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Re: DNB Divestment from the Dakota Access Pipeline and the Fulfillment of the Human Rights of the Standing Rock Sioux Tribe and their Supporters

To Whom It May Concern:

The Red Owl Legal Collective is the on-the-ground legal support team at the encampment known and supported around the world located on the banks of the Missouri River adjacent to the Standing Rock Sioux Reservation in North Dakota. The encampment was formed in opposition to the construction of the Dakota Access Pipeline (the “Pipeline”) by Dakota Access, LLC (“Dakota Access”)¹, a partially-owned indirect subsidiary entity of Energy Transfer Partners, L.P. (“Energy Transfer Partners”).² The Red Owl Legal Collective operates with support from the National Lawyers Guild³ and is committed to supporting the national sovereign rights of the people of the Standing Rock Sioux Tribe and to serving the legal needs of those engaged in resistance to the Pipeline.⁴

¹ Dakota Access, LLC, is a Delaware limited liability company authorized to do business in North Dakota and engaged in the business of constructing the 1,154-mile-long Dakota Access Pipeline that is intended to transport crude oil from the Bakken Shale of North Dakota to refineries in Patoka, Illinois.

² <http://www.energytransfer.com/>

³ <https://www.nlg.org/>

⁴ <https://d3n8a8pro7vhmx.cloudfront.net/honorearth/pages/2293/attachments/original/1476923648/SolidarityStatementLegalSupport.pdf?1476923648>

We collectively request that DNB immediately withdraw its lending commitments with respect to the Dakota Access Pipeline, as its construction and use (1) violates fundamental human rights, (2) violates treaty-based, customary, “good faith” international law, policy, and rights of indigenous peoples’ as expressed by the United Nations, (3) is in violation of the 1851 and 1868 Fort Laramie Treaties between the government of the United States and the Great Sioux Nation (the Oceti Sakowin), and (4) and potentially conflicts with numerous other international human rights standards, norms, and principles found in the Vienna Convention, Geneva Conventions, international criminal law, humanitarian law, and the International Climate Agreement (Paris), to which the United States and Norway are signatories.

The Pipeline cuts across the unceded traditional territories used and occupied by the Standing Rock Sioux Tribe and the tribes of the Oceti Sakowin. This area includes numerous sacred sites, burial grounds, and serves as the land base upon which the tribes depend for subsistence, food, water, medicine, culture, religion, and life.

The construction of the Pipeline has been controversial, as it was constructed without adequate due process in the form of genuine consultation and the free, prior and informed consent (FPIC) the Oceti Sakowin, the Great Sioux Nation, including the Standing Rock Sioux Tribe, and other impacted communities both indigenous and non-indigenous. The ongoing construction of the pipeline continues to escalate, observable in the use of force by heavily militarized police, as well as private security forces hired by Dakota Access.

Energy Transfer Partners, the Texas company behind the Dakota Access Pipeline, and its affiliated entities, have a long history of violations of environmental laws including pending lawsuits by the states of New Jersey, Vermont, Pennsylvania, and the Commonwealth of Puerto Rico and the City of Breau Bridge in Louisiana over MTBE contamination of groundwater, as well as citations for releases of hazardous materials from its pipelines and facilities in Ohio, Oklahoma, Louisiana, Missouri, Texas, Pennsylvania, and Hawaii. Pipelines leak and spill. In one year alone, there were over 300 pipeline breaks in North Dakota. Numerous pipeline spills of millions of gallons of oil and contaminants into the Missouri River and its tributaries have already occurred. In January, over 50,000 gallons of Bakken crude oil spilled into the Yellowstone River in Montana. Oil from the Bakken field is more volatile than other crudes.

Background on DNB and the Dakota Access Pipeline

DNB is part of the lending syndicate that has provided a US\$2.5 billion credit facility for construction of the Dakota Access Pipeline. DNB portion of that commitment is US\$120 million. Additionally, DNB Bank provides revolving credit lines in the approximate amount of US\$340 million to Energy Transfer Partners and its related companies, Energy Transfer Equity and Sunoco Logistics.⁵ Funding the Energy Transfer Partners affiliates and Dakota Access, thereby enabling construction of the Pipeline, implicates DNB in the ongoing violations of human rights occurring

⁵ <http://www.nationofchange.org/2016/09/07/meet-banks-financing-attacks-standing-rock-sioux-protestors/>

in North Dakota. Currently, there are over 400 active criminal cases filed against peaceful protestors, known as “water protectors,” who sought to exercise their voices in opposition to the Pipeline through prayer, acting in good faith under international law.

The Pipeline and corresponding violations of human rights would not be possible without investment and funding from lenders and international financial institutions such as ING Bank. DNB’s loans and funding of the Energy Transfer Partners companies and the Pipeline project directly relates to the damages, personal injuries, physical, psychological, and emotional harm being sustained, and perpetrated against the Standing Rock Sioux tribal members, human rights defenders, medics, media, and other communities impacted by the installation of this DNB-funded project. Moreover, the actions of the Dakota Access Pipeline are contrary to DNB’s own stated human rights values. For example, DNB policy states that,

Companies may be excluded from the investment universe if there is an unacceptable risk that a company contributes to or is responsible for: serious or systematic violations of human rights, such as murder, torture, deprivation of liberty, forced labour, the worst types of child labour) and other exploitation of children, grave violations of individual rights in wars or conflict situations, serious violations of basic labour rights, grave harm to the environment, acts or omissions that on an aggregate company level lead to unacceptable greenhouse gas emissions, serious corruption, other particularly critical violations of basic ethical norms.⁶

Jurisdiction and Human Right Obligations of the United States

Like DNB, the United States has human rights obligations. The United States signed and ratified the International Covenant on Civil and Political Rights (CCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and supports the United Nation’s Declaration on the Rights of Indigenous Peoples (UN Declaration).⁷ It is further a signatory to the Universal Declaration of Human Rights (1948) and the American Declaration on the Rights and Duties of Man (1948).

Morton County is a political subdivision of the State of North Dakota in the United States. The United States is responsible for the official acts of its government authorities such as the Morton County Sheriff’s Department operating within its federal system, including local authorities, when those acts infringe applicable international human rights standards and fundamental freedoms.

⁶ https://www.dnb.no/portalfront/nedlast/en/about-us/corporate-responsibility/2015/Konsernretningslinje_etiske_investeringer_EN.pdf?popup=true

⁷ United Nations Human Rights, Officer of the High Commissioner, Ratification Status for United States of America, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN

The United States, the state of North Dakota, the Morton County Sheriff's Department along with non-state actors, including Dakota Access continue to violate and jeopardize the lives and human rights of Indigenous Peoples and their supporters encamped in opposition to the Pipeline along the confluence of the Missouri and Cannonball Rivers in North Dakota.

Business interests are also at issue, including those of DNB, and for this reason DNB must divest from the Pipeline and cancel its lending commitments. As the world watches in horror, tensions continue to escalate, resulting in a severe cost to the people whose rights are being directly violated by construction of the Pipeline. These violations occur against the will of the American people and even ignore the request of the Joint Statement from the United States Department of Justice, the Department of the Army and the Department of the Interior to voluntarily halt pipeline construction activity within 20 miles east or west of the Missouri River and Lake Oahe.⁸

Investors in the Dakota Access Pipeline must know that the Pipeline is part and parcel of a long and violent colonial history and colonial legal framework which historically dispossesses and deprives Indian nations and their people of basic human rights to self-governance, to have judicial protection, property, religion, and cultural practice. DNB investors must be informed that the Pipeline is another unfortunate manifestation and extension of colonial violence that represents the foulest vestiges of racism against the indigenous peoples of the United States, and which has yet to be fully eliminated or eradicated.

We stand firm that investment in such prolific violations of human rights, and continued breaking of foundational treaties with Native American tribes is not in line with business and human rights policy, law and ethics, government policy, nor is it in the best interests of DNB, other banks, investors, customers, or shareholders.

Reports of International Law Violations

On September 2, 2016, the U.N. Permanent Forum on Indigenous Issues agreed with the Standing Rock Tribe and over 200 supporting tribes' position that the pipeline was approved in violation of international principles requiring states to involve native people in decisions about development affecting their territory. Standing Rock's Chairman David Archambault went to Geneva to testify before the U.N. Human Rights Council September 21, 2016.⁹

On September 22, 2016, Victoria Tauli-Cropuz, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, issued a statement calling upon the United States to immediate halt construction of the Dakota Access Pipeline, in recognition of the dire and direct threats to the

⁸ <https://www.justice.gov/opa/pr/joint-statement-department-justice-department-army-and-department-interior-regarding-standing>

⁹ <http://indiancountrytodaymedianetwork.com/2016/08/20/dakota-access-pipeline-standing-rock-sioux-issue-urgent-appeal-united-nations-human>

drinking water, burial grounds, and sacred sites of the Standing Rock Sioux people.¹⁰ Ms. Tauli-Corpuz's call for the United States government to take action to halt pipeline was endorsed by other United Nations Experts, including:

- Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst
- Special Rapporteur on the human right to safe drinking water and sanitation, Mr. Léo Heller
- Special Rapporteur on human rights and the environment, Mr. John H. Knox
- Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Maina Kiai
- Special Rapporteur on cultural rights, Ms. Karima Bennouna
- UN Special Rapporteur on human rights and hazardous substances and wastes, Mr. Baskut Tuncak
- Current Chairperson of the Working Group on business and human rights, Mr. Pavel Sulyandziga

The United Nations Declaration on the Rights of Indigenous Peoples (2007), was signed by President Obama for the United States on December 16, 2010. It incorporates widely accepted human rights principles and treaties which secure the collective human rights of indigenous peoples, including the Standing Rock Sioux Tribe, and which have become part of the “Supreme law the land.” These include: (1) The Universal Declaration of Human Rights (UDHR) (1948) (approved by the United States in 1948) which recognizes the “inalienable” collective human rights to a nationality (Article 15), property (Article 17), equality (Article 1) and equal protection (Articles 7 and 10) regardless of status (Article 2), life (Article 3), to religion, thought, speech, and assembly (Articles 18, 19, 20), against cruel, inhuman, or degrading treatment (Article 5), against arbitrary arrest (Articles 1, 3, 9), and to an effective remedy for violations of these rights (Article 8). (2) The International Covenant on Civil and Political Rights (ICCPR) (1977) (ratified by the United States in 1992) which, in addition to those rights set forth in the Universal Declaration, secures the right to self-determination, by which indigenous peoples like all other peoples have the right “to freely determine their political status and freely pursue their economic social and cultural development (Article 1, Section 1).

Signatory states, like the United States, are obligated to respect and promote the realization of the right to self-determination in indigenous peoples (Article 1, Section 3). (3) The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1966) (ratified by the United States in 1994), which condemns colonialism and all practices and all practices of discrimination associated therewith and declares “the necessity to bring them to a speedy and unconditional end” and “solemnly affirms” the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations.” Preamble, paragraphs 4 and 5; Article 2, Section 1. The ICERD then secures the rights set forth in the Universal Declaration free of any racial inequality. Article 5. Each of these rights are implicated in the

¹⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20570&LangID=E>

positions and conduct of the of the Standing Rock Sioux Tribe and that of the other indigenous nations and people that have rallied in the thousands to the Tribe's support.

The Oceti Sakowin, the Great Sioux Nation, including the Standing Rock Sioux Tribe, has never conceded its claim to the territory and ancestral lands reserved from cession to the United States in the Fort Laramie Treaties of 1851 and 1868, which secure to the Sioux peoples the lands through which the Dakota Access pipeline is to travel and where the acts of the Tribe and its supporters in defense of this Tribal claim have taken place. By Articles II and XVI of the Treaty of 1868, the United States "solemnly" agreed that "no persons" would be authorized without the prior consent of the Tribe "shall ever be permitted to pass over, settle upon, or reside in the territory described in this article" Neither treaty provided for any right of abrogation in any party to the treaty. The Tribe continues to reject the illegal occupation of this Tribal territory by the United States and its attempt to buy it off. *See, e.g., Hearing Before the Select Committee on Indian Affairs, United States Senate, 99TH Cong., 2d Sess., S. 1453 (Sioux Nation Black Hills Act)¹¹; Oglala Sioux Tribe of the Pine Ridge Indian Reservation v. U.S. Army Corps. of Eng'rs, 570 F.3d 327 (D.C. Cir. 2009); Lazarus, Edward. *Black Hills/White Justice: The Sioux Nation versus the United States, 1775 to the Present* (1991).*

In *Dann v. United States*, Report No. 75/02, Case 11.140 (2002), the Inter-American Commission on Human Rights held that the attempt by the United States to buy off an indigenous nation rather than return territory and lands occupied by settler colonialists, violated the indigenous nation's collective human rights to property and to an effective remedy. In 2006, the United Nations Committee on the Elimination of Racial Discrimination, the UN body tasked with enforcing the ICERD (which as a ratified treaty is binding upon the United States and is part of our domestic law), affirmed the *Dann* ruling, condemned this money-only policy as racially discriminatory, and issued an urgent request that the United State bring its laws regarding Native peoples and nations in compliance with international human rights law. The Standing Rock Sioux Tribe asserts a just and legitimate claim under international law to both the enforcement of the Fort Laramie Treaties of 1851 and 1868 and to its territory and lands that have been unlawfully taken and occupied by the United States since the 1870s.

In a flagrant violation of environmental justice principles, the pipeline was redirected towards lands near the Standing Rock Sioux Tribe from its original route north of the drinking water intakes for Bismarck, ND, in part to avoid non-Native lands and communities. This act of racial discrimination placing the people of the Standing Rock Sioux Tribe at disparate risk of harm violated their collective human rights as secured by the UN Convention on the Elimination of All Forms of Racial Discrimination, and violated the Executive Order on Environmental Justice, EO 12898.

Red Owl Legal Collective members have served as first-hand witnesses to numerous violations of both US constitutional rights and internationally-recognized indigenous human rights. In addition

¹¹ <http://www.gpo.gov/fdsys/pkg/CHRG-99shrg63488/pdf/CHRG-99shrg63488.pdf>

to the underlying continuing violations of the collective human rights of the Tribe to its sovereignty and to its unceded Treaty territory, lands, and natural resources, on August 23, 2016, team members documented and requested urgent interventions relating to the international community concerning human rights violations occurring in North Dakota.¹² Attorney Jeffrey Haas was present September 3, 2016 when Dakota Access hired private security contractors who unleashed attack dogs on women and children. He states,

I was present at several marches and protests at the construction sites, including September 3rd, where security guards for Dakota Access used mace and sicced dogs on the Water Protectors, resulting in several nasty and bloody wounds to the unarmed victims.¹³

Another Red Owl human rights observer of the September 3rd dog attacks writes that “[s]everal people were bitten by dogs including a pregnant woman. The people were also sprayed with mace.”¹⁴ Colleagues from the Civil Liberties Defense Center observed the following rights abuses and actions:

...I just got back from the camp a few days ago....All morning I have been fielding calls from scared but determined front lines activists asking for legal information, wanting reassurance and reminders about their rights and how to keep themselves safe in the event storm troopers invade this sacred area.. The State just announced they were closing the airspace above the camp so that we cannot use drones to record what is about to take place. They want to commit this deplorable act without cameras, media, legal observers, etc. They want their horrifying, egregious civil rights violations to be shrouded in secrecy and silence. They will not succeed and their actions will be disseminated for everyone to see.¹⁵

Water Protectors, youth, women and elders in the encampment live under intense and ongoing military conditions and surveillance.¹⁶ Communications from individuals inside the camp include documenting the nighttime shining of industrial floodlights onto the camp which deprives them of sleep, as well as the flying of helicopters and airplanes overhead at all hours of the night.

Other parties have observed and documented human rights abuses including but not limited to Amnesty International USA in its letter to the governor of North Dakota, the North Dakota Highway Patrol, and the Morton County Sheriff’s Department.¹⁷

¹² <http://bsnorrell.blogspot.com/2016/08/urgent-appeal-for-international.html>

¹³ <http://www.truth-out.org/opinion/item/37795-lawyer-s-view-recent-days-at-standing-rock>

¹⁴ <http://bsnorrell.blogspot.com/2016/09/ocheti-sakowin-camp-human-rights.html>

¹⁵ <https://cldc.org/2016/10/26/update-militarized-police-presence-at-standing-rock/>

¹⁶ On file with Red Owl Legal Collective

¹⁷ <http://www.amnestyusa.org/sites/default/files/ND-Letter-to-Authorities.pdf>

The American Civil Liberties Union (ACLU) has also sent a letter to North Dakota's Governor Dalrymple and the Morton County Sheriff urging them to protect the First Amendment rights of protesters at the site of the Dakota Access Pipeline construction. ACLU of North Dakota released a statement on the government action regarding ongoing demonstrations at the site of the Dakota Access Pipeline construction in Cannon Ball, North Dakota.¹⁸ The ACLU has also documented the use of surveillance, military-style force, and religious oppression of constitutional rights.¹⁹ The NLG and ACLU are requesting all surveillance information and communications regarding the Dakota Access Pipeline protests from April 1 to the present from the following federal and local agencies: Federal Bureau of Investigation, Department of Homeland Security US Army Corps of Engineers, Bureau of Indian Affairs, Federal Emergency Management Agency, Department of Justice, ND National Guard, ND Highway Patrol, Morton County Sheriff, Burleigh County Sheriff, Emmons County Sheriff, Cass County Sheriff, Fargo Police, Bismarck Police, Mandan Police, Fort Yates Police.²⁰

Numerous international legal actions have also been initiated, including an urgent human rights communication from the Standing Rock Sioux Tribe to the United Nations:

Human Rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples which are threatened or violated by the pipeline construction include the right to health, right to water and subsistence, threats against sacred sites including burial grounds, Treaty Rights, cultural and ceremonial practices, free prior and informed consent, traditional lands and resources including water, productive capacity of the environment, and self-determination.²¹

Additionally, United Nations expert Grand Chief Edward John visited the Standing Rock Sioux Reservation to gather information on Human Rights Violations Resulting from Pipeline construction:

.....As a United Nations (UN) expert, he will be visiting in his official capacity to observe the continued impacts of the Dakota Access Pipeline (DAPL) construction such as threats to water, Treaty rights and sacred areas. He will also collect information and testimonies on the escalating levels of repression, violence and intimidation against Tribal members and their supporters by state law

¹⁸ <https://www.aclund.org/en/news/aclu-north-dakota-statement-first-amendment-violations-dakota-access-pipeline-protests>

¹⁹ <https://www.aclu.org/blog/speak-freely/surveillance-state-descends-dakota-access-pipeline-spirit-camp>

²⁰ <https://www.nlg.org/nlg-and-aclu-submit-foia-and-open-records-requests-to-investigate-unconstitutional-surveillance-of-water-protectors-at-standing-rock/>

²¹ http://www.iitc.org/wp-content/uploads/Standing-Rock-Sioux-Tribe-and-IITC-Urgent-Communication-to-United-Nations-August-18-2018-FINAL.FINAL_web.pdf

enforcement, private security and the National Guard which have been widely reported on social and other media.²²

Third parties who have visited the site witnessed and documented serious human rights violations occurring to the water protectors, Tribe and supporters which include but are not limited to the UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz,²³ the UN Permanent Forum on Indigenous Issues, Amnesty International,²⁴ Democracy Now (whose renowned reporter Amy Goodman was arrested on site).²⁵ The situation has been reported on by the major media outlets of the United States, including the New York Times²⁶ and Washington Post²⁷, the US National Public Broadcasting Service (PBS),²⁸ and around the world. The struggle of the tribe against the Pipeline, which is occurring in various areas such as the State of Iowa, and the #nodapl and #istandwithstandingrock hashtags, social media posts, on-the-ground social media live videos, photos, updates and more have gone viral across the world for weeks and months, with tens of thousands of shares per post and with hundreds of posts coming in regularly.

Militarization and Law Enforcement Response

The Red Owl Legal Collective noted on October 27th, 2016, that the law enforcement response to the predominately Native American group camping near the confluence of the Missouri and Cannon Ball Rivers has continued to escalate at an alarming rate. The aggressive militarization of law enforcement under the direction of the Morton County Sheriff reached a new high on October 27th, 2016.²⁹ Currently, there are numerous corroborated first-hand reports of human and civil rights violations of water protectors, including women, youth, and elders, by police, National

²² <http://cdn5.iitc.org/wp-content/uploads/IITC-Press-Release-Standing-Rock-October-28-2016-Final.pdf> the major signatories.

²³ See 23 September 2016 UN news and statement ‘North Dakota: “Indigenous peoples must be consulted prior to oil pipeline construction” – UN expert’, at <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/162-north-dakota-pipeline>.

²⁴ See, for example, Amnesty International on 28 October 2016, ‘Amnesty International USA to Monitor to North Dakota Pipeline Protests’, <http://www.amnestyusa.org/news/press-releases/amnesty-international-usa-to-monitor-to-north-dakota-pipeline-protests> and ‘October 28 letter to Morton County Sheriff’, http://www.amnestyusa.org/sites/default/files/pdfs/Letter_OctoberIssues.pdf

²⁵ See the Democracy Now webpage specifically devoted to the Standing Rock issue and the issue of the pipeline, entitled ‘Dakota Access Pipeline’, at http://www.democracynow.org/topics/dakota_access (accessed 8 November 2016).

²⁶ for example, Bill McKibben, 28 October 2016, “Why Dakota Is the New Keystone”, <http://www.nytimes.com/2016/10/29/opinion/why-dakota-is-the-new-keystone.html>

²⁷ Numerous articles exist, see for example Joe Heim and Mark Berman on 9 September 2016, “Federal government moves to halt oil pipeline construction near Standing Rock Sioux tribal land”, at <https://www.washingtonpost.com/news/post-nation/wp/2016/09/09/federal-judge-denies-standing-rock-sioux-tribes-request-to-stop-work-on-four-state-oil-pipeline/>

²⁸ See, for example, 3 November 2016 report by Jenni Monet “For Native ‘water protectors,’ Standing Rock protest has become fight for religious freedom, human rights,” <http://www.pbs.org/newshour/rundown/military-force-criticized-dakota-access-pipeline-protests/>

²⁹ On file with Red Owl Legal Collective.

Guard, and hired paramilitary personnel.³⁰ This list, which continues to grow daily, includes but is not limited to:

- Use of chemical agents, rubber bullets;
- Use of Long Range Acoustic Devices (LRAD);
- Numerous reports of the reckless deployment of firearms;
- Multiple officers discharging weapons into a crowd and at horses, resulting in multiple injuries of people and horses;
- At least one report of an officer aiming a tear gas canister at an individual's head, striking him in the neck;
- The use of non-lethal or less than lethal firearms at close range;
- The unprovoked use of both bean bag guns and rubber bullets;
- Multiple flash bang grenades thrown into a crowd that included many elderly and otherwise vulnerable people;
- Numerous reports of police pushing, shoving, clubbing, and knocking people down;
- Numerous reports of the unsafe use of ATVs, resulting in, among other things, several people being hit by ATVs;
- Numerous reports of the unsafe and excessive deployment of pepper spray, including against pipe-carrying elders assembled in prayer;
- The targeted use of excessive force against prominent figures, including police grabbing and re-injuring the recently broken wrist (by the police on October 22) of a member of the International Indigenous Youth Council;
- The unnecessary rough apprehension of numerous prayerful and peaceful people, including several prostrate praying women;
- The improper use of zip ties, resulting in reports of loss of feeling and motion, numbness, and hands turning blue that, in some cases, that continued to persist after they were removed;
- Multiple reports of peaceful, surrendering individuals being tackled to the ground by groups of law enforcement officers; and
- Numerous reports of the targeting of horseback riders, including the pursuit of a female horseback rider by police on ATVs shooting guns while following a herd of buffalo.³¹
- The disruption of prayer and spiritual ceremonies by Tribal members;
- The taking of sacred items, including pipes and staffs, from Native water protectors.

As a result of these and other unacceptable police practices, dozens of water protectors sustained serious injuries, including numerous injuries requiring medical treatment by the volunteer camp

³⁰ On file with Red Owl Legal Collective.

³¹ On file with Red Owl Legal Collective.

medics and doctors who responded to the police violence.³² There have been no reports of medical services provided by Morton County or the State of North Dakota other than the minimal, and often insufficient, care offered at the correctional facilities to which Morton County sent arrestees.³³

The Standing Rock Sioux Tribe, in a letter to US Attorney General Loretta Lynch, has also requested information and investigation to protect civil rights in North Dakota regarding militarization stating:

Perhaps most significantly, we have seen the overall militarization of law enforcement response. The Governor called out the National Guard in September, and military vehicles are being used at roadblocks and checkpoints. Peaceful protests are being met with military vehicles and heavily armed law enforcement personnel in riot gear. Rather than seeking to keep the peace, law enforcement personnel are clearly working in tandem with private security of Dakota Access. To many people, the military tactics being used in North Dakota are reminiscent of the tactics used against protesters during the civil rights movement some 50 years ago. And I believe that there are similarities there. But to us, there is an additional collective memory that comes to mind. This country has a long and sad history of using military force against indigenous people – including the Sioux Nation. I would like to think that those days are past – and that today Tribal rights cannot be ignored and military force cannot be used to suppress Indian people. But when I see the militarization taking place in North Dakota against Indian people, I am genuinely concerned.³⁴

Treatment of Human Rights Defenders in Custody and Detention

There have also been an alarming number of corroborated reports of unnecessary, inhumane, and unconstitutional treatment of individuals after arrest, including:

- The use of dehumanizing tactics including marking arrestees' arms with numbers, cavity and strip searches, cutting piercings off with bolt cutters, and failing to provide food and water to inmates for long periods of time, containment in dog kennels in makeshift conditions en-mass; and
- The inadequate medical care provided that resulted in severe discomfort and/or life-threatening health problems.³⁵

³² On file with Red Owl Legal Collective.

³³ On file with Red Owl Legal Collective.

³⁴ <https://assets.documentcloud.org/documents/3189653/Lltr-to-AG-Lynch-Re-Dakota-Access-10-24-16-Pdf-1.pdf>

³⁵ On file with Red Owl Legal Collective.

This is only a small sample of the way Morton County, North Dakota, has treated the predominantly Native American protectors, united in prayerful defence the Dakota Access Pipeline, without regard to their safety or their constitutional, international and indigenous rights. There are numerous additionally-documented illegal mistreatments and abuses associated with police actions on October 22, 2016 and throughout months prior.³⁶

Morton County, North Dakota State government, the US government, as well as Dakota Access, have all done great harm to residents and visitors alike. If left unchecked, such actions are destined to result in even greater tragedy.³⁷ The violations continue to escalate in the state of North Dakota by state and non-state actors, and are fundamentally related to DNB's funding of the project. A swift and correct resolution is of the essence and necessitates immediate divestment. On a moral level DNB divestment from the Dakota Access pipeline is the right thing to do.

Corporate Social Responsibility and Indigenous Peoples

Extractive industries, and those that provide the financial backing for their activities, have a long and disturbing relationship with indigenous peoples and nations throughout their entire 525-year relationship. More recently, the international community has engaged in a discussion of the social responsibility of extractive corporations to the communities they impact, including corporate human rights violations. In 2009, the United Nations Expert Group on Extractive Industries, Indigenous Peoples' Rights and Corporate Social Responsibility issued their report addressing this corporate obligation. E/C.19/2009/CRP.8 (May 4, 2009). In its report, the Chairperson of the International Expert Group remarked:

Indigenous Peoples around the world have continued to suffer violations of their human rights on a regular basis. This is especially the case in the context of extractive industries, such as mineral, oil and gas extraction, which disproportionately impact Indigenous Peoples. Human rights violations range from violations of Indigenous Peoples' right to self-determination, rights to lands, territories and resources, health and culture, food and water, as well as displacement and violations of the most basic civil and political rights, such as arbitrary arrests and detention, torture, enforced disappearances and killings.

Id. at 4. On the Role of Corporations, the Expert Group stated:

According to the provisions of the UNDRIP, extractive industries must not operate on indigenous lands or territories without obtaining the free, prior and informed consent (FPIC) of the relevant communities and Indigenous Peoples. This includes the right to say no to extraction or exploration. FPIC is a right and not an obligation and it is therefore for Indigenous Peoples to determine whether they will engage in

³⁶ On file with Red Owl Legal Collective.

³⁷ On file with Red Owl Legal Collective.

discussions or not. FPIC is not a single decision but rather a process that occurs in stages and which can be revoked.

Id. at 5. Specifically as to international financial institutions (IFIs), the Expert Group remarked:

[w]hile international financial institutions (IFIs) tend to have policies on Indigenous Peoples that can safeguards their rights and interests, particularly in countries that do not have good laws, these policies are not always implemented. Moreover, it is extremely problematic that IFIs have not adopted the requirement for free, prior and informed consent (FPIC). Indeed, IFIs have confused the issue by instead calling for free, prior and informed “consultation”, which has no clear meaning and has had problematic results. For example, in some cases, governments have used this as grounds to simply notify indigenous communities of extractive industries projects that would impact them, rather than asking for their consent.

Id. at 12. The Expert Group concluded that “IEIs could play an important role in setting international environmental and human rights standards concerning extractive industries.” *Id.* at 13. It made the following recommendations that extractive industries corporations:

Adopt the UN Declaration on the Rights of Indigenous Peoples as a minimum standard;

Respect the rights enshrined in the UN Declaration regardless of a host government’s acknowledgment of the human rights of Indigenous Peoples or failure to protect these through national law;

Fully integrate considerations of human rights and environmental standards in all areas of their work, including staff assessments based on staff records;

Recognize the rights of Indigenous Peoples over their lands as the basis for negotiations over proposed extractive industries, as well as the organization of engagement, partnership and sharing of financial benefits. In instances where Indigenous Peoples consent to extractive activities on indigenous land, payments or benefit sharing arrangements should be based on annual reviews throughout the life of the activity. Incomes from any extractive activity must cover all costs associated with closure and restoration and include sufficient funds to provide for potential future liabilities; ...

Develop and enforce policies on human rights; ...

Be accountable to Indigenous Peoples for damages resulting from past extractive activities that affected indigenous lands and livelihoods and provide compensation and restitution for damages inflicted upon the lands, territories and resources of

Indigenous Peoples, and the rehabilitation of degraded environments caused by extractive industry projects that did not obtain FPIC;

Submit themselves to the jurisdiction of indigenous courts and judicial systems in whose territories they operate;

Ensure respect of FPIC including full transparency in all aspects of their operations and stop dividing communities to obtain FPIC.

Always regard indigenous communities as having control and ownership of the land and territory, regardless of whether these rights are recognized by the relevant governments or not.

Id. at 13-14. We request that you acknowledge the obligations expressed by this international Expert Group on corporate social responsibility and implement each of these recommendations as they pertain to the Dakota Access pipeline project.

Request and Conclusion

In conclusion, we request that DNB withdraw all financial assistance, including any loans and equity investments, from the Energy Transfer Partners group of companies and the Dakota Access Pipeline. The Standing Rock Sioux Tribe recently issued Resolution No-591-16, in which the tribe's own government where they,

...pledge and commit that national treasuries, financial holdings, bank accounts, and other financial interests will be divested and severed from any and all banks, mutual funds, securities companies, and other financial entities that invest in, or otherwise financial support any aspect of the Dakota Access Pipeline Project.

DNB must immediately consider the consequences and ramifications of continuing to support the 'wrong team', in what is now known and will be remembered as one of the most profound violations of Native American sovereignty to occur in the United States. The history being created in the unceded traditional territories of the Great Sioux Nation in America's Upper Great Plains continues to be written at this moment. DNB has a choice to stand on the right side of history, with the Standing Rock Sioux Tribe, and the tribes of the Oceti Sakowin and the world in saying "No to the Dakota Access Pipeline," and to adhere to international and national laws in accordance with human rights.

Absent divestment and cancellation of financing commitments, DNB risks being documented and remembered as a supporter of human rights violations against the Standing Rock Sioux Tribe, indigenous peoples, human rights defenders, and their supporters. DNB can set a positive example,

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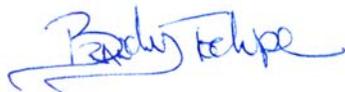
showing that financial institutions and investors can uphold the laws, human rights, and ethics they and their partners are accountable to.

DNB and similarly-situated financial institutions should reconsider how they relate to and respect the rights Native American sovereign nations and other indigenous peoples throughout the world, including rights consultation, free, prior and informed consent, cultural rights, and survival. Banks must find it unacceptable to fund development projects that devastate and are deleterious to indigenous rights and existence. Financial support for such projects must cease immediately. One human rights observer wrote that:

As Indigenous peoples, we emphasize that this discussion must begin by acknowledging that we are sovereign Indigenous nations. We retain our inherent sovereignty as the original peoples and caretakers of the land. This inherent sovereignty exists and continues to this day regardless of whether it is recognized by the State. Because of that inherent sovereignty no corporation is entitled to construct or extract from the traditional lands of the nation concerned without its free, prior and informed consent.

The Red Owl Legal Collective will continue to witness and protect those who are exercising their indigenous customary rights, civil, constitutional, and human rights to halt the pipeline and to protect the traditional land, territories, and resources of the Oceti Sakowin and those dependent on the Missouri River. If you desire further information, evidence, or communication please don't hesitate to contact us immediately.

Very truly yours,
RED OWL LEGAL COLLECTIVE



Brandy Toelupe, President



Robin S. Martinez, Secretary

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Enclosures

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Rob Wilson Photography
<https://www.facebook.com/rob.wilson.142892?fref=ts>



“On October 27th, 2016 a large military style police force moved in on the Water Protectors on highway 1806 who were obstructing the construction of the Dakota Access Pipeline. Police used a variety of less-than-lethal weapons at point blank range - often with no provocation.”

RESOLUTION NO. 591-16

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[a], 1[b], 1[c], 1[h], and 1[j], is authorized to negotiate with Federal, State and local governments and others on behalf of the Tribe, and is further authorized to promote and protect the health, education and general welfare of the members of the Tribe and to administer such services that may contribute to the social and economic advancement of the Tribe and its members; and is further empowered to authorize and direct subordinate boards, committees or Tribal Officials to administer the affairs of the Tribe and to carry out the directives of the Tribal Council; and is empowered to manage, protect and preserve the property of the Tribe and natural resources of the Standing Rock Sioux Reservation; and

WHEREAS, the Standing Rock Sioux Tribe is a signatory to the Treaty of Fort Laramie of 1851 [11 Stat. 749], and the Fort Laramie Treaty of 1868 [15 Stat. 635]; and

WHEREAS, Article 2 of the Treaty of Fort Laramie of 1868 provides for the "undisturbed use and occupation" of the Great Sioux Reservation by the Oceti Sakowin Oyate; and

WHEREAS, the Standing Rock Indian Reservation was established as permanent homeland for the Hunkpapa, Yanktonai, Cuthead and Blackfoot bands of the Great Sioux Nation; and

WHEREAS, in the Territory of the Oceti Sakowin [Seven Council Fires], as Original and Allied Nations of Great Turtle Island, we hereby declare and affirm our fundamental understanding of Mni Wiconi [Water is Life]; and

WHEREAS, Standing Rock Sioux Tribe condemns the efforts to destroy our Nations has been pursued through a State-Corporate-Industrial process that has invaded our national territories;

NOW THEREFORE BE IT RESOLVED, the Standing Rock Sioux Tribe stands united in our steadfast opposition to the Dakota Access Pipeline and similar projects. As free, independent, and self-determining Original Nations, we pledge and commit that our national treasuries, financial holdings, bank accounts, and other financial interests will be divested and severed from any and all banks, mutual funds, securities companies, or other financial entities that invest in, or otherwise financially support any aspect of the Dakota Access Pipeline Project; and

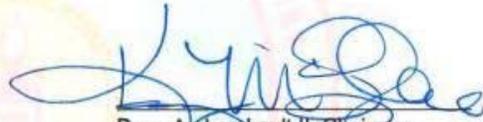
BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

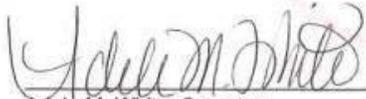
We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of [17] members, of whom 12 constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held on the 04th day of **OCTOBER, 2016**, and that the foregoing resolution was duly adopted by the affirmative vote of 10 members, with 0 opposing, and with 2 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 04th DAY OF OCTOBER, 2016.

ATTEST:



Dave Archambault II, Chairman
Standing Rock Sioux Tribe



Adele M. White, Secretary
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Meeting Date: 10/04/2016
Motion No. 20