

## Formal Argument: Federal Nexus in the Pipestone Pipeline Project

### I. Introduction

The proposed reroute of the Magellan Pipeline near **Pipestone National Monument** raises significant concerns from the **Yankton Sioux Tribe** and numerous other affiliated Tribes. These concerns focus on the pipeline's proximity to sacred lands, its potential impact on endangered species, and the vulnerability of critical water resources. Despite the **\$18.8 billion merger** of Magellan with ONEOK, the companies continue to assert that the project does not trigger a **federal nexus**, an assertion that is demonstrably false.

The pipeline's proximity to **federally protected lands, endangered species habitats, and vital water systems** clearly necessitates **federal oversight**. Multiple federal statutes are triggered, including the **National Environmental Policy Act (NEPA)**, the **Endangered Species Act (ESA)**, the **Clean Water Act (CWA)**, the **National Historic Preservation Act (NHPA)**, **Executive Orders on Sacred Sites and Environmental Justice**, and the **U.S. government's treaty obligations** to the Yankton Sioux Tribe.

Each of these legal frameworks demands federal consultation, environmental review, and oversight due to the profound cultural and environmental risks posed by this pipeline. This document outlines the legal grounds that establish a federal nexus and demonstrates why the pipeline company's denial of federal oversight requirements is both misleading and harmful. The project threatens to cause **irreparable damage** to the environment, endangered species, and the cultural heritage of Indigenous peoples, demanding federal intervention to ensure that the pipeline does not move forward without comprehensive review.

This case exemplifies the importance of environmental justice, as it highlights how corporate interests and negligence are prioritized over the protection of sacred Indigenous sites and critical natural resources. The pipeline's reroute risks not only the integrity of **Pipestone National Monument** but also violates the trust responsibilities that the federal government owes to the Tribes under established treaties.

### II. Proximity to Pipestone National Monument (A *Wizipan Wakan*)

Pipestone National Monument is a federally protected site established in 1937, created to safeguard quarries of a brick-red stone (catlinite) used by numerous Tribes in ceremonial pipemaking. The Yankton Sioux refer to this area as a *Wizipan Wakan* (sacred bundle), signifying its deep spiritual and cultural importance to the Tribe. The monument's federal protection mandates strict oversight of activities that could damage its cultural, spiritual, and environmental resources.

Magellan's proposed pipeline route, while located on private land, runs dangerously close to the boundaries of the monument. The **Minnesota Public Utilities Commission (PUC)** recognized this sensitivity by selecting a route farther from the monument, acknowledging the importance

of cultural and archaeological surveys. However, this proximity still creates a federal nexus due to the potential impacts on sacred sites, triggering additional protections under **Executive Order 13007 on Indian Sacred Sites**. This executive order mandates that federal agencies, in consultation with Tribal governments, ensure access to and protection of sacred sites, even when projects occur on adjacent lands.

Furthermore, under the **National Environmental Policy Act (NEPA)**, federal agencies must assess the environmental and cultural impacts of projects near federal lands. The proximity of the pipeline to Pipestone National Monument requires a thorough environmental assessment (EA) or an environmental impact statement (EIS), depending on the severity of the expected impacts.

The **National Park Service (NPS)** and **U.S. Fish and Wildlife Service (USFWS)**, as federal agencies with jurisdiction over the monument, also have a vested interest in protecting the cultural and natural resources of the site. Their involvement may further trigger consultation requirements under the **National Historic Preservation Act (NHPA), Section 106**, which mandates federal consultation with Tribes on projects that may affect culturally significant sites.

Additionally, under **Section 4(f) of the Department of Transportation Act**, any federally funded transportation project that affects publicly owned land, including parks or historic sites like Pipestone, must consider alternatives that avoid these lands unless there is no feasible alternative. This further solidifies the need for federal review and potential rerouting to avoid Pipestone National Monument.

The PUC's recognition of the need for cultural and archaeological reviews is a step in the right direction, but the involvement of multiple federal statutes necessitates full federal oversight to ensure the protection of the monument and its surrounding areas.

### **III. Impact on Endangered Species (Rare Relatives)**

The area surrounding Pipestone National Monument is home to several endangered species, which the Yankton Sioux and other Tribes refer to as *Rare Relatives*, reflecting the deep cultural and spiritual connection between the Tribe and the natural world. The proposed pipeline construction and potential leaks pose significant risks to these species, which are already vulnerable due to historical watershed mismanagement.

#### **Effects of Construction:**

**Habitat Disruption:** The physical disturbance from pipeline construction can destroy or fragment habitats critical for endangered species like the Northern Long-Eared Bat and Poweshiek Skipperling. The noise, vibrations, and human activity associated with construction could drive away species that rely on undisturbed environments.

**Soil Compaction and Vegetation Loss:** Construction equipment compacts soil, which can disrupt root systems and alter the habitat of plants like the Western Prairie Fringed

Orchid, reducing its ability to thrive. The removal of vegetation could destabilize ecosystems, further impacting species like the Poweshiek Skipperling that rely on prairie plants.

**Erosion and Sedimentation:** The removal of topsoil and vegetation during construction can increase erosion, leading to sedimentation in nearby streams and water bodies. Increased sediment loads can suffocate aquatic species, particularly the Topeka Shiner, which requires clean, clear waters for survival. Sedimentation also alters water temperatures and disrupts breeding grounds for these species.

**Hydrological Changes:** Construction activities can modify water flow, creating surface runoff and altering groundwater recharge patterns. These changes can harm wetland-dependent species like the Western Prairie Fringed Orchid and the Whooping Crane by disrupting their water sources and the delicate balance of moisture they rely on for survival.

### **Effects of Pipeline Leaks:**

**Groundwater Contamination:** An inevitable leak would introduce harmful chemicals and pollutants into the aquifers that many of these species depend on. This contamination could spread through the water table, affecting not only the species but also human communities that rely on these water sources.

**Surface Water Contamination:** Streams and rivers would also be at risk. The contamination of surface water could decimate aquatic life, disrupt food webs, and destroy critical habitats for species like the Topeka Shiner and the Northern Long-Eared Bat.

### **Species at Risk and Potential Impacts:**

1. **Northern Long-Eared Bat (*Myotis septentrionalis*)**

This species could experience habitat disruption due to construction, and any contamination of insect populations from water sources could limit their food supply, leading to further decline.

2. **Topeka Shiner (*Notropis topeka*)**

Sedimentation from construction activities and contamination from pipeline leaks would severely impact the clean, unpolluted waters this fish species needs to survive.

3. **Poweshiek Skipperling (*Oarisma poweshiek*)**

The loss of prairie vegetation during construction and the potential contamination of wetland habitats could lead to the destruction of the butterfly's breeding grounds and food sources.

4. **Western Prairie Fringed Orchid (*Platanthera praeclara*)**

Construction-induced soil disruption and hydrological changes could threaten the delicate conditions this species needs to survive. Contamination of groundwater would further stress this fragile plant species.

5. **Whooping Crane (*Grus americana*)**

Construction noise and human activity near wetlands could disturb the breeding and feeding areas of this rare bird. A leak that contaminates wetland areas would disrupt the ecosystem, threatening their food sources and leading to population decline.

#### **IV. Crossing Streams and Aquifers (Federal Water Statutes)**

The pipeline route crosses multiple streams and aquifers, which are critical to both the local environment and the cultural practices of Tribes, particularly the Yankton Sioux. These water bodies are integral to sustaining ecosystems, and any contamination from pipeline leaks would threaten the biodiversity and water quality that support these habitats. Moreover, the Tribes rely on these water sources for ceremonial purposes, making their preservation essential not just for environmental reasons but for maintaining cultural integrity.

The **Clean Water Act (CWA)**, designed to protect the nation's waters, prohibits unauthorized discharges of pollutants into these waters without proper permits. The pipeline's proximity to streams, wetlands, and aquifers makes it subject to federal regulation under the **CWA**. Specifically, **Section 404 of the CWA** governs the discharge of dredged or fill material into waters of the United States, including wetlands. Since the pipeline crosses multiple water bodies, a **Section 404 permit** is required to ensure that these critical resources are not harmed by construction or leaks. This section of the CWA mandates that any potential impacts on water quality and aquatic habitats be fully assessed and mitigated, further triggering federal involvement.

Additionally, the **Rivers and Harbors Act**, which predates the CWA, provides added federal oversight by prohibiting the unauthorized construction of structures, such as pipelines, in navigable waters. **Section 10 of the Rivers and Harbors Act** requires that any crossing of streams or other navigable waters must be permitted by federal authorities to prevent obstructions to waterways or environmental damage.

In the landmark case **Rapanos v. United States (2006)**, the U.S. Supreme Court clarified that federal jurisdiction under the CWA extends to tributaries, adjacent wetlands, and waters with a significant connection to navigable waters. This case sets a precedent that supports federal oversight for projects like the proposed pipeline, as the streams, tributaries, and aquifers affected by the construction fall under the definition of "waters of the United States." These water bodies are crucial for maintaining regional hydrology, supporting aquatic ecosystems, and preserving cultural practices related to water use.

#### **Risks of Contamination:**

The risk of contamination from leaks is especially concerning given the interconnected nature of groundwater and surface water systems. A leak could result in:

**Groundwater Pollution:** If pollutants from the pipeline seep into aquifers, they could spread across large areas, contaminating drinking water supplies and the ecosystems that depend on clean groundwater.

**Surface Water Degradation:** Streams and wetlands would suffer from reduced water quality, harming fish and other aquatic species. The contamination could also disrupt the delicate balance of wetland ecosystems, which support both endangered species and vital plant life.

Given these risks, the federal government must rigorously apply the **CWA, Rivers and Harbors Act**, and the precedent set in **Rapanos v. United States** to ensure that this project does not endanger these essential water resources. The requirement for proper permits and environmental impact assessments is essential to safeguarding both the ecological and cultural importance of the streams and aquifers the pipeline crosses.

#### **V. Cultural and Historical Preservation (National Historic Preservation Act)**

Pipestone National Monument holds profound cultural and historical significance to the Yankton Sioux and 23 other Tribes, serving as a sacred site where ceremonial pipes have been made for centuries. The **National Historic Preservation Act (NHPA)**, specifically **Section 106**, mandates federal agencies to consult with Tribes when a project may affect properties of cultural importance to Indigenous peoples. This includes evaluating the potential impacts on sacred sites such as the quarries at Pipestone.

The **Minnesota Public Utilities Commission (PUC)** acknowledged the necessity of cultural and archaeological surveys along the pipeline route, implicitly recognizing the potential harm to culturally significant areas. **Section 106** of the NHPA requires that these surveys are conducted with Tribal input to ensure that any cultural resources—whether human remains, artifacts, or sacred stones like catlinite—are properly protected. In particular, if cultural remains are found, the pipeline route may need to be altered to prevent damage to these irreplaceable resources. The potential for such discoveries further reinforces the need for full federal consultation.

**Section 106** calls for meaningful consultation between federal agencies and Tribes, ensuring that any project impacting historic properties is carefully evaluated, and that Indigenous perspectives are prioritized in the decision-making process. The case of **Save Our Heritage Organization v. FAA (2006)** sets a strong legal precedent for enforcing consultation requirements under the NHPA, affirming that projects near culturally significant areas require thorough and respectful engagement with Indigenous communities.

In addition to cultural artifacts, the landscape itself—especially the quarries where sacred stones are gathered—forms part of the spiritual significance of Pipestone National Monument. The pipeline poses a threat to both the physical environment and the intangible cultural connections that Tribes have maintained for generations. Federal involvement through **NHPA Section 106** is critical in ensuring that the historic and spiritual integrity of these lands is not compromised.

**Executive Order 13007 on Indian Sacred Sites** also offers additional protection, mandating that federal agencies avoid adversely affecting the physical integrity of sacred sites and ensure that Tribes can continue their access and use of these locations. The executive order reinforces the need for federal oversight to prevent disruption to the cultural practices tied to Pipestone.

## **VI. Treaty Obligations to the Yankton Sioux**

The **Yankton Sioux Treaty of 1858** granted the Tribe continued access to the sacred pipestone quarries at Pipestone National Monument. This treaty is a binding agreement between the U.S. government and the Yankton Sioux, ensuring that the Tribe's rights to access and protect the quarries are preserved, regardless of land cessions. The approval of a pipeline route so close to this sacred site risks violating these treaty obligations, especially considering the potential for environmental damage that could interfere with the Tribe's ability to access and use the quarries for their cultural and religious practices.

### **Cultural and Environmental Protection under the Treaty:**

While the surrounding land may have been ceded, the sacred nature of the quarries and the spiritual connection the Yankton Sioux have with this place remain unchanged. The **Treaty of 1858** ensures that the Yankton Sioux's access to the pipestone quarries is protected, and any threat to the environmental integrity of this site could undermine the Tribe's rights. The proposed pipeline endangers these cultural and environmental resources by putting the quarries at risk of contamination from leaks, as well as disrupting the spiritual and ceremonial significance of the site.

### **Article VI of the U.S. Constitution:**

The **U.S. Constitution, Article VI**, explicitly states that treaties are the supreme law of the land, meaning that any federal action, including approving pipeline routes, must respect the provisions of the Treaty of 1858. By permitting a pipeline route that jeopardizes the sacred quarries, the federal government risks breaching its obligations under the treaty. Failure to uphold this treaty would not only violate the rights of the Yankton Sioux but also set a dangerous precedent for the treatment of other Indigenous treaties.

### **Implied Water Rights and Winters Doctrine:**

In **Winters v. United States (1908)**, the U.S. Supreme Court established the principle of **implied water rights**, which holds that Tribes are entitled to sufficient water to support their reservations and protect their cultural practices. This doctrine supports the Yankton Sioux's claim that the federal government has a responsibility to ensure the water sources connected to the quarries remain unpolluted and undisturbed. A pipeline leak or environmental degradation near Pipestone National Monument would violate this principle, further underscoring the need for federal oversight and protection of the Tribe's treaty rights.

### **Trust Responsibility:**

Beyond the legal obligations outlined in the treaty, the U.S. government has a **trust responsibility** to uphold the rights of Native American Tribes. This fiduciary duty requires the government to protect Tribal lands, resources, and cultural heritage. Allowing a pipeline that endangers sacred lands undermines this responsibility and disrespects the Yankton Sioux's longstanding relationship with the quarries. The trust responsibility must be central to any federal decision-making regarding this project, with full consideration given to the cultural, environmental, and legal consequences.

## **VII. Environmental Justice**

The federal government has a responsibility to address **environmental justice** concerns, particularly those impacting marginalized communities, under **Executive Order 12898**. This order requires that federal agencies identify and address disproportionately adverse effects of federal actions on minority and low-income populations, including **Native American Tribes**. The proposed pipeline near Pipestone National Monument raises significant environmental justice issues because it threatens sacred lands and critical water resources central to the cultural and spiritual lives of the Yankton Sioux and other Tribes.

Historically, Native American communities have faced environmental degradation and resource extraction projects that disproportionately impact their lands. The Yankton Sioux and other affiliated Tribes have endured significant environmental harm in the region, ranging from the degradation of waterways to the contamination of land used for ceremonial purposes. This proposed pipeline exacerbates these challenges by potentially damaging both sacred sites and the local environment, placing an additional burden on Tribes who have already borne the brunt of historic environmental injustices.

The decision by the **Minnesota Public Utilities Commission (PUC)** to proceed with the pipeline despite considerable opposition from Tribes underscores the necessity of federal oversight. The pipeline could potentially contaminate water sources, degrade land vital to cultural practices, and disrupt the natural environment. For the Tribes, this is not just an environmental issue—it is a question of cultural survival. Without clean water and access to uncontaminated lands, their spiritual and cultural practices are threatened.

**Federal oversight under the National Environmental Policy Act (NEPA)** is critical to ensuring that a thorough review of the pipeline’s potential impacts on both the environment and cultural resources is conducted. **Executive Order 12898** mandates that NEPA reviews specifically consider environmental justice impacts, requiring that the voices of the affected Tribal communities be heard and their concerns addressed meaningfully.

Moreover, federal agencies must incorporate **Tribal consultation** into the environmental review process, as required under **NEPA** and **NHPA Section 106**. This ensures that Indigenous perspectives are fully considered when assessing the pipeline’s potential to exacerbate environmental injustices. A comprehensive environmental impact statement (EIS) must explore not only alternative pipeline routes but also the long-term consequences of the project for Tribal communities.

By advancing projects like this pipeline without full consideration of the environmental justice implications, the federal government risks further marginalizing Native American Tribes and violating its duty to protect their lands, resources, and cultural heritage. The federal government must apply the principles of **environmental justice** rigorously in this case, ensuring that the Tribes’ concerns about water contamination, land degradation, and spiritual disruption are addressed comprehensively before any further decisions are made regarding the pipeline’s construction.

### **VIII. Risks to Catlinite from Oil Contamination**

For the Yankton Sioux Tribe, **catlinite** is far more than a natural resource—it is sacred and integral to the creation of ceremonial pipes, deeply tied to spiritual traditions and creation stories. Pipestone National Monument holds some of the only deposits of this rare and unique stone, making it a site of profound reverence for many Tribes across North America. The stone connects people to their ancestors and carries immense spiritual and cultural value. Disturbing or damaging the quarries not only threatens the material itself but also the spiritual lifeblood of the Yankton Sioux and other Tribes.

**Pipestone** is incredibly rare and only found in a few locations in the world, with the highest-quality deposits located at Pipestone National Monument. Its scarcity adds to its sacred significance, as any contamination or damage could forever restrict access to this irreplaceable resource. This could halt centuries-old spiritual practices tied to the stone, causing a cultural rupture that future generations would bear.

The proposed pipeline reroute, situated dangerously close to the monument, poses a severe threat to the physical integrity of the quarries and the cultural heritage embedded within them. Oil contamination, a risk inherent to pipeline construction and operation, could have **catastrophic effects** on catlinite due to its highly porous nature. Once contaminated, the stone absorbs oil deeply, resulting in **permanent and irreversible damage**. This would alter the stone’s natural composition, discolor it, and render it unsuitable for ceremonial purposes, violating the sacred traditions and practices of the Yankton Sioux and other Tribes.



Currently, no known method exists to remove or mitigate oil contamination from catlinite, making any exposure devastating. The irreversible nature of such contamination highlights the urgency of protecting the quarries from any risk. The loss of access to pipestone would compromise the ability of Tribes to practice their sacred ceremonies and maintain their cultural connections for generations to come. The spiritual and cultural risks associated with this pipeline far outweigh the perceived benefits of its construction.

Beyond the damage to the stone, oil contamination poses broader environmental threats. Contaminated water could seep into the surrounding quarries, land, and ecosystems, impacting the plants, animals, and water sources essential to the Yankton Sioux's cultural and spiritual practices. Clean water and a healthy ecosystem are not just environmental concerns but are integral to maintaining the sanctity of **Pipestone National Monument** as a sacred space.

The federal government has a legal and moral responsibility, under the **National Historic Preservation Act (NHPA)** and **Executive Order 13007 on Indian Sacred Sites**, to protect this monument and the resources it safeguards. These frameworks require federal agencies to consult with Tribes and ensure that sacred sites remain undisturbed by federal or private actions that could cause harm. Even though the proposed pipeline reroute is on private land, the proximity to the monument and the potential for irreversible harm to this sacred resource warrant immediate **federal involvement**. Federal authorities must ensure that environmental assessments, Tribal consultations, and cultural impact studies are conducted thoroughly before proceeding with the project.

## **VIII. Conclusion**

The proximity of the pipeline to Pipestone National Monument, along with its potential impact on endangered species, vital water sources, and sacred cultural sites, clearly demonstrates that **multiple federal nexus points** exist—despite the pipeline company's false claims to the contrary. This is a classic case of **environmental injustice**, where corporate interests are prioritized over the protection of irreplaceable cultural and natural resources.

The pipeline company knowingly downplayed the significance of federal oversight by asserting that no nexus existed, when in fact the project triggers obligations under the **National Environmental Policy Act (NEPA)**, the **Endangered Species Act (ESA)**, the **Clean Water Act (CWA)**, the **National Historic Preservation Act (NHPA)**, **Executive Order 12898 on Environmental Justice**, and the **U.S. government's treaty obligations** to the Yankton Sioux. Each of these legal frameworks mandates federal consultation and thorough environmental review, highlighting the profound cultural and ecological risks the project poses.

The **damage to endangered species** and their habitats, **contamination of water sources**, and the potential for **irreversible harm to sacred sites** make this project deeply problematic. The quarries at Pipestone are not just physical spaces; they are cultural and spiritual lifelines for the Tribes. Catlinite, found only in a few places in the world, is irreplaceable, and any contamination

would forever destroy this sacred resource. The federal government has a trust responsibility to uphold its treaty obligations and protect the Yankton Sioux's access to these quarries, yet allowing the pipeline to proceed without federal oversight would violate that trust.

The company's attempt to bypass federal scrutiny by falsely claiming there was no nexus is not just misleading—it is an attempt to circumvent legal protections designed to prevent exactly this kind of harm. The risks to the environment and Tribal cultural heritage are too great to ignore. By ignoring the multiple federal nexus points, the pipeline company is perpetuating a gross injustice, further disenfranchising Indigenous communities who have already suffered from historical environmental degradation and exploitation of their lands.

**Federal oversight is not just required—it is essential.** Without proper intervention, the pipeline could inflict permanent damage on both the environment and the Tribes' cultural and spiritual heritage. The company's false claims and the risks posed by this project necessitate immediate federal action to enforce compliance with **NEPA, ESA, CWA, NHPA**, and the **treaty obligations** to the Yankton Sioux. Any failure to do so would be an inexcusable breach of the federal government's duty to protect both the environment and the people who depend on it.