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Jason Cooke, VICE CHAIRMAN
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Ryan Cournoyer
Perry Little
Diane Merrick
Dayia Picotte
Justin Song Hawk



**YANKTON SIOUX TRIBE
BUSINESS AND CLAIMS COMMITTEE
RESOLUTION NO. 2024-047**

**Official Tribal Comments Opposing the Magellan Pipeline Adjacent to 1858 Treaty
Lands at Pipestone Monument Quarries**

- WHEREAS:** The Yankton Sioux Tribe is an unincorporated Tribe of Indians operating under an amended Constitution and By-Laws approved on April 24, 1963; June 16, 1975; and March 23, 1999; and
- WHEREAS:** The Yankton Sioux Tribe's Business and Claims Committee is the elected body constituted for the purpose of conducting the business and serving the best interests of the Yankton Sioux Tribe and its membership; and
- WHEREAS:** The General Council is the governing body of the Yankton Sioux Tribe and is the body that represents the Tribe in any Nation-to-Nation consultations, unless other parties have been designated for parties have been designated for a specific consultation; and
- WHEREAS:** Pursuant to Article IV, Section I of the Amended By-Laws of the Business and Claims Committee, the Committee has the authority "investigate and transact all Tribal business of a routine nature and Indian legislation, including Industry, . . . and shall also act in the capacity of a liaison delegation between the Tribe and Federal, State and local governments, and such other agencies or parties that may offer opportunities for the Tribe"; and
- WHEREAS:** The Yankton Sioux Tribe and the United States entered into a treaty in 1858 establishing a new reservation for the Tribe comprised of 400,000 acres of land including and to the east of the Missouri River; and
- WHEREAS:** Article VIII of the 1858 Treaty reserved for the Tribe certain rights in the ceded lands, "Yankton Indian shall be secured in the free and unrestricted use of the red pipe-stone quarry." The area of red pipestone quarry now known as Pipestone National Monument in present-day Minnesota, which was part of the original Yankton homelands; and

WHEREAS: As such, the lands within the Tribe's 1858 Treaty territory hold countless cultural and natural resources of significance to the Tribe and likely burials of ancestors of Tribal members; and

WHEREAS: Further, the lands within the Tribe's 1858 Treaty Territory are home to flora and fauna that Tribal members continue to use for spiritual, medicinal, cultural, and subsistence purposes to this day; and

WHEREAS: These areas of concern are within and outside the boundaries of the Pipestone National Monument, and are included in the Matter of the Application of Magellan, LLC, for a routing permit for the Pipeline Rerouting Project in Magellan, LLC, for a routing permit for the Pipeline Rerouting Project in Pipestone County, Minnesota (Docket # IP-7109/PPL-23-109) Pipestone County, Minnesota (Docket # IP-7109/PPL-23-109); and

WHEREAS: After review of the Comparative Environmental Analysis (CEA) issued on March 4, 2024, by the Minnesota Commerce Department, the Yankton Sioux Tribe and its related authorities hereby identify justifications for its opposition to the proposed re-route of the Magellan Pipeline as set forth below; and

WHEREAS: The Yankton Sioux Tribe will provide a comprehensive analysis of the Magellan Comparative Environmental Analysis in writing which will be attached and presented at upcoming meetings and hearings presided over by Administrative Law Judge Barbara J. Case from the Office of Administrative Hearings; and

WHEREAS: The Business and Claims Committee finds that is in the best interest of the Tribe and its members to strongly request that the permit for the Magellan Pipeline re-route or any of its proposed route options be **denied** and not be constructed within or adjacent to the Tribe's Treaty or aboriginal territories or current "use and occupation areas" because it is a dangerous and destructive project the impacts of which have not been well researched, because the review process has not included meaningful tribal consultation, because of the total lack of recognition of a most sacred Dakota site and the threat the project poses to Tribal cultural resources, and for the reasons asserted below.

NOW, THEREFORE, BE IT RESOLVED, that the Yankton Sioux Tribe asserts its opposition to the Magellan Pipeline re-route project, and asserts the following justifications for our opposition to the Magellan re-route:

1. No Mandate for Ethanol-Heavy Fuels. The CEA report states that the need for the project is due to a potential mandate around ethanol-heavy fuels, but no mandate has been issued and newer fuels can be shipped using the current pipeline structure and the project will have no effect on gas prices for consumers if running or not running.
2. This economic based pipeline marginalizes the importance of one of the most sacred resources to the Oceti Sakowin or Seven Council Fires, the Great Sioux Nation, and many tribal nations across the United States or what we call Turtle Island.
3. Lack of Consultation. Only Minnesota Tribes were consulted, and there was no “good faith” effort to reach other tribes, including affiliated and treaty tribes with an interest in or historical ties to the region. A single attempt was made without follow-up. Because the National Environmental Policy Act (NEPA) and the National Historic Preservation Act apply, federal law and policies require comprehensive rounds of consultation in compliance with national executive orders affecting tribes. Yankton and other impacted tribes have been prevented from engaging in the environmental review by a criss crossing of Minnesota State laws and processes that disregard the existence of a federal nexus requiring consultation with federal agencies that possess a federal trust responsibility for tribes.
4. Mille Lacs Band of Ojibwe Request for Consultation. We support the request of the Mille Lacs Band of Ojibwe for “robust consultation” with tribes to find a routing solution that protects Pipestone. State officials say that the state does not require them to consult, but we have located the federal nexus requiring federal agencies to engage with tribes. The Mille Lacs Band in a letter dated March 10, 2023, insisted that Magellan expand its consultation efforts to include a wider circle of Tribes. We are reiterating the need for that to occur.
5. Ihanktonwan Duty to Protect Pipestone. The Ihanktonwan or Yankton have been entrusted with being “Keepers of the Quarry” in order to protect this sacred resource. That is why Yankton Chief Struck by the Ree insisted that the area that now comprises Pipestone National Monument be a part of the 1858 Treaty. Our duty to protect this most sacred site continues to this day. Our rights to these places and resources are also considered “inherent rights.” These treaty rights are impacted by upstream and downstream flow of water from OUTSIDE OF THE PARK. The current Pipestone Park contains unsafe water which was

contaminated by bodies **outside of the park**. This explains our vigilance of nearby pipelines, pesticides, and other industrial dangers.

6. Improper/Insufficient Archaeological Surveys. The Phase I archaeological survey conducted by Commonwealth Heritage of Wisconsin inaccurately states that the Yankton agreed to sell their claim to their rights at Pipestone in 1899. This was coerced by an ill obtained decision in the 1892 Agreement and a years long battle at the Supreme Court which was decided contrary to what the Indians were fighting for.

7. Ihanktonwan Treaty Right to Pipestone. A treaty right still exists at Pipestone which was reiterated in a letter from Superintendent Lauren Black on April 12, 2023, which declares that our treaty right to quarry at Pipestone is “fully acknowledged.” This was supported by the U.S. Department of the Interior Office of the Solicitor.

8. Grave Threat to Water. This pipeline is a danger to the first “medicine” of our people, which is “Mni” or Water. Groundwater is at risk because it is **VISIBLE** at springs, creeks, wetlands, and rivers. The groundwater provides the **base flow** for creeks and rivers, which allows them to run year-round. The deep connection between groundwater and surface water is complex as the long view sometimes takes 100 years to demonstrate the impact. **GROUNDWATER CONTAMINATION DOES NOT HAVE BOUNDARIES** and adds complexity to measuring and monitoring surface flows.

9. Lack of Transparency. There is a lack of transparency regarding potential spills from the project. The plan includes barges for an area with 1st and 2nd order rivers, not based on groundwork.

10. Poor Mitigation Strategy. The CEA report contains a substandard mitigation strategy which omits cultural mitigation and fails to include a long-term mitigation plan.

11. Wrongful Denial of Federal Nexus. The CEA report states there is no federal nexus necessitating tribal involvement; however, multiple federal nexuses exist, including but not limited to the presence of endangered species such as the Topeka shiner (section 7 of the Endangered Species Act), the crossing of the Northern Tallgrass National Wildlife Refuge and corresponding need for consultation with and permission from the U.S. Fish and Wildlife Service, and the crossing of rivers and wetlands and corresponding need for consultation with and permits from the Army Corps of Engineers.

12. Failure to Conduct NEPA Review. Review of the project under NEPA is required, and its omission is a glaring deficiency. The Pipeline crosses state lines, thereby requiring NEPA review and necessitating involvement from the Environmental Protection Agency and the Federal Energy Regulatory Commission.
13. Proximity to Pipestone National Monument. Re-routes #1 (APR) and #2 (RA2) are in very close proximity to Pipestone National Monument and will have a significant impact on the air, water, and watershed at the Monument. Re-route #3 is less invasive but has not been surveyed using a Traditional Property Survey and therefore risks untold harm to cultural resources.
14. Potential Archaeological Sites. Not all of the re-route areas have been archaeologically surveyed and none have been surveyed with Traditional Cultural Property survey expertise incorporating Native tribal involvement.
15. Oil Impact on Pipestone/Catlinite. No studies or data exists on petroleum contamination of pipestone/catlinite, but studies on similar materials show high rates of contamination with little chance of mitigation.
16. Disregard of a Native Cultural Site. The area encompassed by and surrounding Pipestone National Monument is considered a genesis site for at least 23 affiliated tribes, a fact which is not acknowledged or addressed in the CEA report.
17. Contamination Risk to Streams and Aquifer. All pipeline routes except for RA3, would have significant aquifer exposure and a leak could easily contaminate the city of Pipestone's groundwater and bring oil into the pipestone itself, which is a painful threat to Native Spirituality. All routes but RA3 cross multiple streams, rivers, and an aquifer. Underground pipelines that run through large aquifers have been identified as causing severe groundwater pollution.
18. Deficient Environmental Justice Analysis. The community for which environmental justice effects were considered is the town of Pipestone, which was established long after the Treaty of 1858, and the analysis ignores the large population of Native people that need Pipestone as a Sacred Site to obtain ceremonial items supported by Executive Order 13007. Pipeline presence and any resulting groundwater or pipestone contamination would have a detrimental impact on the spiritual well-being of the thousands of Native people who frequent the site for

ceremonial use. The environmental justice analysis is based on “settler use” and not impacts to Indigenous communities or Indigenous knowledge.

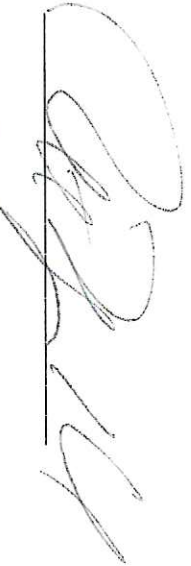
BE IT FURTHER RESOLVED: That the Yankton Sioux Tribal Historic Preservation Office is hereby authorized and directed to contact federal, state, tribal, and local officials for technical, legal, and any other assistance that may be available for the identification, evaluation, and protection of any cultural, historical, religious, and burial sites within the Pipestone area located in the 1858 Yankton Treaty Territory;

BE IT EVEN FURTHER RESOLVED, that Robert Flying Hawk, Chairman, and Courtney Sully, Secretary of the Yankton Sioux Tribe’s Business and Claims Committee are authorized to execute documents of behalf of the Yankton Sioux Tribe.

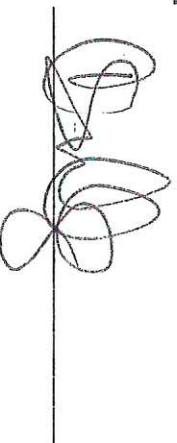
CERTIFICATION

THIS IS TO CERTIFY AND AFFIRM, the above and foregoing resolution was duly authorized and passed by the Yankton Sioux Tribe’s Business and Claims Committee on the 5th day of April, 2024 at a meeting held at the Tribal Headquarters, Wagner, South Dakota on the Yankton Sioux Reservation, by a vote of 4 in favor, 0 opposed, abstain 1, 4 absent, **MOTION CARRIED.**

ATTEST



Robert Flying Hawk, Chairman
Yankton Sioux Tribe
Business and Claims Committee



Courtney Sully, Secretary
Yankton Sioux Tribe
Business and Claims Committee