



March 2, 2018

President Margarette May Macaulay
Commissioner Antonia Urrejola
Commissioner Francisco José Eguiguren Praeli
Commissioner Esmeralda Arosemena de Troitiño
Commissioner Luis Ernesto Vargas Silva
Commissioner Joel Hernández García
Commissioner Flávia Piovesan
Executive Secretary Paulo Abrão
Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C. 20006

Re: Update on Effect of U.S. Executive Order “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects”

Dear Commissioners Eguiguren Praeli, Macaulay, Urrejola, Arosemena de Troitiño, Vargas Silva, and Piovesan, and Executive Secretary Abrão,

We, the undersigned Indigenous and civil society organizations, write to update the Inter-American Commission on Human Rights on President Trump’s Executive Order “Expediting Environmental Review and Approvals for High Priority Infrastructure Projects,” (Infrastructure EO) with a focus on developments since the March 21, 2017 hearing¹ on this matter. The actions taken in the last year in direct and indirect furtherance of the Infrastructure EO – including granting permission for construction without conducting appropriate assessments and silencing opposition to that permission – severely impact the rights of Indigenous peoples in the United States to their land and culture, as well as to free, prior, and informed consent. We ask the Commission to maintain its involvement in monitoring and responding to this situation, including by taking the specific actions listed at the conclusion of this letter.

Background and Update on Effects of Executive Order “Expediting Environmental Review and Approvals for High Priority Infrastructure Projects”

On January 24, 2017, the President of the United States signed an executive order (Infrastructure EO) that expedites the environmental reviews of and approvals for “high priority” infrastructure projects, which includes pipelines.² The Infrastructure EO bestows the power of designating a project as “high priority” on the Chairman of the White House Council on Environmental Quality, who may designate a project as a high priority within 30 days of receiving a request or on his or her own initiative; the Infrastructure EO directs the Chairman to base his or her designation of high priority projects on general welfare, value to

¹ Impact of Executive Orders “Border Security and Immigration Enforcements Improvements;” “Protecting the Nation from Foreign Terrorist entry into the United States;” “Expediting Environmental Reviews and Approval for High Priority Infrastructure Projects” on Human Rights in the United States (Ex-officio), March 21, 2017.

² Executive Order: Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, 82 Fed. Reg. 8657 (Jan. 24, 2018), sec. 1, available at <https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02029.pdf>.

the United States, environmental benefits, and other factors at the Chairman's discretion.³ Despite outlining factors for determining on a case-by-case basis which projects are high priority, the Infrastructure EO identifies several types of infrastructure projects as high priority, including the construction and maintenance of pipelines.⁴

A later Executive Order, signed by the President on August 15, 2017, provides guidelines for the implementation of the Infrastructure EO⁵ and expands the definition of high priority infrastructure projects. Infrastructure projects that meet and are subject to three statutory provisions will be designated as high priority.⁶ The designated statutory provisions lay out criteria for highway, public transportation, multimodal transportation, and water resources development, as well as any project requiring an environmental review for construction of energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resources, broadband, pipelines, manufacturing, and other projects that, among other criteria, do "not qualify for abbreviated authorization or environmental review processes."⁷ In addition to the above list, the August 2017 Executive Order allows for other projects "subject to special environmental review and authorization streamlining processes" to be designated high priority infrastructure projects.⁸

On the same day that the Infrastructure EO was signed, President Trump issued two presidential memoranda on expediting approvals necessary for the construction of the Dakota Access pipeline,⁹ which was pending completion of an environmental impact review,¹⁰ and the Keystone XL pipeline,¹¹ which had been rejected by the U.S. Department of State in 2015.¹² The first memorandum directed the Secretary of the Army specifically to order the U.S. Army Corps of Engineers to approve expeditiously easements and rights-of-way as necessary to the construction of the Dakota Access pipeline, to rescind or modify the December 4, 2016 decision of the Army Corps to prepare an environmental impact statement for alternative routes to the one that would cross the Missouri River,¹³ and to take the former Environmental

³ Executive Order: Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, 82 Fed. Reg. 8657, at sec. 1.

⁴ Executive Order: Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, 82 Fed. Reg. 8657, at sec. 1.

⁵ Executive Order: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure, 82 Fed. Reg. 40463 (Aug. 24, 2017), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2017-08-24/pdf/2017-18134.pdf>.

⁶ Executive Order: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure, 82 Fed. Reg. 40463, at sec. 5(d).

⁷ 23 U.S.C. § 139(a)(6)(A); 33 U.S.C. § 2348(a)(5); 44 U.S.C. § 4370(m)(6)(A).

⁸ Executive Order: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure, 82 Fed. Reg. 40463, at sec. 5(d).

⁹ Presidential Memorandum: Construction of the Dakota Access Pipeline, Memorandum for the Secretary of the Army, 82 Fed. Reg. 8661, (Jan. 24, 2017), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02032.pdf>.

¹⁰ *Victory for Standing Rock: DAPL Easement Not Granted*, EARTHJUSTICE, 4 Dec. 2016, <https://earthjustice.org/news/press/2016/victory-for-standing-rock-dapl-easement-not-granted>.

¹¹ Presidential Memorandum: Regarding Construction of the Keystone XL Pipeline, Memorandum for the Secretary of State, the Secretary of the Army, and the Secretary of the Interior, 82 Fed. Reg. 8663, (Jan. 24, 2017), *available at* <https://www.federalregister.gov/documents/2017/01/30/2017-02035/construction-of-the-keystone-xl-pipeline>.

¹² U.S. Department of State, Keystone XL Pipeline Permit Determination (Nov. 6, 2015), *available at* <https://2009-2017.state.gov/secretary/remarks/2015/11/249249.htm>.

¹³ *Victory for Standing Rock: DAPL Easement Not Granted*, EARTHJUSTICE, *supra* note 10.

Assessment of July 2016 on the pipeline as satisfying requirements under existing laws, including the National Environmental Policy Act, for environmental reviews and consultations prior to the project.¹⁴

The second memorandum invited TransCanada to resubmit its application for a permit to construct the Keystone XL pipeline and issued directives that addressed specific departments of the U.S. federal government and the heads of those departments to expedite approvals necessary for the pipeline's construction and operation,¹⁵ including a directive issued to the United States Secretary of State to view a prior Environmental Impact Statement on the Keystone XL pipeline issued in 2014 as fulfilling requirements under pre-existing federal legislation, including the National Environmental Policy Act.¹⁶

The issuance of the Infrastructure EO and the presidential memoranda followed civil society's protests over both pipelines,¹⁷ the U.S. Army Corps of Engineers' December 2016 concession to forgo construction under the Missouri River for the Dakota Access pipeline,¹⁸ and the prior decision to deny the Keystone XL a presidential permit.¹⁹ Indigenous nations and tribal governments opposed the construction of the Dakota Access pipeline adjacent to the Standing Rock Sioux reservation and on land or underneath water – specifically the Missouri River – with religious and cultural significance starting in early 2016, holding mass demonstrations and filing a lawsuit in August 2016 claiming the Army Corps of Engineers failed to consult with the Standing Rock Sioux Tribe.²⁰ As this honorable Commission heard in a thematic hearing on December 9, 2016, protesters faced heavily militarized police and private security contractors who used excessive and disproportionate force. The use of force comprised water cannons in subfreezing weather, stun grenades, attack dogs, rubber bullets, assault rifles, batons, tasers, tear gas, pepper spray and other tactics, against unequivocally non-threatening protestors, including those who were kneeling

¹⁴ Presidential Memorandum: Construction of the Dakota Access Pipeline, Memorandum for the Secretary of the Army, 82 Fed. Reg. 8661.

¹⁵ Presidential Memorandum: Regarding Construction of the Keystone XL Pipeline, Memorandum for the Secretary of State, the Secretary of the Army, and the Secretary of the Interior, 82 Fed. Reg. 8663.

¹⁶ The other directives were for the Secretary of the Army to order the U.S. Army Corps of Engineers to approve in an expedited manner authorization for a permit under the Clean Water Act for the pipeline to cross waters of the United States, and for the Secretary of the Interior and the Directors of the Bureau of Land Management and the United States Fish and Wildlife Service to expedite approval for right-of-way and temporary use permits from the Bureau of Land Management, requests under the regulations implementing the Migratory Bird Treaty Act, and additional approvals related to other laws and regulations. See Presidential Memorandum: Regarding Construction of the Keystone XL Pipeline, Memorandum for the Secretary of State, the Secretary of the Army, and the Secretary of the Interior, 82 Fed. Reg. 8663.

¹⁷ *IACHR Wraps Up its 160th Session*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Dec. 19, 2016, http://www.oas.org/en/iachr/media_center/PReleases/2016/192.asp; *Thousands protest at the White House against Keystone XL pipeline*, THE GUARDIAN, 6 Nov. 2011, <https://www.theguardian.com/environment/2011/nov/07/keystone-xl-pipeline-protest-white-house>; *Hundreds of Keystone XL pipeline opponents arrested at White House*, WASHINGTON POST, 2 March 2014, https://www.washingtonpost.com/blogs/local/wp/2014/03/02/hundreds-of-keystone-xl-pipeline-opponents-arrested-at-white-house/?utm_term=.64828289eeb4.

¹⁸ *Victory for Standing Rock: DAPL Easement Not Granted*, EARTHJUSTICE, *supra* note 10.

¹⁹ *Obama rejects Keystone XL pipeline and hails US as leader on climate change*, THE GUARDIAN, 6 Nov. 2015, <https://www.theguardian.com/environment/2015/nov/06/obama-rejects-keystone-xl-pipeline>.

²⁰ *Key Moments in The Dakota Access Pipeline Fight*, NPR, 22 Feb. 2017, <https://www.npr.org/sections/thetwo-way/2017/02/22/514988040/key-moments-in-the-dakota-access-pipeline-fight>.

and praying or standing with their arms raised.²¹ Prior to the December 9, 2016 Commission hearing, on December 4, 2016, the U.S. Army Corps of Engineers conceded to some of the Tribe's concerns, stating that it would not grant the easement for the pipeline to cross the Missouri River and planned to issue an Environmental Impact Statement on alternative routes.²²

Following the Infrastructure EO and the presidential memoranda of January 24, 2017, however, the Army Corps ignored its previous decision, issued the easement for the pipeline to run across the Missouri River, and abandoned the environmental impact statements for alternative routes,²³ prompting the continued construction of the Dakota Access pipeline and litigation. The Dakota Access construction was completed, and the pipeline began operating in June 2017.²⁴

In response to a claim brought by the Standing Rock Sioux Tribe and the Cheyenne River Sioux Tribe, represented by Earth Justice, a federal judge ruled in June 2017 that the Army Corps did not comply with the National Environmental Policy Act when it granted the easement to run the pipeline under the Missouri River because it failed to consider "the impacts of an oil spill on fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline's effects are likely to be highly controversial," and the judge ordered the Army Corps to perform a new analysis of those sections of its environmental review.²⁵

The pipeline, though, the federal court of the District of Columbia later found, could continue operating while the Army Corps performs the new analysis,²⁶ but the Army Corps must take certain interim measures ordered by the court to reduce the risk of a spill while conducting their further environmental assessments; the Army Corps and Dakota Access LLC must work with the Tribes to create response plans for a spill at the site of the Missouri River crossing, Dakota Access LLC must be subject to an independent audit to assess its compliance with permit conditions with input from the Tribes on the selection of the auditor, and Dakota Access LLC must regularly report on incidents and repairs on the pipeline.²⁷

The construction of the Keystone XL pipeline was also revived following the Infrastructure EO and presidential memoranda, although it was previously denied a permit by the former administration in 2015.²⁸ The U.S. Department of State found in 2015 that construction of the Keystone XL pipeline was not

²¹ *IACHR Wraps Up its 160th Session*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *supra* note 17; Sandy Tolan, *Taxpayer-Funded Horror at Standing Rock*, THE DAILY BEAST, Feb. 22, 2017, <https://www.thedailybeast.com/taxpayer-funded-horror-at-standing-rock>.

²² *Victory for Standing Rock: DAPL Easement Not Granted*, EARTHJUSTICE, *supra* note 10.

²³ EarthJustice, *The Dakota Access Pipeline* (last visited Jan. 29, 2018), *available at* <https://earthjustice.org/cases/2016/the-dakota-access-pipeline>.

²⁴ *DAPL Update: The Oil Will Keep Flowing, The Fight Continues*, EARTHJUSTICE, 11 Oct. 2017, <https://earthjustice.org/features/dakota-access-what-next>.

²⁵ *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 255 F.Supp.3d 101 (D.D.C. June 14, 2017), *available at* <https://earthjustice.org/sites/default/files/files/DAPL-order.pdf>.

²⁶ *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, Civ. Action No. 16-1534 (JEB) (D.D.C. Oct. 11, 2017), *available at* <https://earthjustice.org/sites/default/files/files/opinion-re-vacatur.pdf>.

²⁷ *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, Civ. Action No. 16-1534 (JEB) (D.D.C. Dec. 4, 2017), *available at* <https://earthjustice.org/sites/default/files/files/Order-re-conditions.pdf>.

²⁸ Native American Rights Fund, *Keystone XL Pipeline* (last visited Jan. 29, 2018), <https://www.narf.org/cases/keystone/>; *Obama rejects Keystone XL pipeline and hails US as leader on climate change*, THE GUARDIAN, *supra* note 19.

in the nation's interests,²⁹ but, on March 24, 2017, a presidential permit was issued to TransCanada to construct and operate the pipeline pursuant to the U.S. Department of State's determination that it would serve the national interest.³⁰ TransCanada anticipates primary construction to begin on the pipeline in 2019.³¹

The Keystone XL pipeline's route in Nebraska was recently approved despite testimony against it from neighboring Indigenous Tribes and incomplete environmental reviews on the route. Before receiving the presidential permit, on February 20, 2017 TransCanada filed a request for route approval with the Nebraska Public Service Commission (NPSC) for the portion of the pipeline that would cross the state of Nebraska, to which the Ponca Tribe and the Yankton Sioux Tribe intervened citing cultural and social concerns. Witnesses for the Tribes testified that the proposed routes – of which there were three possible – would run through territory recognized by the Yankton Sioux Tribe and would disturb cultural sites relevant to the Tribes, including the Ponca Removal Trail, causing psychological and cultural harm to tribal members.³² Additionally, one witness noted that remains of Ponca Tribe members who died on the Trail of Tears may be disturbed by the construction.³³ Finding that TransCanada demonstrated it would comply with requirements to avoid disturbing, or minimize disturbance of, cultural sites, on November 20, 2017, the Nebraska Public Service Commission approved a route for the pipeline within the state of Nebraska that would cross the Ogallala aquifer, a significant source of water in the state, as well as the Ponca Removal Trail.³⁴

Voicing dissent to approve the Nebraska route of the Keystone XL pipeline, one commissioner of the NPSC found that the environmental review of the route was insufficient, that TransCanada did not consult the Tribes, and that the NPSC hearing disregarded the Tribes' due process rights. The dissenting commissioner noted that the studies on the impact of the pipeline covered a different route than the one approved; the Nebraska Department of Environmental Quality (NDEQ) drew its 2017 conclusions on the environmental impact on the project based on the U.S. Department of State's 2014 Environmental Impact Statement (EIS) and the NDEQ's EIS from 2013, neither of which analyzed the route approved by the NPSC.³⁵ Further, the NPSC's decision was based, in part, on the assessment that consultation with the Tribes on the construction of the pipeline had occurred, when only the U.S. Department of State, not TransCanada, had consulted with the Tribes.³⁶ Further, the dissenting commissioner argued that the Tribe should not have been consolidated together as intervenors when they have distinct culture, language, history, and religion,

²⁹ U.S. Department of State, *Keystone XL Pipeline Permit Determination* (Nov. 6, 2015), *available at* <https://2009-2017.state.gov/secretary/remarks/2015/11/249249.htm>.

³⁰ U.S. Department of State, *Issuance of Presidential Permit to TransCanada for Keystone XL Pipeline* (March 24, 2017), *available at* <https://www.state.gov/r/pa/prs/ps/2017/03/269074.htm>.

³¹ *TransCanada Confirms Commercial Support for Keystone XL*, TRANS CANADA, 18 Jan. 2018, <https://www.transcanada.com/en/announcements/2018-01-18transcanada-confirms-commercial-support-for-keystone-xl/>.

³² In the Matter of the Application of TransCanada Keystone Pipeline, L.P., App. No. OP-0003, (Neb. Pub. Serv. Comm'n Nov. 20, 2017), at 22-24, *available at* <http://www.psc.nebraska.gov/natgas/Keystone/Orders/2017.11.20.Final%20Order.pdf>.

³³ *Id.* at 24.

³⁴ *Keystone XL pipeline gets Nebraska's approval, clearing a key hurdle in 9-year effort and allowing Trump to claim a win*, WASHINGTON POST, 20 Nov. 2017, https://www.washingtonpost.com/news/energy-environment/wp/2017/11/20/keystone-xl-pipeline-gets-nebraskas-approval-clearing-a-key-hurdle-in-9-year-effort-and-allowing-trump-to-claim-a-win/?utm_term=.a24b804d2368; In the Matter of the Application of TransCanada Keystone Pipeline, L.P., App. No. OP-0003, at 23, 44, 50-51.

³⁵ In the Matter of the Application of TransCanada Keystone Pipeline, L.P., App. No. OP-0003, at 56-57.

³⁶ *Id.* at 60 (Rhoades, Comm'r, dissenting).

and the Tribes, as well as the environmental groups, that intervened were only allowed one witness each instead of being allowed to fully present their case in the manner of the other intervenors in violation of their due process rights.³⁷

Renewed construction plans prompted environmental groups to file a lawsuit in March 2017³⁸ challenging U.S. federal agencies', including the U.S. Department of State and the U.S. Department of the Interior, approval of and environmental reviews of the Keystone XL pipeline.³⁹ The plaintiffs argue that in granting a permit to TransCanada the Department of State violated the National Environmental Policy Act because it relied on an outdated and incomplete environmental assessment from three years ago, failing to account for the national, environmental, and public interests affected by the project.⁴⁰ Litigation is ongoing in the case.⁴¹

Pipelines in operation have already resulted in several spills. At least five leaks from the Dakota Access pipeline alone occurred in 2017.⁴² The most recent spill was on November 14, 2017, when 21 gallons of crude oil leaked.⁴³ The leak was a result of an "excessive vibration," which caused a crack in one of the weld connections that serve the function of "keep[ing] the oil moving and monitor[ing] its flow."⁴⁴ These connections are in place along the pipeline;⁴⁵ thus, there is a risk of a leak in at least a few places. Furthermore, the TransCanada Keystone pipeline recently leaked approximately 210,000 gallons of oil in South Dakota.⁴⁶ The leak occurred on November 16, 2017, four days before the NPSC approved a route for Keystone XL through Nebraska.⁴⁷ TransCanada shut down the pipeline on November 16 but began operating it again two weeks later at reduced capacity.⁴⁸ The leak occurred near the Lake Traverse Reservation, prompting Tribal Chairman Dave Flute to make a statement, indicating that TransCanada appropriately reached out to the Tribe to notify them of the leak, but did not immediately answer their questions of how it happened.⁴⁹

³⁷ *Id.* at 65 (Rhoades, Comm'r, dissenting).

³⁸ *Federal Lawsuit Challenging Keystone XL Approval Will Move Forward*, SIERRA CLUB, 22 Nov. 2017, <https://www.sierraclub.org/press-releases/2018/01/federal-lawsuit-challenging-keystone-xl-approval-will-move-forward>; Third Amended Complaint, *N. Plains Res. Council v. Thomas A. Shannon, Jr.*, CV 17-31-GF-BMM (D. Mont. Aug. 4, 2017), available at <https://www.sierraclub.org/sites/www.sierraclub.org/files/blog/TAC.pdf>.

³⁹ Third Amended Complaint, *N. Plains Res. Council v. Thomas A. Shannon, Jr.*

⁴⁰ Third Amended Complaint, *N. Plains Res. Council v. Thomas A. Shannon, Jr.*

⁴¹ *Federal Lawsuit Challenging Keystone XL Approval Will Move Forward*, SIERRA CLUB, *supra* note 38.

⁴² Alleen Brown, *Five Spills, Six Months in Operation: Dakota Access Track Record Highlights Unavoidable Reality – Pipelines Leak*, THE INTERCEPT, 9 Jan. 2018, <https://theintercept.com/2018/01/09/dakota-access-pipeline-leak-energy-transfer-partners/>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Richard Gonzales, *Keystone Pipeline Oil Spill Reported in South Dakota*, NPR, 16 Nov. 2017, <https://www.npr.org/sections/thetwo-way/2017/11/16/564705368/keystone-pipeline-oil-spill-reported-in-south-dakota>.

⁴⁷ *Id.*

⁴⁸ *Keystone oil pipeline still at reduced pressure: spokesman*, REUTERS, 23 Jan. 2018, <https://www.reuters.com/article/us-pipeline-operations-transcanada-keyst/keystone-oil-pipeline-still-at-reduced-pressure-spokesman-idUSKBN1FC2NT>.

⁴⁹ Dan Cooney, *'We need to know' more about Keystone oil pipeline leak, tribal chairman says*, PBS, 18 Nov. 2017, <https://www.pbs.org/newshour/nation/we-need-to-know-more-about-keystone-oil-pipeline-leak-tribal-chairman-says>.

Related Updates on Additional Pipeline and Oil Extraction Projects

Other pipeline construction and extractive projects in the United States also affect Indigenous communities or have pushed forward in the last year without a sufficient environmental impact assessment. The Enbridge Line 3 Replacement project, which would replace existing pipeline as well as require a new route in Minnesota, would pass through Ojibwe treaty lands and through several water sources, including the Mississippi River.⁵⁰ The Minnesota Department of Commerce's environmental impact assessment from August 2017 found that the pipeline will have "disproportionately high and adverse impacts" on the Indigenous population.⁵¹ The Minnesota state's Public Utility Commission has yet to issue the necessary certificate for the project to commence, as the commission asked for, and is waiting on more information on the environmental impact on geological formations.⁵² United States Representative from Minnesota Keith Ellison asked the Minnesota Public Utility Commission to consider the Indigenous community's opposition to the project.⁵³

The Army Corps of Engineers decided on December 14, 2017 that a pipeline project in Louisiana, the Bayou Bridge pipeline, does not require an environmental impact assessment.⁵⁴ The Army Corps then granted Energy Transfer Partners, the same company that owns the Dakota Access pipeline, the permits to begin construction.⁵⁵ A lawsuit was filed against the Army Corps on January 11, 2018, alleging that the Army Corps violated the National Environmental Protection Act, among other laws.⁵⁶ Energy Partners appeared to begin construction on the pipeline in January 2018.⁵⁷

Additionally, the "Tax Cuts and Jobs Act" signed into law by President Trump on December 22, 2017 authorizes the sale of oil and gas leases in a section of the ANWR on Alaska's North Slope, the coastal plain that faces the Arctic Ocean which is also the calving ground of the Porcupine Caribou herd. The Gwich'in Athabaskan Nation (Alaska and Canada) adamantly opposes opening ANWR for oil development and are spiritually and culturally connected to the porcupine caribou, their primary means of subsistence whose

⁵⁰ Honor the Earth, Line 3 (last visited Jan. 30, 2018), http://www.honorearth.org/sandpiper_line_3_corridor; Friends of the Headwaters, Some facts about the Enbridge Pipeline proposed for Minnesota (last visited Jan. 30, 2018), <http://www.friendsoftheheadwaters.org/index.html>.

⁵¹ See Minnesota Department of Commerce, *Minnesota Department of Commerce Energy Environmental Review and Analysis Final Environmental Impact Statement Line 3 Project* (2017), at ch. 11 pg. 17, available at <https://mn.gov/commerce/energyfacilities/documents/34079/All%20FEIS%20Text.pdf>.

⁵² Minnesota Public Utility Commission, *Notice of Final Environmental Impact Statement Adequacy Determination* (2017), available at <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={F0435060-0000-CE10-943A-2CBAF7E9A46B}&documentTitle=201712-138116-01>; Mike Hughlett, *PUC rejects state's environmental review for Enbridge's Line 3 project*, STAR TRIBUNE, 7 Dec. 2018, <http://www.startribune.com/puc-rejects-state-s-environmental-review-for-enbridge-s-line-3-project/462672913/>.

⁵³ *Keith Ellison Calls Out Proposed Minnesota Pipeline After Keystone XL Wins Approval*, HUFFINGTON POST, 28 Nov. 2017, https://www.huffingtonpost.com/entry/keith-ellison-enbridge-minnesota-pipeline_us_5a1dc8d8e4b04abdc6147901.

⁵⁴ *Bayou Bridge Fight Heads to Federal Court*, EARTHJUSTICE, Jan. 11, 2018, <https://earthjustice.org/news/press/2018/bayou-bridge-fight-heads-to-federal-court>.

⁵⁵ *Id.*

⁵⁶ Complaint, *Atchafalaya Basinkeeper v. U.S. Army Corps of Eng'rs*, Case no. 3:18-cv-00023-SDD-EWD, (M.D. La. Jan. 11, 2018), available at <https://earthjustice.org/sites/default/files/files/3430-Complaint.pdf>.

⁵⁷ Steve Hardy and David J. Mitchell, *Bayou Bridge Pipeline begins construction in Louisiana amid protests, legal challenges*, THE ADVOCATE, 24 Jan. 2018, http://www.theadvocate.com/baton_rouge/news/courts/article_4dc0be78-012a-11e8-b293-cbc2716bdce6.html.

calving grounds, called “the place where all life begins” is a sacred site, and would be irreparably disrupted by Arctic drilling.⁵⁸

Related Updates on Measures Taken Against Protesters and Human Rights Defenders

Hundreds of people who protested against the Dakota Access pipeline were arrested; charged with different crimes, including criminal trespassing; prosecuted; and convicted for their activism during the demonstrations. In just one day in October 2016, 142 people were arrested;⁵⁹ of those arrested that day and later convicted of misdemeanors, the first to receive jail time on October 20, 2017 were Alexander Simon and Mary Redway, despite the prosecuting attorney recommending no jail time and the former convictions of those arrested on the same day not ending in jail time.⁶⁰ The Water Protector Legal Collective characterized the sentence as a warning to the 324 others with pending criminal cases in North Dakota state court, pushing them, the Water Protectors said, to take plea deals.⁶¹ According to data from the Water Protector Collective, 14 cases have already resulted in convictions.⁶²

An additional seven cases against Standing Rock protesters are in federal court,⁶³ including, notably, Red Fawn Fallis’s case, who earlier this year took a plea deal, pleading guilty to two charges.⁶⁴ Fallis was reportedly tackled to the ground by two police officers when a firearm in her vicinity discharged. The firearm belonged to an FBI informant who had been passing information on demonstrators, including Fallis, and had started a romantic relationship with Fallis.⁶⁵ Fallis was charged with civil disorder, discharge of a firearm in relation to a felony crime of violence, and possession of a firearm and ammunition by a

⁵⁸ Robinson Meyer, *The GOP Tax Bill Could Forever Alter Alaska’s Indigenous Tribes*, THE ATLANTIC, 2 Dec. 2017, available at <https://www.theatlantic.com/science/archive/2017/12/senate-tax-bill-indigenous-communities/547352/>.

⁵⁹ Alleen Brown, Will Parrish, & Alice Speri, *The Battle of Treaty Camp: Law Enforcement Descended on Standing Rock a Year Ago and Changed the DAPL Fight Forever*, THE INTERCEPT, 27 Oct. 2017, <https://theintercept.com/2017/10/27/law-enforcement-descended-on-standing-rock-a-year-ago-and-changed-the-dapl-fight-forever/>.

⁶⁰ *Judge Merrick finds two Water Protectors guilty for first amendment activity*, WATER PROTECTOR LEGAL COLLECTIVE, 20 Oct. 2017, <https://waterprotectorlegal.org/judge-merrick-finds-two-water-protectors-guilty-for-first-amendment-activity>.

⁶¹ *Id.*

⁶² ND State Criminal Cases, Water Protector Legal Collective (last visited January 31, 2018), <https://waterprotectorlegal.org/nd-state-criminal-defense/>.

⁶³ *Water Protector Legal Collective Defends Those Arrested at Dakota Access Pipeline Protests*, NATIVE AMERICAN RIGHTS FUND, 1 Oct. 2017, <https://www.narf.org/water-protector-legal-collective/>.

⁶⁴ Will Parrish, *A Native American Activist Followed Her Mother’s Footsteps to Standing Rock. Now She Faces Years in Prison.*, THE INTERCEPT, 30 Jan. 2018, <https://theintercept.com/2018/01/30/standing-rock-red-fawn-fallis-plea-deal/>.

⁶⁵ *Press Release: Government Withholding Key Evidence in Standing Rock Federal Prosecution*, WATER PROTECTOR LEGAL COLLECTIVE, 14 Dec. 2017, <https://waterprotectorlegal.org/press-release-government-withholding-key-evidence-standing-rock-federal-prosecution/>; Will Parrish, *An Activist Stands Accused of Firing a Gun at Standing Rock. It Belonged to Her Lover – An FBI Informant*, THE INTERCEPT, 11 Dec. 2017, <https://theintercept.com/2017/12/11/standing-rock-dakota-access-pipeline-fbi-informant-red-fawn-fallis/>.

convicted felon.⁶⁶ Her attorneys have requested additional information on the paid informant.⁶⁷ In January 2018, Fallis changed her plea to guilty on two charges in exchange for the elimination of one charge, that she discharged a firearm.⁶⁸

An investigation into the use of force used against protesters revealed the use of military type surveillance and counterintelligence tactics.⁶⁹ Tiger Swan is a private security firm that was originally contracted with the U.S. for its global war on terror.⁷⁰ Documents that were leaked by a Tiger Swan contractor to the Intercept as well as those retrieved through public records requests revealed that Tiger Swan viewed the water protectors as following a “jihadist insurgency model.”⁷¹ Tiger Swan’s tactics included aerial surveillance, helicopters, and drones.⁷² Documents indicated that Tiger Swan cooperated with local and federal governments and assisted the prosecution in developing its case against the water protectors.⁷³

Advocates of the water protectors’ rights have also faced legal challenges. The Energy Transfer Partners – the company responsible for the Dakota Access Pipeline -- filed a complaint against Greenpeace and partners for “defrauding the public by defaming the public,” such as by criticizing the nature of consultations with the Tribes and for engaging in an “illegal enterprise,” which makes Greenpeace accountable for the actions of other groups opposing the Dakota Access pipeline.⁷⁴

Further, legislators and the judiciary have taken steps that will make it more difficult for protesters and human rights defenders to peacefully protest in the future in North Dakota, home to a portion of the Dakota Access pipeline now in operation. In March 2017, the North Dakota governor signed into law four new bills aimed at controlling and chilling protests and that increase the likelihood that protesters may be forced to defend against criminal charges. Those laws expand what qualifies as trespassing to include

⁶⁶ *Unlawful Arrest Targeting Protected Speech*, WATER PROTECTOR LEGAL COLLECTIVE, 11 Dec. 2017, <https://waterprotectorlegal.org/court-update-red-fawns-motions-hearing/>.

⁶⁷ *Press Release: Government Withholding Key Evidence in Standing Rock Federal Prosecution*, WATER PROTECTOR LEGAL COLLECTIVE, 14 Dec. 2017, <https://waterprotectorlegal.org/press-release-government-withholding-key-evidence-standing-rock-federal-prosecution/>.

⁶⁸ Will Parrish, *A Native American Activist Followed Her Mother’s Footsteps to Standing Rock. Now She Faces Years in Prison.*, *supra*, note. 63.

⁶⁹ Alleen Brown, Will Parrish & Alice Speri, *Leaked Documents Reveal Counterterrorism Tactics Used Standing Rock to “Defeat Pipeline Insurgencies”*, THE INTERCEPT, 27 May 2017, <https://theintercept.com/2017/05/27/leaked-documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies/>; Antonia Juhasz, *Paramilitary security tracked and targeted DAPL opponents as ‘jihadists,’ docs show*, GRIST, 1 June 2017, <https://grist.org/justice/paramilitary-security-tracked-and-targeted-nodapl-activists-as-jihadists-docs-show/>; Jamil Dakwar, *Why Did a Private Security Contractor Treat Standing Rock Protestors like ‘Jihadists’?*, HUFFINGTON POST, 2 June 2017, https://www.huffingtonpost.com/entry/why-did-a-private-security-contractor-treat-standing-rock-protesters-like-jihadists_us_5931d928e4b02478cb9b9b48.

⁷⁰ Alleen Brown, Will Parrish & Alice Speri, *Leaked Documents Reveal Counterterrorism Tactics Used Standing Rock to “Defeat Pipeline Insurgencies”*, *supra* note 68.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*; Antonia Juhasz, *Paramilitary security tracked and targeted DAPL opponents as ‘jihadists,’ docs show*, *supra* note 68.

⁷⁴ Brian Hauss, *Standing Rock Protest Groups Sued by Dakota Access Pipeline Company*, ACLU, 6 Dec. 2017, <https://www.aclu.org/blog/free-speech/rights-protesters/standing-rock-protest-groups-sued-dakota-access-pipeline-company>.

situations in which there are no clear signs posted on trespassing;⁷⁵ make rioting in a group smaller than 100 people a felony instead of a misdemeanor as it was previously;⁷⁶ allow the attorney general of the state to appoint ad hoc special agents from outside the state or at the federal level to enforce the law within the state when needed;⁷⁷ and prohibit wearing a mask, hood, or face covering for the purpose of concealing one's face at protests on private property.⁷⁸

Further, the judges of the South Central Judicial District in North Dakota attempted to limit Dakota Access protesters' access to counsel with a request made to the North Dakota Supreme Court to terminate the practice of admitting attorneys not licensed in the state to represent the defendants.⁷⁹ The Supreme Court of North Dakota refused to grant the request.⁸⁰

Regional Framework for Free, Prior, and Informed Consent

This honorable Commission has recognized an obligation to obtain the free, prior, and informed consent of Indigenous peoples before engaging in activities that may affect their interests and rights in their land and territories,⁸¹ an obligation related to the right to consultation and participation developed by the Inter-American Court.⁸² In considering Indigenous peoples' right to property under Article 21 of the American Convention on Human Rights, the Inter-American Court of Human Rights found that States should only approve a development project that may affect Indigenous land after conducting a prior environmental and social impact assessment with Indigenous participation, ensuring effective participation of Indigenous peoples in all stages of the project, and ensuring a shared benefit derived from the project.⁸³ The requirement of participation, the Court further held, obliges the State to "actively consult" with the Indigenous community in accordance with their own traditions and in the development

⁷⁵ North Dakota Legislative Branch, Bill Actions for HB 1293, <http://www.legis.nd.gov/assembly/65-2017/bill-actions/ba1293.html>; North Dakota House Bill 1293, *available at* <http://www.legis.nd.gov/assembly/65-2017/bill-index/bi1293.html>.

⁷⁶ North Dakota Legislative Branch, Bill Actions for HB 1426, <http://www.legis.nd.gov/assembly/65-2017/bill-actions/ba1426.html>; North Dakota House Bill 1426, *available at* <http://www.legis.nd.gov/assembly/65-2017/documents/17-8158-02000.pdf>.

⁷⁷ North Dakota Legislative Branch, Bill Actions for SB 2302, <http://www.legis.nd.gov/assembly/65-2017/bill-actions/ba2302.html>; North Dakota Senate Bill 2302, *available at* <http://www.legis.nd.gov/assembly/65-2017/documents/17-8161-01001m.pdf>.

⁷⁸ North Dakota Legislative Branch, Bill Actions for HB 1304, <http://www.legis.nd.gov/assembly/65-2017/bill-actions/ba1304.html>; North Dakota House Bill 1304, *available at* <https://www.legis.nd.gov/assembly/65-2017/documents/17-0311-01000.pdf>.

⁷⁹ See Judges of the South Central Judicial District, *In the Matter of a Petition to Terminate the Special Provision of Legal Services by Qualified Attorneys From Outside North Dakota*, 11 Sept. 2017, *available at* <https://www.ndcourts.gov/Court/Notices/20160436/petition2.pdf>.

⁸⁰ *In the Matter of a Petition to Terminate the Special Provision of Legal Services by Qualified Attorneys From Outside North Dakota*, 2017 N.D. 234, *available at* <https://www.ndcourts.gov/court/opinions/20160436.htm>.

⁸¹ IACHR, *Indigenous Peoples, Communities of African Descent, Extractive Industries* (2016), para. 159, *available at* <http://oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf>.

⁸² I/A Court H.R., *Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of Nov. 28, 2007. Series C No. 172, paras. 133-37, *available at* http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf; See IACHR, *Indigenous Peoples, Communities of African Descent, Extractive Industries*, at para. 155-59.

⁸³ *Saramaka People v. Suriname*. Judgment of Nov. 28, 2007. at paras. 129; IACHR, *Indigenous Peoples, Communities of African Descent, Extractive Industries*, at para. 160, 172.

of the project, and, in the case of large-scale development or investment projects, the State has a duty to obtain the free, prior, and informed consent of the Indigenous community affected.⁸⁴

The United States' actions in issuing the Infrastructure EO and accompanying memoranda, as well as the State's actions taken since then in pushing forward the Dakota Access, Keystone XL, and other pipelines; taking measures to limit the exercise of protests; and the criminal and administrative proceedings associated with the protests and permits for the pipelines likely implicate several rights under the American Declaration on the Rights and Duties of Man, including the right to free, prior, and informed consent as read into the right to property under Article XXIII.⁸⁵ Additionally, the rights to equality before the law, juridical personality, to a fair trial, to assembly, to protection from arbitrary arrest, and to due process of law under articles II, XVII, XVIII, XXI, XXV, and XXVI are likely implicated.⁸⁶

The United States has continually failed to meaningfully consult with Indigenous peoples, as demonstrated in the development and construction of the Dakota Access pipeline; failed to obtain consent from the relevant Indigenous communities for the construction of the Dakota Access pipeline crossing at the Missouri River and the Keystone XL's construction in Nebraska; failed to conduct sufficient and complete environmental and cultural impact assessments for the construction on the Dakota Access pipeline in 2017, the approved construction on the Keystone XL pipeline, and the construction of the Bayou Bridge pipeline; and failed to consider the assessment that the Enbridge pipeline will have a significant cultural impact on Indigenous communities. These actions fall short of meeting the requirements of prior and informed consent.⁸⁷

Additionally, the intimidation and chilling tactics used against protesters in the form of mass arrests, use of unlicensed private military contractors, problematic spaying tactics such as FBI informant infiltration of the protest camp and supply of a weapon that lead to criminal charges. Finally, the denial of Indigenous Tribes' due process right to fully present their case also denies them their right to consultation recognized in the Inter-American system as part of the right to property.⁸⁸

Universal Framework for Free, Prior, and Informed Consent

The universal human rights system also recognizes the obligation to obtain free, prior, and informed consent through the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁸⁹ and supporting treaty body commentary.⁹⁰ The obligation to obtain free, prior, and informed consent from

⁸⁴ *Saramaka People v. Suriname*. Judgment of Nov. 28, 2007. at paras. 133-37.

⁸⁵ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 rev.13, at art. XXIII (2010) [hereinafter American Declaration].

⁸⁶ American Declaration, arts. 2, 17, 18, 21, 25, 26.

⁸⁷ See *Saramaka People v. Suriname*. Judgment of Nov. 28, 2007. at paras. 133-37; OHCHR, *Free, Prior and Informed Consent of Indigenous Peoples* (2013), 2, available at <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>.

⁸⁸ *Saramaka People v. Suriname*. Judgment of Nov. 28, 2007. at paras. 129-37; American Declaration, art. 23.

⁸⁹ UN Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007), UNGA Res. 61/295, arts. 10-11, 19, 28-29 [hereinafter UNDRIP].

⁹⁰ Committee on the Elimination of Racial Discrimination, *General Comment No. 23 on the rights of indigenous peoples*, UN Doc. A/52/18, 26 September 1997, para. 4(d), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7495&Lang=en; Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take*

Indigenous peoples before adopting legislative and administrative measures, or approving projects that may affect Indigenous communities and their lands is explicitly recognized in articles 19 and 32 of UNDRIP.⁹¹ Further, in a 1997 General Recommendation, the Committee on Elimination of Racial Discrimination called on States parties to obtain informed consent before implementing decisions that affect Indigenous peoples' rights and interests,⁹² and the Committee on Economic, Social and Cultural Rights found that States parties "should respect the principle of free, prior and informed consent" in matters that affect the preservation of Indigenous peoples' cultural resources.⁹³

The Office of the UN High Commissioner on Human Rights (OHCHR) has further explained, in its own commentary, the meaning behind each of the three requirements for obtaining consent – that it is free, prior to a decision, and informed. Free consent, the OHCHR explains, means coercion, intimidation, and manipulation were not used when obtaining the consent. Prior consent is that which is sought in sufficient advance of approval with respect shown to the Indigenous community's temporal requirements for the consultation process. Informed consent requires that a range of information is provided, including, but not limited to, the locality and areas affected by a project; an assessment of the potential environmental, social, and cultural impacts; and the scope of the project.⁹⁴

The United States is a party to the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights,⁹⁵ among others, and has obligations under those treaties to uphold the rights to self-determination, non-discrimination, freedom from arbitrary arrest and detention, equality before the law, peaceful assembly, fair trial, and due process,⁹⁶ all of which were likely implicated through the actions taken on the pipelines described above and the intimidation tactics used against, and trials of, protesters.

The UN Special Rapporteur identified and underscored the relevant universal human rights obligations that apply to the United States, specifically in the context of energy development and Indigenous peoples' rights. The Special Rapporteur visited the United States in 2017 and specifically focused on the Dakota Access pipeline.⁹⁷ The Special Rapporteur expressed particular concern on the fulfillment of the right to full, free, prior, and informed consent; right to self-determination; and economic, social, cultural and environmental rights. According to the report, the current framework of consultations violates the right

part in cultural life, UN Doc. E/C.12/GC/21, 21 December 2009, paras. 38-39, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2fGC%2f21&Lang=en.

⁹¹ UNDRIP, at arts. 19, 32.

⁹² *General Recommendation No. 23 on the rights of indigenous peoples*, 26 September 1997, at para. 4(d).

⁹³ *General Comment No. 21: Right of everyone to take part in cultural life*, 21 December 2009, at paras. 37, 55(e).

⁹⁴ See OHCHR, *Free, Prior and Informed Consent of Indigenous Peoples*, at 2.

⁹⁵ UN Treaty Collection, International Convention on the Elimination of All Forms of Racial Discrimination (last visited February 1, 2018), https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280008954&clang=_en; UN Treaty Collection, International Covenant on Civil and Political Rights (last visited February 1, 2018), https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5&clang=_en.

⁹⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171, at arts. 2, 9, 14, 21, 26 (ICCPR); International Convention on the Elimination of All Forms of Racial Discrimination (adopted 6 March 1966, entered into force 4 January 1969), 660 UNTS 1, at arts. 2, 5 (ICERD).

⁹⁷ *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America*, UN Doc. A/HRC/36/46/Add. 1, 9 August 2017, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/46/Add.1.

to consent,⁹⁸ and the report affirms the obligation to involve Indigenous peoples in decision making.⁹⁹ The Special Rapporteur also confirmed the militarized response and use of force against protesters,¹⁰⁰ and highlighted the right to protest “free from reprisals, acts of violence, or undue pressure to accept or enter into consultations.”¹⁰¹

Requested Action

With regard to the Executive Order on Expediting Environmental Reviews and Approval for High Priority Infrastructure Projects, we respectfully request that the honorable Inter-American Commission on Human Rights:

1. Urge the United States government to rescind or modify the relevant Executive Orders and related presidential memorandums, their implementation, or future guidance on implementation as necessary to comply with its obligations to respect, protect, and fulfill the human and treaty rights of individuals, communities, and Indigenous Peoples affected by major infrastructure projects.
2. Examine the impacts of executive actions on the rights affirmed in the American Declaration on the Rights of Indigenous Peoples, in particular in Articles 2, 3, 17-19, 21, 23-26, and 29.
3. Engage in ongoing monitoring of environmental and cultural impact reviews, and the process for obtaining free, prior, and informed consent for the construction of major extraction and infrastructure projects in the United States, with particular focus on the Dakota Access, Keystone, and Keystone XL pipelines, including by:
 - 3.1. endeavoring to carry out an on-site visit to Standing Rock Sioux Reservation in North Dakota, United States, with the prior permission and invitation of the Standing Rock Sioux Tribe, to observe and monitor the impact of the Dakota Access Pipeline on local communities, particularly on Indigenous Peoples, as well as any violations of the right to peaceful assembly; and,
 - 3.2. initiating and maintaining close coordination between the IACHR and relevant United Nations human rights mechanisms, including treaty bodies and special procedures, on these issues. In particular, we request that the Special Rapporteur on Freedom of Expression; Rapporteurship on the Rights of Indigenous Peoples; the Rapporteurship on Human Rights Defenders; and the Unit on Economic, Social and Cultural Rights communicate and jointly monitor the situation with the United Nations special procedures in the relevant thematic areas for the purpose of conducting any country visits and issuing joint statements regarding pertinent developments.
4. Follow up on implementation of its recommendations in previous hearings, cases, and thematic reports related to Indigenous Peoples’ rights and the environment in the United States, especially the report on *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*.
5. Consult and directly engage with sovereign tribal governments and representatives of Indigenous Peoples impacted by infrastructure projects such as the Dakota Access Pipeline, including for the purpose of assessing the impacts of those projects on human rights; rights recognized in treaties concluded with Indigenous nations; and, respect for the right to free, prior, and informed consent.
6. Communicate with civil society organizations to request relevant information and updates as helpful to monitor developments and follow up on prior recommendations in cases and reports.

⁹⁸ *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America*, at para. 14.

⁹⁹ *Id.* at para. 26.

¹⁰⁰ *Id.* at para. 73.

¹⁰¹ *Id.* at para. 72.

7. Issue timely press releases on significant developments related to the hearing, including State responses or lack thereof.
8. Request adoption of precautionary measures where appropriate to prevent irreparable harm to a person, a group, or Indigenous Peoples that will come about as a result of the implementation of the executive orders.

Sincerely,

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