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INDIGENOUS ENVIRONMENTAL NETWORK
and NORTH COAST RIVERS ALLIANCE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

INDIGENOUS ENVIRONMENTAL
NETWORK and NORTH COAST RIVERS
ALLIANCE,

Plaintiffs,

vs.

PRESIDENT DONALD J. TRUMP,
UNITED STATES DEPARTMENT OF
STATE; MICHAEL R. POMPEO, in his
official capacity as U.S. Secretary of State;
UNITED STATES ARMY CORPS OF
ENGINEERS; LT. GENERAL TODD T.
SEMONITE, Commanding General and
Chief of Engineers; UNITED STATES FISH
AND WILDLIFE SERVICE, a federal
agency; GREG SHEEHAN, in his official
capacity as Acting Director of the U.S. Fish
and Wildlife Service; UNITED STATES
BUREAU OF LAND MANAGEMENT, and

CV 19-28-GF-BMM

**STATEMENT BY
INDIGENOUS
ENVIRONMENTAL
NETWORK AND NORTH
COAST RIVERS ALLIANCE
IN OPPOSITION TO
CONSOLIDATION**

Judge: Hon. Brian M. Morris

DAVID BERNHARDT, in his official
capacity as Acting U.S. Secretary of the
Interior,
Defendants,
TRANSCANADA KEYSTONE PIPELINE,
LP, a Delaware limited partnership, and TC
ENERGY CORPORATION, a Canadian
Public Company,
Defendant-Intervenors.

Pursuant to the Court’s Order of July 16, 2019, Plaintiffs Indigenous Environmental Network and North Coast Rivers Alliance (collectively, “IEN Plaintiffs”) respectfully submit this response opposing consolidation of this matter with the matter filed by Plaintiffs Rosebud Sioux Tribe and Fort Belknap Indian Community (collectively, “Rosebud Plaintiffs”), for five reasons:

1. Consolidation is not warranted because the differences between the two cases substantially outweigh the similarities. The IEN Plaintiffs’ First Amended Complaint alleges three Claims for Relief, under the Property Clause, the Commerce Clause and Executive Order 13,337. The Rosebud Plaintiffs’ First Amended Complaint, by contrast, alleges eleven Claims for Relief, which are dominated by tribe-specific claims including violations of several treaties and related fiduciary duties. Although its second and eighth Claims for Relief (which are similar save for the listed Defendants) raise one issue that overlaps with one of

the three claims alleged by the IEN Plaintiffs – a violation of the Commerce Clause – the vast majority of the Rosebud Plaintiffs’ claims are unrelated to the claims raised by the IEN Plaintiffs.

2. The records on which this Court would rely in deciding the two matters are markedly different. The IEN Plaintiffs raise claims under two clauses of the Constitution (and a related Executive Order) which present discrete legal issues for the Court’s prompt resolution. The Rosebud Plaintiffs, by contrast, raise a broad panoply of treaty, constitutional, statutory, fiduciary and regulatory claims. The judicial record required to adjudicate these claims – including many documents dating to the 19th Century and detailed property ownership files – would be complex and potentially enormous. Consequently, the Rosebud Plaintiffs’ claims, assuming they survive the pending motions to dismiss, are likely to involve a very large documentary record (and engender corresponding record disputes) and take far longer to adjudicate.

3. The Rosebud Complaint seeks separate relief against TC Energy. The IEN Plaintiffs allege claims only against the Federal Defendants. The Rosebud Plaintiffs, by contrast, bring a separate claim against TC Energy, alleging that TC Energy has not obtained a right-of-way from the Tribes to cross tribal land.

4. The Rosebud Plaintiffs challenge the 2017 Permit. The IEN Plaintiffs

challenge only the 2019 Permit for the Keystone XL Pipeline. The IEN Plaintiffs recognize that any challenge to the 2017 Permit has been mooted by President Trump's revocation of that permit. The difference between the two sets of plaintiffs on this issue is fundamental.

5. Procedurally, the two cases are in significantly different postures. The Defendants' motions to dismiss the Rosebud Plaintiffs' claims will be heard by this Court on August 7. By contrast, there is no pending motion to dismiss in the IEN matter, as the IEN Plaintiffs have mooted the Defendants' previous motion to dismiss by filing a First Amended Complaint. The IEN Plaintiffs have filed a Motion for Preliminary Injunction, which will be fully briefed by August 7. Thus, the IEN matter is much closer to this Court's issuance of affirmative relief than is the Rosebud matter.

CONCLUSION

For the foregoing reasons, the IEN Plaintiffs respectfully oppose consolidation of the Rosebud matter with the IEN matter. Doing so would result in no judicial economy or benefit to the parties. Instead, it would likely create inefficiencies and potentially, procedural and substantive confusion regarding the scope of the appropriate record and the means of adjudicating the numerous complex and historic claims alleged by the Rosebud Plaintiffs.

Dated: July 29, 2019 Respectfully submitted,

PATTEN, PETERMAN, BEKKEDAHL & GREEN,
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s/ James A. Patten

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