically within the confluence of the Inyan Wakan Kagapi Wakpa and Mni Sose corridor supports conducive habitat and provides sustainability to the federally threatened northern long-eared bat and several other rare bat species. These rare bats are likely finding adequate habitat and forage resources that are integral to its existence in this portion of the Mni Sose - Inyan Wakan Kagapi Wakpa complex and the North American populations of this species. The wetland-riverine benthic habitats with their diverse assemblages of insects (including larvae of mayflies, stoneflies, dipterans, as well as annelids, mollusks, crustaceans, flatworms, etc.) have enabled documentation of the presence of a federally threatened species (northern long-eared bat) and several other rare bats for use in this unique area, as well documented hibernacula not mentioned in any corps documentation.

Again as to Bald and golden eagle use within the study area the study indicates nesting, and foraging occur. The respective habitats in this location are ecologically

supportive of these important raptors not only nesting, but critical foraging in this river reach.

There are a wide assemblage of unique flora and fauna identified within the confluence area of the Inyan Wakan Kagapi Wakpa and Mni Sose that necessitates the need for continued monitoring and management going forward for resource managers of this valuable ecosystem. The additional information collected will clarify existing conditions for the DEIS process, so that important ecological relationships are not ignored in this important process when an adverse spill or natural resource assault persists.

XIII. Greenhouse Gas Emissions and Climate Change

Unsurprisingly in light of the failures documented above, the DEIS also muddles the key issue of the relationship between the pipeline's authorization and the climate crisis. That is because it declines to delve into the key question of whether authorization of the pipeline will contribute to more production and consumption of fossil fuels, and for longer, compared to the closure of the pipeline. The DEIS incorrectly and unlawfully deems such impacts outside the "scope" of the NEPA review, and then compounds that error by assuming that the existence of the pipeline has no impact on the amount of oil that is produced or consumed. (Except, as documented above, where it serves DAPL's purpose to assume otherwise, *see, e.g.* DEIS 3-135 (claiming adverse economic impacts from shutting down the pipeline).

Instead, the DEIS focuses on the relative minutiae of greenhouse gasses from construction of pipeline segments, or alternative transportation. While it is appropriate to disclose these GHG emissions, it is not the major concern—which is the fate of the 1.1 million bpd to be carried in the pipeline.

The Corps can, and should, assess the far more meaningful question of how ongoing operation of the pipeline—presumably for decades—will impact the nation's commitments to reducing GHG emissions.³ Such analyses are regularly performed elsewhere: indeed, in the case of the Keystone XL pipeline, a clear-eyed understanding

³ Such analyses are readily available and have been done for other projects. *See, e.g.,* Erickson & Lazarus, *Impact of the Keystone XL pipeline on global oil markets and greenhouse gas emissions*, Nature (Aug. 2014), available at:

<https://mediamanager.sei.org/documents/Publications/Climate/Erickson-Lazarus-2014-KeystoneXL-NatureCC.pdf>

of how the pipeline would undercut climate goals was instrumental in leading to denial of project permits.

Any discussion of GHG impacts should also discuss the ramifications of such emissions through the lens of the “social cost of carbon” (“SCC”) metric. SCC is an “accepted method for estimating the impact of greenhouse gas emissions” which is frequently used to contextualize the real-world impacts of GHG emissions. *Vecinos para el Bienestar de la Comunidad Costera v. Federal Energy Regulatory Commission*, 6 F.4th 1321, 1329 (D.C. Cir. 2021). While not a perfect metric, it is a useful starting point for disclosing the consequences of major fossil fuel infrastructure permitting decisions. In the Tribe’s view, the ultimate costs of burning 1.1 million bpd of crude oil for the foreseeable future are very serious, and must be disclosed.

While the Tribe’s opposition to this pipeline has focused on Treaty rights, cultural protection, and water quality, the issue of climate change is also very important. The nation deserves a full accounting of whether and how this pipeline will lock in decades of new fossil fuel production and consumption, contrary to this Administration’s declared goals and international commitments. There is likely a key conflict between continued operation of this pipeline and the U.S. Government’s policies, international commitments related to climate—which will require radical transformation of the energy and transportation sectors away from fossil fuels. NEPA requires that such conflicts be identified. The climate section of this DEIS need to be abandoned and started anew.

XIV. Expansion

As we have explained repeatedly, all of the Tribe’s concerns about the risks and impacts of crude oil spills are compounded by DAPL’s plans to double the capacity of the pipeline. It is startling indeed both that the Corps has acquiesced in a violation of its property rights by failing to take action against the unauthorized expansion that has already occurred. It is even more startling that it is blithely planning on signing off without any of the careful analysis required by law.

At the outset, we are troubled to see that the DEIS states that the capacity of the pipeline will be “at least” 1.1 million bpd. DEIS 1-9. Does that mean the Corps is signing off on literally unlimited capacity? Is it so incurious about the potential risks and impacts of ever greater volumes of crude moving through this pipeline? The MLA requires the Corps to have a plan of operation prior to issuance of any permit. 15 U.S.C. § 185(h). A theoretically unlimited capacity volume is inconsistent with the

requirement for a plan of operations. And it cannot analyze the impacts of an unlimited volume of oil under NEPA.

More to the point, the DEIS contains nowhere near enough information to assess the increase in risk or the increase in potential impacts to the Tribe associated with a doubling of the original capacity. The complete avoidance of any discussion related to the existing natural resource condition and what potential impacts are lessens all our abilities to be good stewards of the land. We have gone to substantial lengths to explain why capacity increases increase risk as well as potential impact. *See, e.g.*, Prefiled Testimony of Don Holmstrom, and Jon Eagle, Sr. before the ND Public Service Commission, Case No. PU-19-204 (November 1, 2021). (Enclosures 2, 13); SRST's Comments on the Scoping Report, Attachment R (Enclosure 1). While the ND PSC papered over these problems, the Corps has an independent duty to disclose and consider the adverse consequences of operating at a substantially increased level. *See*, Findings of Fact and Conclusion of Law, Case No. PU-19-204, NDPSC (February 19, 2020). (Enclosure 5). It has not even made the most preliminary effort to do so.

XV. Conclusion

As explained above, the EIS process is gravely off track. As an adjunct to the fossil fuel industry and a partner to DAPL itself, the contractor has a conflict of interest that renders it incapable of serving further in this role. The document is irredeemably flawed, having ignored extensive technical and cultural material already presented by the Tribe. The secrecy with which the process has been conducted is shameful and unlawful. The Corps must start the process over, with all cooperating agencies at the table to determine the scope and analysis of this EIS.

Signed,



Mike Faith, Chairman