

Exhibit A

NIWRC, Comment Letter on the Notice of Intent to Prepare an EIS in Connection with Dakota Access, LLC's Request for an Easement to Cross Lake Oahe, N.D.

January 26, 2017

VIA EMAIL AND MAIL

Mr. Gib Owen
Office of the Assistant Secretary of the Army for Civil Works
108 Army Pentagon
Washington, DC 20310-0108
gib.a.owen.civ@mail.mil

RE: COMMENTS OF THE NATIONAL INDIGENOUS WOMEN’S RESOURCE CENTER (NIWRC) ON THE ENVIRONMENTAL IMPACT STATEMENT IN CONNECTION WITH DAKOTA ACCESS, LLC’S REQUEST FOR AN EASEMENT TO CROSS LAKE OAHE, NORTH DAKOTA

Dear Mr. Owen:

This law firm represents the National Indigenous Women’s Resource Center (“NIWRC”), a national non-profit dedicated to preserving tribal sovereignty and safety for Native women.¹ In response to the United States Army Corps of Engineers (“Army Corps” or “Corps”) January 18, 2017 Notice that the Army Corps intends to prepare an Environmental Impact Statement (“EIS”) in connection with Dakota Access, LLC’s (“Dakota Access”) request for an easement to cross Lake Oahe, North Dakota, we submit the following comments on NIWRC’s behalf.

¹ The NIWRC is a Native nonprofit organization whose mission is to ensure the safety of Native women by protecting and preserving the inherent sovereign authority of American Indian and Alaska Native Tribes to respond to domestic violence and sexual assault.

INTRODUCTION

The land is our Mother, so when we lose value for the land . . . People lose value for the women.

Vanessa Grey, Aamjiwnaang First Nation

Granting Dakota Access the requisite easement to cross Lake Oahe would not serve—and in fact would undermine—the public interest. Accordingly, the NIWRC is compelled to offer its views on the unconsidered risks that would result from the Army Corps granting the easement without adequately considering the public interest implications of the proposed pipeline. Specifically, the Army Corps must consider the increased levels of violence Native women and children in the Bakken region will face if the pipeline is permitted to cross the Missouri River at Lake Oahe and commence operations.

Oil extraction and production in the Bakken region—a region that comprises eastern Montana and western North Dakota, as well as two Tribal Nations—has increased dramatically from 2005 to the present. Today, North Dakota produces more oil for export than any other State. The region is also home to some of the highest rates of sexual assault, sex trafficking, and domestic violence in the United States. With the majority of oil extraction taking place on or near tribal lands, the recent spike in violence in the Bakken has fallen disproportionately on Native women and children. Throughout the United States, Native women suffer the highest rates of violence in the country.² A federally-permitted project that threatens to increase these levels of violence undeniably undermines the “public interest” and fails the United States’ trust responsibility to Tribal Nations, as well as their woman and children, and therefore commands—at a minimum—the Army Corps’ serious consideration.

² 151 Cong. Rec. S4873, (daily ed. May 10, 2005) (statement of Sen. McCain).

Dakota Access' stated goal is to increase capacity for the transportation of up to 570,000 barrels per day ("bpd") of oil from the Bakken to Illinois.³ Dakota Access asserts its proposed pipeline has "an expected day-one volume of 450,000 barrels per day." Cross Claimant Dakota Access, LLC's Memorandum in Support of Motion for Summary Judgment, *Standing Rock Sioux Tribe, et. al., v. United States Army Corps of Engineers, et. al.*, U.S. Dist. Ct. Dist. of Col., No. 16-cv-01534, Doc. No. 66-1 (Dec. 4, 2016), p. 5. As of September 2016, the U.S. Energy Information Administration estimates that the Bakken Region is producing 942,000 bpd.⁴ Thus, if the easement is granted and the pipeline commences operations at capacity, the Dakota Access pipeline could increase oil extraction in the Bakken by as much as 60%. An increase in oil extraction near tribal communities, without the consent of affected Tribal Nations or consideration of the health and safety of tribal communities, creates a significant risk of increased violence in the Bakken—and in particular, against Native women and children.

As Congress has repeatedly recognized, the United States owes a trust duty and obligation to Tribal Nations to ensure the safety of their women and children. This trust obligation extends to the entirety of the federal government and all federal agencies. *See, e.g., Nance v. E.P.A.*, 645 F.2d 701, 711 (9th Cir. 1981) ("It is fairly clear that any Federal government action is subject to the United States' fiduciary responsibilities toward the Indian tribes.").

³ Army Corps of Eng'rs – Omaha Dist., *Envtl. Assessment – Dakota Access Pipeline Project*, 5 (July 2016) ("Final EA").

⁴ U.S. Energy Inf. Adm., *Drilling Productivity Report, Petrol. & Other Liquids* (Oct. 16, 6:26PM), <http://www.eia.gov/petroleum/drilling/#tabs-summary-2>.

The granting of an easement under RHA § 408, with no consideration of the increased levels of violence and sexual assault Native women and children will face, undermines both the public interest and the United States' role as trustee to Tribal Nations and their citizens.

* * *

The Corps Must Consider the Public Interest Consequences of a Decision to Grant the Requested Easement

As Dakota Access repeatedly asserts in its motion before the United States District Court for the District of Columbia, “[p]ermission for the crossing of federal land at Lake Oahe under RHA § 408 turns on whether the activity is consistent with ‘the public interest.’” *Standing Rock Sioux Tribe, et. al., v. United States Army Corps of Engineers, et. al.*, U.S. Dist. Ct. Dist. of Col., No. 16-cv-01534, Doc. No. 66-1 (Dec. 4, 2016), 6 (quoting 33 U.S.C. § 408). According to the Corps’ own regulations, the Corps must undertake “an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest” to determine whether the pipeline is consistent with “the public interest” under § 408. 33 C.F.R. § 320.4(a)(1). This evaluation must include consideration of “[a]ll factors which may be relevant to the proposal . . . including . . . *safety*, . . . and, in general, the needs and *welfare of the people*.” *Id.* (emphasis added). The record is clear that the Corps has not, to date, considered the pipeline’s potential impacts on the “safety” and “welfare of the people” of North Dakota—in particular, the safety and welfare of Native women and children to whom the Army Corps owes a trust responsibility and who are likely to suffer increased rates of violence, sexual assault, and abuse if and when this pipeline is permitted to completion.

That is, the RHA and implementing regulations require the Corps to consider whether the proposed project will be “injurious to the public interest” prior to issuing a permit under § 408. 33 U.S.C. § 408; *see also* 33 C.F.R. § 320.4(a) (requiring a public interest analysis for all permits

issued by the Department of the Army). To effectuate this statutory mandate, the Corps' regulations stipulate that:

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments All factors which may be relevant to the proposal must be considered including **safety**, food and fiber production, mineral needs, considerations of property ownership and, in general, **the needs and welfare of the people**.

33 C.F.R. § 320.4(a)(1) (emphasis added). Under the Corps' own regulations, therefore, a valid public interest review must include consideration of the "safety" and "welfare of the people," which, in this instance, requires consideration of the pipeline's impacts on violence against Native women and children.⁵

Nothing in the record, however, demonstrates that the Corps has, to date, undertaken any consideration of how a fully permitted Dakota Access pipeline could impact the safety and/or welfare of Native women and children.

* * *

⁵ Courts reviewing the applicability of 33 C.F.R. § 320.4(a)(1) have affirmed that the agency is required to consider all of the enumerated public interest factors prior to issuing a permit. *See, e.g., Hoosier Environmental Council v. U.S. Corps of Engineers*, 722 F.3d 1053, 1063 (7th Cir. 2013) (noting that "the Supreme Court has held that . . . the regulation is to be interpreted literally and so requires the Corps to evaluate all the factors listed in it.") (citing 33 C.F.R. § 320.4(a)(1); *United States v. Alaska*, 503 U.S. 569, 573 (1992)); *see also Alaska*, 503 U.S. at 573-74 (rejecting a challenge that § 320.4(a)(1) is "invalid because [it] authorize[s] the Secretary [of the Army] to consider a wider range of factors than just the effects of a project . . ."); *All. to Protect Nantucket Sound v. U.S. Dep't of the Army*, 398 F.3d 105, 113 (1st Cir. 2005) (concluding that a proper public interest review must analyze the entire enumerated list in § 320.4(a)(1)); *Airport Communities Coalition v. Graves*, 280 F.Supp.2d 1207, 1210, 1229 (W.D. Wash. 2003) (affirming agency's consideration of all public interest factors, "includ[ing] such intangibles as air travel safety . . .").

Increasing Oil Extraction in Bakken Region Near Tribal Lands Increases Violence Against Native Women

Any assertion that the proposed Dakota Access pipeline is “consistent with the public interest” is contradicted by the rapid increase in violence Native women and children in Bakken have faced as a result of the recent oil boom. This increase in violence has been well documented by state, tribal, and federal officials. In 2013, the Department of Justice’s (“DOJ”) Office of Violence Against Women (“OVW”) explained the relationship between a rapid increase in oil production in the Bakken and a contemporaneous rise in crimes and violence against women and children, stating:

Because of recent oil development, the [Bakken] region faces a massive influx of itinerant workers[,] and [consequently,] local law enforcement and victim advocates report a sharp increase in sexual assaults, domestic violence, sexual trafficking, drug use, theft, and other crimes, coupled with difficulty in providing law enforcement and emergency services in the many remote and sometimes unmapped “man camps” of workers.⁶

Indeed, since 2009 alone, nearly 100,000 workers have entered the Bakken region to work the oil fields.⁷ To house the sudden and drastic increase in population, corporations create “man camps,” where male workers often work 12-hour days, are socially isolated for weeks or months at a time, and live in trailer parks that extend for miles. Most of the workers are not violent men, but numerous “man camps” in the Bakken have become centers for drugs, violence, and sex trafficking of Native women and girls. As the DOJ OVW noted in 2014, the “[r]apid development for oil production in the Bakken region has brought a massive influx of itinerant

⁶ U.S. Dep’t of Justice Office on Violence Against Women, 2013 Tribal Consultation Report 3 n.2 (2013).

⁷ See Jens Manuel Krogstad, *How North Dakota’s ‘man rush’ compares with past population booms*, Pew Research Center (July 16, 2014), <http://www.pewresearch.org/fact-tank/2014/07/16/how-north-dakotas-man-rush-compares-with-past-population-booms/> (estimating that from 2009 to 2014 the population had grown by 100,000 workers in connection with oil extraction in the Bakken shale).

workers and a sharp increase in crime and law enforcement issues, including sex and human trafficking.”⁸

Other federal officials have publicly acknowledged the relationship between the dramatic increase in oil extraction and contemporaneous increase in violence against women in the Bakken. A former U.S. Attorney for the District of North Dakota described the increase in crime following the oil boom as: “[m]ore money and more people equals more crime.”⁹

In fact, combatting the rise in human trafficking in the Bakken became one of U.S. Attorney Tim Purdon’s top priorities during his tenure and the arrests of several sex traffickers in North Dakota constituted some of his “proudest achievements.”¹⁰ In late 2013, his office worked with state and federal law enforcement partners to implement Operation Vigilant Guardian, a series of sting operations in Williston and Dickinson, North Dakota, that resulted in multiple arrests for sex trafficking.¹¹ In 2015, the Department of Justice noted that the Bakken oil boom had “revealed a previously unknown level of demand for underage commercial sex in western North Dakota.”¹²

The rise in sex trafficking has captured the attention of federal legislators as well. Senator Heidi Heitkamp (D-ND) calls sex trafficking “an unfortunately growing problem in North

⁸ U.S. Dep’t of Justice Office on Violence Against Women, 2014 Tribal Consultation Report 3 (2014).

⁹ Sari Horwitz, *The Dark Side of the Boom*, The Wash. Post (Sept. 28, 2014), <http://www.washingtonpost.com/sf/national/2014/09/28/dark-side-of-the-boom/>.

¹⁰ See Press Release, U.S. Dep’t of Justice, U.S. Attorney Timothy Q. Purdon to Step Down (Feb. 10, 2015), <https://www.justice.gov/usao-nd/pr/u-s-attorney-timothy-q-purdon-step-down> (hereinafter “DOJ Press Release”).

¹¹ *Tim Purdon Steps Down as U.S. Attorney for North Dakota*, Valley News Live, Feb. 10, 2015, <http://www.valleynewslive.com/home/headlines/US-States-Attorney-for-North-Dakota-Tim-Purdon-Steps-Down-291399551.html>.

¹² DOJ Press Release; see also Andrew Sheeler, *Durr gets 21 months for human trafficking*, Bismarck Tribune (March 18, 2015), http://bismarcktribune.com/news/local/crime-and-courts/durr-gets-months-for-human-trafficking/article_d94c782e-b3fb-590d-b5f5-395f7f7683aa.html (Wisconsin man convicted and sentenced to prison for human trafficking in North Dakota).

Dakota, particularly in the oil patch and in Indian Country.”¹³ Indeed, this “growing problem” prompted Senator Heitkamp in 2015 to request the federal government to provide the State of North Dakota with “federal funding [to] be used to identify victims of human trafficking” and to address a “threat” that, according to Senator Heitkamp, “continues to grow in North Dakota.”¹⁴ In 2014, Senator Jon Tester (D-MT) noted “Montana and North Dakota have been especially hard-hit by increases in crime . . . due to the explosive influx of people and resources following the oil and gas boom in the Bakken.”¹⁵

Statistics from state governments corroborate federal accounts of rising crime in North Dakota, specifically in the oil-producing regions that are located on or near tribal lands. According to the North Dakota Attorney General’s office, the number of crimes against persons—including murder, rape and assault—has risen every year during the Bakken oil boom—with 7,695 in 2010, to 9,469 in 2015.¹⁶ A recent study of oil boom counties in Montana and North Dakota also found a surge in violence.¹⁷ The researchers discovered that violent crime in these counties increased by 18.5% between 2006 and 2012, while the rates decreased by 25.6% in counties with no fossil fuel extraction.¹⁸

¹³ “Human Trafficking,” Senator Heidi Heitkamp (last visited Oct. 3, 2016), <http://www.heitkamp.senate.gov/public/index.cfm/human-trafficking>.

¹⁴ Press Release, Sen. Heidi Heitkamp, Heitkamp Announces Federal Funding to Combat Human Trafficking (September 24, 2015), <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=bbc14f2b-f93e-47b2-b0f6-90e352b4a3f9>

¹⁵ Suzette Brewer, *Tester Begins Hearings on Sex Trafficking in Indian Country*, Indian Country Today (Sept. 3, 2014), <http://indiancountrytodaymedianetwork.com/2014/09/03/tester-begins-hearings-sex-trafficking-indian-country-156723?page=0%2C0>.

¹⁶ See N. Dakota Att’y Gen., Bureau of Criminal Investigation, *Crime in North Dakota, 2015* 16 (2016), <https://www.ag.nd.gov/reports/bcireports/crimehomicide/Crime15.pdf> (Data does not include crimes that take place on Tribal Law Enforcement Reservations, except for homicides that tribal authorities report to the state).

¹⁷ See Rick Ruddell et al., *Drilling Down: An Examination of the Boom-Crime Relationship in Resource-Based Boom Counties*, Western Crim. Rev. 15(1):3-17.

¹⁸ *Id.* at 7.

Because the majority of Bakken oil extraction currently takes place on or near tribal lands, increasing oil extraction in the Bakken—without adequate consideration of the public interest or consent from Tribal Nations—will more than likely increase the extreme levels of violence that Native women and children already face—an outcome that more than warrants the Army Corps’ careful consideration and the completion of an EIS that undertakes a rigorous analysis of the increased violence Native women will likely face as a result of granting Dakota Access its requested easement.

* * *

The Bakken Oil Boom Has Dramatically Increased Violent Crimes Committed Against Native Women and Children at Fort Berthold

Human trafficking is not only happening in foreign countries or dark alleys – it’s happening right in our backyards.

Senator Heidi Heitkamp (D-ND)

Data collected by the Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation (“Three Affiliated,” “MHA Nation,” or “Fort Berthold”) through their Three Affiliated Tribes (“TAT”) Victim Services program demonstrates that the rapid increase of oil extraction within MHA Nation has coincided with a rapid increase in violence against tribal citizens. MHA Nation is located in northwest North Dakota, in the heart of the Bakken. The numbers of sexual assault and domestic violence victims recorded by MHA Nation’s TAT Victim Services are shown in Figure 1, revealing the violence peaked in 2012, during the apex of the Bakken oil boom.

Year	Number of Sexual Assault Victims	Number of Domestic Violence Victims
2010	1	88
2011	10	160

2012	25	237
2013	31	171

Figure 1: Number of sexual assault and domestic violence victims seen by TAT Victim Services from 2010-2013. Source: Grant Application from TAT Victim Services to Office of Violence Against Women, Dep't of Justice (FY 2015) (on file with Pipestem Law, LLC) at 5.¹⁹

Since the beginning of the Bakken oil boom, TAT Victim Services has documented a dramatic increase in elder abuse and human trafficking.²⁰ According to the agency, human trafficking is a relatively new but increasingly common occurrence among the population that the agency serves.²¹ As TAT Victim Services noted in a grant application to the DOJ OVW, the proliferation of man camps nearby is directly tied to the increase in violent sexual crimes committed against tribal citizens. For instance, one single camp near tribal lands reportedly houses thirteen registered sex offenders.²²

Additional on the ground studies and reports corroborate MHA Nation's data. A study conducted by the University of North Dakota notes that tribal domestic violence "service providers report witnessing a dramatic increase in domestic violence" since the inception of the oil boom.²³ Study participants discussed the unique challenges of combatting domestic violence in a community that experiences rapid oil development, such as the remote location of the drilling sites, as well as the rising housing prices that render a woman's ability to leave a violent home nearly impossible.²⁴

¹⁹ These figures should be considered in the context of Fort Berthold's relatively small population and the chronic underreporting of sexual assault and domestic violence. *See supra* "Statistics," N. Dakota Indian Affairs Comm'n (last visited 9:41pm, Oct. 18), <http://indianaffairs.nd.gov/statistics/>.

²⁰ Grant Application from TAT Victim Services to Office of Violence Against Women, Dep't of Justice (FY 2015) (on file with Pipestem Law, P.C.) at 5 (hereinafter "FY15 Grant").

²¹ *See* Grant Application from TAT Victim Services to Office of Violence Against Women, Dep't of Justice (FY 2014) (on file with Pipestem Law, P.C.) at 1, 3 (hereinafter "FY14 Grant").

²² FY15 Grant at 6.

²³ Heitkamp, *supra* note 1 at 5.

²⁴ *Id.* at 6.

MHA Nation citizen Cedar Wilkie Gillette worked as a victim advocate at the Fort Berthold Coalition Against Violence (the predecessor to TAT Victim Services) during the peak of the Bakken oil boom, from May 2012 until October 2013. She would often serve fifteen victims at a time, as MHA Nation was not sufficiently staffed to combat the rapid increase in violence among such a small population. She further recalled that state, federal, and tribal law enforcement were likewise understaffed and unequipped to deal with the swift increase in violence, and as a result, the burden fell to Gillette and her colleagues at MHA Nation to simply provide victim services.²⁵

According to Gillette, many non-Indian perpetrators acted with impunity because they knew tribal authorities were without jurisdiction to hold them accountable. Gillette explained:

It became a real barrier. If they lived in a man camp, we couldn't serve them with a TRO [temporary restraining order] because they didn't have an address. And they could always bring up that the tribe had no jurisdiction over them.²⁶

Some of Gillette's clients were women fleeing man camps where they had been held against their will. Many, out of fear of retaliation or a sense of hopelessness, chose to simply be relocated rather than pursue legal options. Given the emotional challenges of her work, Gillette explained, "I said I would quit when one of my clients was murdered. Some cases were very close."²⁷

Residents also spoke about the increase in organized crime, including sex trafficking.²⁸ Former Rosebud Sioux Tribe Police Chief Grace Her Many Horses took a temporary job with the MHA Nation during the Bakken oil boom—where she quickly learned that the targets for sex

²⁵ Telephone interview with Cedar Wilkie Gillette, Former Victim Advocate, Fort Berthold Coalition Against Violence (Oct. 11, 2016).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 11.

trafficking crimes in the Bakken are often Native children. In an interview, Chief Her Many Horses recalled specific instances when Native children were targeted, stating:

One of the things we ran into while working up there was a 15 year old boy had gone missing. He was found in one of the Man Camps with one of the oil workers. They were passing him around from trailer to trailer. . . [Another time w]e found a crying, naked, four year old girl running down one of the roads right outside of the Man Camp. She had been sexually assaulted. . .²⁹

Another complication created by the Bakken oil boom is the influx of non-Indian convicted sex offenders working or living on tribal land—many of whom do not register with the Tribe despite being required to do so by federal law.³⁰ As Deputy U.S. Marshall Dan Orr explained, “the increase in transient workers to the area” has resulted in an “increase in non-tribal members who are registered sex offenders” living on tribal lands.³¹

The refusal of many non-Indian convicted sex offenders to register with MHA Nation has undermined MHA Nation’s ability to protect its citizens, and in particular, its women.³² In 2015, a joint law enforcement operation conducted by the U.S. Marshals Service and MHA Nation’s police found that in the wake of the Bakken oil boom, almost 20% of convicted sex offenders living on the Fort Berthold Reservation had failed to register in violation of federal and tribal law, compared to a non-compliance rate of only 4 to 5% for the rest of North Dakota.³³

²⁹ Damon Buckley, *Firsthand Account of Man Camp in North Dakota From Local Tribal Cop*, Lakota Country Times (May 22, 2015), http://m.lakotacountrytimes.com/news/2014-05-22/Front_Page/Firsthand_Account_Of_Man_Camp_In_North_Dakota_From.html.

³⁰ Sex Offender Registration and Notification Act, 42 U.S.C. § 16927 (2006).

³¹ *Id.*

³² See Krogstad; Ahtone, *supra* note 32.

³³ Amy Dalrymple, *Federal, tribal officers check offenders at Fort Berthold*, The Bismark Tribune (April 19, 2015) http://bismarcktribune.com/news/state-and-regional/federal-tribal-officers-check-on-sex-offenders-at-fort-berthold/article_6d23ab8e-2ea8-55af-b63f-e662dfae9eff.html.

There can be no question: the rapid increase in oil production in the Bakken has brought with it a crisis of violence inflicted primarily on the Native women and children already living there.

* * *

The Bakken Oil Boom Has Increased Rates of Violence Against Native Women and Children in the Fort Peck Assiniboine and Sioux Tribe

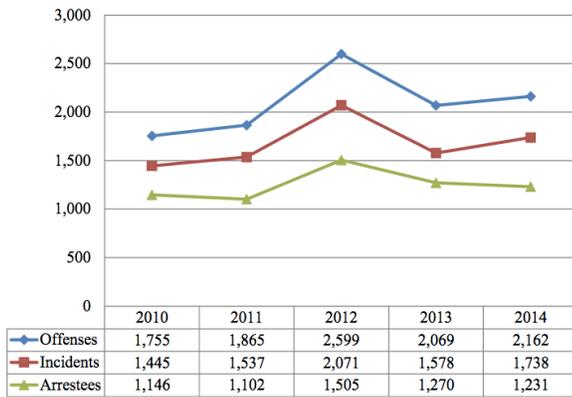
The Fort Peck Assiniboine Sioux Tribe (“Fort Peck”), located in present-day Montana, has not escaped the increase in violence accompanying the Bakken oil boom. As a program specialist for the NIWRC testified before the United States Congress in 2013:

In Montana, the Bakken Oil Boom has impacted the largest reservation, Fort Peck, and residing counties have experienced both a population and crime explosion There have been documented increases in drug use and human trafficking, theft, alcohol related incidents and assaults within the last year. Law enforcement response, tribal [domestic violence and sexual assault] services, and medical response to these crimes have tripled in the last year.³⁴

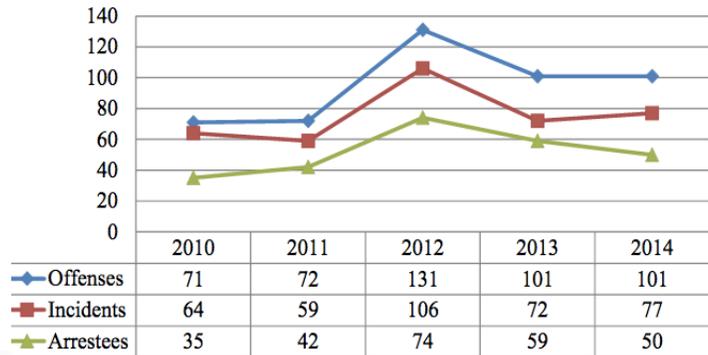
³⁴ *Hearing on “Combating Human Trafficking: Federal, State, and Local Perspectives” Before the S. Comm. on Homeland Sec. and Gov’t Affairs, 113th Cong. (2013) (statement of Lisa Brunner, Program Specialist, Nat’l Indigenous Women’s Res. Ctr.).*

In response to these and other reports, the Montana Board of Crime Control issued a special report, *Bakken Oil Field Crime Analysis*.³⁵

**Primary Bakken
Total Number of Offenses, Incidents,
and Arrestees
2010-2014**



**Primary Bakken
Domestic Violence Related
Offenses, Incidents, and Arrestees
2010 - 2014**



The above data was gathered from two regions within Montana—the Primary Bakken Region³⁶ and the Greater Bakken Region³⁷--demonstrating that both general offenses and domestic violence peaked in 2012, at the height of the Bakken oil boom.³⁸ Tribal leaders have confirmed this increase in violence. Fort Peck Councilman Dana Buckles noted that from October 2013 to September 2014, the Roosevelt County (Fort Peck) 911 Call Center received an alarmingly

³⁵ Mont. Bd. of Crime Control, *Crime in Montana: 2013-2014 Report* 84-96 (2015) <http://mbcc.mt.gov/Portals/130/Data/CIM/CIM2013-14.pdf> (Data does not include information from tribal law enforcement agencies, however it is representative of larger crime trends in the region).

³⁶ *Id.* at 84 (Primary Bakken Region includes Daniels, Richland, Roosevelt, and Sheridan counties).

³⁷ *Id.* (Greater Bakken Region includes Custer, Dawson, Fallon, Garfield, McCone, Prairie, Valley, and Wibaux counties).

³⁸ *Id.* at 85.

increased number of 911 calls, totaling 718 domestic violence reports in an area with very few permanent residents.³⁹

Furthermore, since the inception of the Bakken oil boom, sex offender registrations on the Fort Peck Indian Reservation have quadrupled.⁴⁰ The most recent count of the Fort Peck Sex Offender Registry places the number of registered sex offenders at 69.⁴¹ By June 2015, the number had climbed to 89, with an additional 392 registered sex offenders known to be living between eastern Montana and western North Dakota, in the Bakken.⁴² When considered in the context of Fort Peck's limited population (10,231 residents), the recent increase to 89 registered sex offenders is alarming.⁴³

* * *

Jurisdictional Complications Make Increased non-Indian Perpetrated Violence Against Native Women all the More Dangerous

Because major crimes on tribal lands fall under the jurisdiction of federal law enforcement—criminals believe that there is a good chance their crimes will go uninvestigated and unprosecuted—and they're right. In Indian Country, such jurisdictional issues leave no cop on the beat to stop them Criminals seeking refuge on [] tribal land ha[ve] been ravaging Native communities.

Senator Heidi Heitkamp (D-ND) and former Attorney General for North Dakota⁴⁴

³⁹ *Hearing on the Tribal Youth and Community Protection Act, S. 2785 and the Tribal Law and Order Act Reauthorization, S. 2920 Before the S. Comm. on Indian Affairs, 114th Cong. (2016)* (statement of Dana Buckles, Councilman Assiniboine and Sioux Tribes of the Fort Peck Reservation).

⁴⁰ Christine Graef, *Bakken Region Tribes Fight Back Against Human Trafficking*, MintPress News (Nov. 21, 2014), <http://www.mintpressnews.com/bakken-region-tribes-fight-back-human-trafficking/199156/> (quoting Tina Bets His Medicine, an administrative assistant and victims' advocate for the sheriff's office in Roosevelt County, where the Fort Peck Indian Reservation is located).

⁴¹ Fort Peck Tribes (Assiniboine & Sioux) Sex Offender Registry, <https://fortpecktribes.nspow.gov/SearchOffender.aspx> (last visited Oct. 24, 2016).

⁴² *Addressing the Need for Victim Services in Indian Country, Hearing Before the S. Comm. on Indian Affairs, 114th Cong. 10-11 (2015)* (statement of Hon. A.T. "Rusty" Stafne, Chairman, Fort Peck Assiniboine and Sioux Tribes).

⁴³ Health Promotion and Disease Prevention Wellness Program: Harvard University Initiatives, http://www.fortpecktribes.org/hpdp/harvard_university_initiatives.html.

⁴⁴ Sen. Heidi Heitkamp (D-ND), *Jurisdictional No-Man's Land: Explaining to FBI Director Comey Why Our Tribes Need a Cop on the Beat*, Medium (June 6, 2016),

In 1978, the United States Supreme Court declared that Tribal Nations could no longer exercise criminal jurisdiction over non-Indians who commit crimes on tribal lands. *See Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). In the wake of *Oliphant*, Tribal Nations have been unable to protect their women and children from the rapid increase of non-Indian perpetrated violent crimes on tribal lands in the Bakken.⁴⁵ As Senator Tester acknowledged during a 2014 listening session on the growing threat of sex trafficking in the Bakken, it is “[b]ecause of the patchwork of tribal, state, and federal jurisdiction [that] tribes also often lack the ability to prosecute and appropriately punish offenders in tribal courts.”⁴⁶ With regards to the majority of violent crimes now committed against Native women and children in the Bakken, their Tribal Nations simply do not have jurisdiction to protect them.⁴⁷

This leaves only the federal government with jurisdiction. However, the federal government declines to prosecute the majority of non-Indian assaults committed against Native women,⁴⁸ and consequently, the federal government’s “failure to prosecute sex crimes against American Indian women [has become] an invitation to prey with impunity.”⁴⁹

<https://medium.com/@SenatorHeitkamp/jurisdictional-no-mans-land-explaining-to-fbi-director-why-our-tribes-need-a-cop-on-the-e960be5578f1#.flykz2vyk> (last visited Oct. 26, 2016).

⁴⁵ *Remarks by Associate Attorney General Tony West at the Four Corners Conference*, Dep’t of Justice (Aug. 26, 2014). <https://www.justice.gov/opa/speech/remarks-associate-attorney-general-tony-west-four-corners-conference> (citing “meteoric population boom” in the Bakken as reason for increase rates of violence against Native women.).

⁴⁶ *Tester’s Listening Session Shines Light on Growing Human Trafficking Problem*, *supra* note 15.

⁴⁷ *See* Ahtone, *supra* note 4 (following the Supreme Court’s decision in *Oliphant*, Indian Country has become a “safe haven” for predators) (quoting Troy Eid, Chairman of the Indian Law and Order Commission).

⁴⁸ *See* United States Government Accountability Office, U.S. Department of Justice Declinations of Indian Country Criminal Matters (Dec. 13, 2010), p. 3 (noting that from 2005 to 2009, United States Attorneys declined to prosecute 67% of non-Indian perpetrated sexual assaults against American Indians).

⁴⁹ *Examining the Prevalence of and Solutions to Stopping Violence Against Indian Women*, *Hearing Before the S. Comm. On Indian Affairs*, 110th Cong. 16 (2007) (quoting David Lisak, Assoc. Professor of Psychol., Univ. of Mass., *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA*, Amnesty Int’l).

The lack of tribal criminal jurisdiction over the majority of non-Indian violent offenders in the Bakken underscores the necessity for the Corps' consideration of the public interest implications of the proposed Dakota Access pipeline.

* * *

Increasing Violence Against Native Women is Not in the “Public Interest”

Repeatedly, tribal, federal, and state officials have voiced concerns regarding the rising levels of violence accompanying the increased levels of oil extraction in the Bakken region. If permitted, Dakota Access could increase the capacity of crude oil production and transportation in the Bakken by nearly 60%. Such a sudden, dramatic increase in extraction would more than likely precipitate the same chain of events that made the previous oil boom in the Bakken so dangerous—an influx of itinerant workers, the sudden creation of man camps, and the consequential rise in rape, assault, and sex trafficking. For Native women and children—and the Tribal Nations who seek to protect them—granting the Dakota Access pipeline the easement necessary to cross Lake Oahe does not serve the overriding public interest.

Dakota Access asserts it has expended billions of dollars to develop this pipeline. The corporation's monetary investments, however, do not outweigh the public interest in protecting the safety, health, and welfare of Native communities that have existed in the Bakken long before it became the epicenter of oil extraction and transportation.

Moreover, other federal agencies—aside from the Army Corps—have recently identified the increased levels of the violence in the Bakken as serious enough to warrant federal intervention. In recognition of the relationship between increased oil extraction and an increase in violence against Native women in the Bakken, the U.S. DOJ recently announced federal grants to “increase local and tribal capacity to prosecute crimes of violence against women and

provide services to victims of sexual assault, domestic violence and stalking in the Bakken Region of North Dakota and Montana.”⁵⁰ Thus, although the Corps has yet to undertake a public interest sufficient to consider the pipeline’s safety and welfare consequences for Native women and children, another federal agency is working to secure millions of taxpayer dollars to study what has been identified to be a serious public health and safety crisis.

* * *

Granting Dakota Access its Desired Easement without Adequately Considering the Public Interest Violates the United States’ Duties as Trustee

[S]overeignty and safety are hand and glove. The sovereignty of Indian Tribes is connected to the safety of Native women.

Terri Henry, Eastern Band of Cherokee Indians Secretary of State

The United States Congress has repeatedly recognized the connection between tribal sovereignty and safety for Native women as the foundation for the federal government’s “trust responsibility to assist tribal governments in safeguarding the lives of Indian women.” § 901 Violence Against Women and Dep’t of Justice Reauthorization Act of 2005 (“VAWA 2005”), Pub. L. No. 109–162, § 901(6), 119 Stat. 3078. Congress further affirmed the federal government’s trust responsibility to ensure Tribal Nations are able to protect Native women when Congress re-authorized VAWA in 2013. VAWA 2013 partially overturned *Oliphant*, restoring the inherent criminal jurisdiction of Tribal Nations over non-Indians who commit acts of dating and domestic violence against Native women. *See* Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, tit. IX, 127 Stat. 54, 118–26.

As members of Congress have noted, the VAWA 2013 tribal amendment was born out of an understanding that laws prohibiting Tribal Nations from protecting their women from

⁵⁰ Dep’t of Justice, *Montana Groups Receive Federal Grant to Fight Domestic and Sexual Violence in the Bakken* (Aug. 27, 2014), <https://www.justice.gov/usao-mt/pr/montana-groups-receive-federal-grant-fight-domestic-and-sexual-violence-bakken>.

domestic violence and sexual assault “directly conflict with the policy of Indian self-determination and they strike at the very heart of tribal sovereignty.”⁵¹ That is, because Native women are “citizens of particular Tribal Nations, the welfare and safety of American Indian and Alaska Native women are directly linked to the authority and capacity of their nations to address such violence.”⁵² When Native women and children are threatened with increased violence, the ability of their Nations to self-govern is likewise compromised.

The Army Corps, as a department of the United States, shares the same duty as the DOJ, and other federal agencies, in regard to its role as trustee and therefore must weigh the safety of Native women and children as part of its public interest calculation. Failing to consider the impacts of a federally-permitted project on the safety of Native women and children offends what the United States has recognized as the “[g]overnment[’s] . . . legal obligation to provide for the public safety of tribal communities.” 155 Cong. Rec. S4334 (daily ed. Apr. 2, 2009) (statement of Sen. Byron Dorgan); *see also Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942) (concluding that as a result of the numerous treaties signed with Indian Nations, the federal government “charged itself with moral obligations of the highest responsibility and trust.”).

⁵¹ *Examining the Prevalence of and Solutions to Stopping Violence Against Indian Women, Hearing Before the S. Comm. On Indian Affairs*, 110th Cong. 2 (2007) (statement of Sen. Byron Dorgan, Chairman, S. Comm. On Indian Affairs)

⁵² *See* Amnesty Int’l, *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA* 1 (2007), <http://www.amnestyusa.org/pdfs/mazeofinjustice.pdf>. Safety for Native children is similarly linked to the preservation of tribal self-determination and sovereignty. In *Mississippi Band of Choctaw Indians v. Holyfield*, the Supreme Court affirmed that Indian children are “vital to the continued existence and integrity of Indian tribes” 490 U.S. 30, 39 (1989) (quotations omitted).

A federal decision that grants the requested easement without the consent of the Tribal Nations whose citizens would suffer from the resulting rise in violence, therefore, violates the agency's trust duties and responsibilities and, as a result, undermines the public interest.

* * *

CONCLUSION

As demonstrated by U.S. Government reports, data gathered in North Dakota, MHA Nation, Montana, and Fort Peck, as well as firsthand testimony, the Bakken oil boom has led to an increase in violence against Native women and children. Federal permitting of the Dakota Access pipeline could result in a projected 60% increase in oil production in the Bakken from the Dakota Access pipeline. Such a significant and rapid increase in oil extraction in the Bakken will once again increase the number of Native women and children who are assaulted, abused, and sex trafficked. The granting of an easement for such a project, without consideration of this violence, violates the public interest, threatens tribal sovereignty, and undermines the integrity of the United States' trust relationship with Tribal Nations.

Respectfully,



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