

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STANDING ROCK SIOUX TRIBE,

Plaintiff,

v.

U.S. ARMY CORPS OF ENGINEERS,

Defendant.

Case No. 1:16-cv-1534-JEB

SECOND DECLARATION OF DAVE ARCHAMBAULT, II

I, Dave Archambault II, declare as follows:

1. My name is Dave Archambault, II and I am the Chairman of the Standing Rock Sioux Tribe. I have served as Chairman since 2013. I also served as a member of the Tribal Council from 2007 until 2011.

2. Since the Tribe first learned that the Dakota Access pipeline planned to cross Lake Oahe immediately upstream from the Standing Rock Sioux Reservation, the Tribe's position has been clear – we oppose the pipeline crossing Lake Oahe at that location. Our fundamental interest is to protect the waters of Lake Oahe from the risks associated with oil spills and to protect sacred sites along the pipeline's proposed path from destruction and desecration.

3. The waters of Lake Oahe have great significance to my people and to me. They are the waters that we drink, that we rely on for irrigation and other economic pursuits, and that sustain us spiritually. It is the drinking water supply for our homes, as well as the hospital, schools, and all public buildings on the Reservation. We have seen so many oil spills in North Dakota and around the country, and we are aware of the devastating impacts such spills have had

in the past and continue to have today. As a fundamental part of our belief system, which is the belief system that guides my life, we have an obligation to our children, and to future generations, to protect against the contamination of these precious waters.

4. There is an important historic dimension to our concerns about the Dakota Access pipeline. The United States entered treaties with the Sioux Nation in 1851 and 1868, promising that we would have our homeland forever and that they would protect us against depredations. But, after gold was found and immigrants came into our territory, the United States broke its promises to us. The United States even tried to starve my people, in an effort to get us to consent to the taking of our lands. But we did not consent. Nevertheless, the United States dispossessed us from large amounts of land promised to us.

5. In modern times, this pattern continued – as our lands were taken and our way of life destroyed, to benefit others. In 1958, Congress enacted the Oahe Taking Act which took away 56,000 acres of land on our Reservation. These were fertile, wooded bottomlands – the best lands of the Reservation. These lands were permanently flooded, requiring the forced relocation of my people from their protected lowlands to the harsh and windswept uplands. This was a devastating event in the life of the Tribe, causing vast economic and social hardship that continues to this day.

6. The Tribe has a strong interest in making sure that this historic pattern does not continue. In every era, when the United States responds to demands from those seeking to advance particular economic interests – for gold in the Black Hills, for land for non-Indian homesteaders on our Reservation, or for navigation or hydropower – it has always been the Tribe that has borne the heavy burdens, through the loss of our lands and harm to our way of life. While so much has been taken away by the misdeeds of the federal government, the Tribe has

survived, and we have an obligation to protect what remains for the good of our children. We must take positive steps to see that our rights are not ignored by the federal government. That is why we have stressed the importance of meaningful consultation regarding the Dakota Access pipeline. We must see that the federal government, which has solemn obligations under our Treaties and under the trust responsibility, hears our voices, and protects our Reservation and our way of life. As Chairman of the Tribe, I have done all I can to advance these principles.

7. There is also an important spiritual dimension to our concerns about the Dakota Access pipeline. Water plays a central role in our spiritual beliefs and our religious ceremonies. Our creation stories include stories of the importance of water. In our world view, everything is connected – people, animals, the land, and the water – and our belief system requires maintaining water in a pure form. Water is the critical element that nourishes and sustains all life. And water itself has a spirit that connects us all. When we say “mni wiconi,” it means that water is a source of life – that water gives life. Water provides the foundation and basis for all living things. That is a core religious belief that sustains me and our people.

8. The waters of Lake Oahe have a particular religious significance to me and to the Tribe. Certain religious ceremonies, such as the sundance, have historically taken place on the banks of Lake Oahe right near where Dakota Access proposes to cross. Other ceremonies continue to this day. For example, each year when the ice begins to break up after the winter, families from our Tribe have prayer ceremonies on the banks of Lake Oahe at the site of the proposed crossing. Other ceremonies are also connected with Lake Oahe – although our ancestors have taught us that certain ceremonies should not be disclosed to outsiders. Nevertheless, there is a significant connection between the waters of Lake Oahe and the religious practices of my people.

9. One of the teachings of our ancestors, which is central to our belief system, is that to understand the interconnected nature of all things, one must look up to the heavens and down to the center of the earth. Along with our precious waters, the earth, the air and the sun are also sources of life. All of these four sources are connected, and all four are necessary for all beings to exist. We do not look at the sky and the ground as separate things – they are part of the unity of all of nature. This means that we must protect and conserve not only things on the surface, but in the sky and under the ground as well. Our ceremonies reflect the interconnectedness of water, earth, air and the sun (fire), and our spiritual life depends on the integrity of this understanding.

10. Another important teaching of our ancestors is to honor those who have come before us and in particular to ensure that their final resting places are not harmed or desecrated. In Lake Oahe, directly in the path of the proposed Dakota Access pipeline crossing, there is an island. Before the federal government built the Oahe Dam and Reservoir, this was not an island, but dry land along the Missouri River. It is my understanding that there are ancestors buried on this island and so this is a site of great religious and cultural significance to us.

11. Consistent with our history and our spiritual knowledge and understanding, the Tribe has worked hard to address its concerns regarding the Dakota Access pipeline in a good way. On behalf of the Tribe I have expressed our concerns in innumerable meetings with federal officials, I have spoken with all who would listen, and I have written to all those who had a role in the decisions to be made.

12. Throughout the process, we emphasized three things. First, we have a right to be heard – so meaningful consultation must be afforded to us consistent with the federal trust responsibility. Second, our Treaties must be honored, our sacred places protected, and our

waters preserved. Third, the decisionmaking process must be fair – which means that an environmental impact statement is required. These positions have never changed.

13. The Army's December 4, 2016 decision and the January 18, 2017 notice in the Federal Register regarding the Army's intent to proceed with an Environmental Impact Statement was a significant development. After all of our efforts to be heard regarding oil spill risks, alternative routes and Treaty rights, the Army determined that it does have an obligation to take a closer look at these matters through an EIS. I felt that this was a significant vindication of the Tribe's position that we have a right to be heard and to have the Army address our concerns in a fair and comprehensive way. That has not happened before. While not guaranteeing any particular outcome, the Army's decision to do an EIS provided us with hope – as the process would open the door to meaningful consideration of our rights. The Tribe wrote to the Army, expressing our intent to participate fully in the EIS process, and asking to be a cooperating agency.

14. The Army's recent decision granting the easement to cross Lake Oahe immediately upstream from our Reservation indicates that, once again, the federal government feels that it can ignore the interests of the Tribe. In granting the easement, the Army did not consider our Treaty rights to hunt and fish on our Reservation or our Winters doctrine reserved water rights which sustain us. An oil spill would be devastating to those rights, and to the lives of my people, but none of that has been considered by the Army in granting the easement.

15. It is vitally important to our people that our rights be heard by this Court before Dakota Access drills under Lake Oahe.

16. Undertaking HDD drilling to place a major crude oil pipeline under Lake Oahe would interfere with important religious practices of the Tribe. The area where Dakota Access

proposes to drill is a sacred area, where numerous religious rituals are undertaken, as described above. The construction of the pipeline would harm the integrity and spiritual nature of the area, which extends under the ground. Our rituals could never be undertaken in those locations again. The proposed route would also go directly under the burial sites of ancestors in the island in Lake Oahe, and this would desecrate those graves – in much the same manner as placing a pipeline under a formal cemetery. Overall, the drilling under Lake Oahe would be a substantial burden to the exercise of religion by our people in that area.

17. The HDD drilling under Lake Oahe would also have a significant impact on the well-being of our people. Throughout the course of our history, we have suffered historic trauma. This has taken many forms – the devastating loss of lands, the destruction of the buffalo and our way of life, the efforts by the federal government to take away our language and culture, the impacts of poverty, and the ravages of racism. All of this has been endured with great dignity by my people. But over time this history takes a significant toll on our physical and mental health. Many of the health challenges that we face today have been linked, in significant scientific studies, to the historic traumas that we have faced. The traumas of our ancestors are passed down across the generations and impact us today.

18. While I am not a psychologist or social worker, as Chairman I know many Tribal members, and I understand how our history of trauma affects us and creates challenges for us today. One of those challenges today involves the Dakota Access pipeline. Our history tells us that the federal government does not listen to the voices of our people and does not care about our rights or interests. Our Tribe has been subject to terrible misdeeds and abuse at the hands of the federal government, and this has been so in Treaty times, at the time our lands were taken for the Oahe project, and up until the present. This pattern of ignoring Tribal interests continued

with respect to the Dakota Access pipeline, until the Army finally determined that our position has merit and that an environmental impact statement was required. That step suggested, perhaps for the first time ever, that the voices of the Tribe do matter and that the federal government was willing to at least consider, in a meaningful way, our rights. The decision to undertake an EIS signified a recognition that we have a right to be heard.

19. The Army's decision to grant the easement basically strips the Tribe of the right to be heard. Once again, we are told that Tribal interests do not matter. If Dakota Access is allowed to drill under Lake Oahe before this Court hears the Tribe's position and rules on it, that would cause deep and lasting harm to our people. We have faced historic trauma and mistreatment across generations, which instilled in us the view that our rights do not matter to the federal government. But we have managed to overcome that here, when the Army determined that our concerns merited an EIS. Having come this far, there will be a deep and harmful impact on us if we are told that, not only has the Army changed its mind, but that the Court will not hear us until after the drilling is done and the oil is flowing. If that happens, it would reinforce the deeply held understanding that the historic wrongs committed by the United States against us will continue and that our voices will not be heard in ways that matter by those who have the power to stop the harm to our people. In my view, that would be a terrible blow to our people, and it would have major and lasting physical and emotional consequences. As Chairman, I have a responsibility to provide for the health and welfare of our people, and if there is drilling under Lake Oahe, I will need to bear the additional burden of addressing the increased needs of our people who are adversely impacted.

20. The adverse consequences to our people of permitting Dakota Access to drill under Lake Oahe before our rights have been addressed by the Court would be profound. The

drilling itself would violate our religious tenets and practices and would reinforce the federal government's intent to continue its pattern of wrongdoing against the Tribe. And if the drilling is permitted to go forward to completion, and if oil is actually transported through the pipeline under Lake Oahe, the harm to the Tribe and our people would be magnified. In that event, we would be living under the risk of an oil spill that would harm the waters that sustain our people, our economy and our spiritual lives. An oil spill would foul the water that we drink, that we rely upon for our Treaty protected, subsistence hunting, fishing and traditional plant gathering, and that provides irrigation for our farming and other economic ventures. The risk of an oil spill by the pipeline was significant enough that the original route of the pipeline – which was supposed to cross the River north of Bismarck – was changed. That risk is now placed squarely on the Tribe, as our Reservation is immediately downstream from the proposed crossing of Lake Oahe. We are entitled to be heard on this risk, particularly in light of the history of federal wrongdoings against us, the promises made to us in the Treaties, and the government's trust responsibility to protect our rights and resources from harm.

21. In conclusion, allowing Dakota Access to proceed to drill under Lake Oahe before this Court rules on the legality of the Army's actions would cause irreparable harm to the Tribe and our people. And if Dakota Access is allowed to complete the drilling and transport oil under Lake Oahe before the Court rules on the legality of the Army's actions, that would cause further and even more profound irreparable harm to the Tribe and our people.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on February 9, 2017, at Fort Yates, North Dakota.



Dave Archambault, II