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## Fighting for Our Lives: #NoDAPL in Historical Context

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## **Fighting for Our Lives** **#NoDAPL in Historical Context**

*Nick Estes*

**T**his essay puts the #NoDAPL movement to stop the Dakota Access Pipeline (DAPL) into historical context and within the longer histories of Oceti Sakowin resistance against the trespass of settlers, dams, and pipelines across the Mni Sose, the Missouri River, and into our territory.<sup>1</sup> From the late summer of 2016 to the winter of 2017, more than three hundred Native nations planted their flags in solidarity at Oceti Sakowin Camp, the largest of several camps that also included Sacred Stone Camp, Red Warrior Camp, Two-Spirit Camp, the International Indigenous Youth Council, and various allied Indigenous and non-Indigenous camps.<sup>2</sup> The pipeline will carry half a million barrels of heavy crude oil a day across four states (North Dakota, South Dakota, Iowa, and Illinois), under the Missouri River twice, and under the Mississippi River to refineries in Illinois and the Gulf of Mexico for global export. For most, it's not *if* the pipeline breaks but *when*. After all, all pipelines break and leak. Crossing these major waterways, the threat posed to freshwater is immeasurable. Thus, the movement galvanized around the Lakota affirmation Mni Wiconi, or *water is life*.

The pipeline crosses the Missouri less than a mile north from the locations of the camps. The original route crossed the Missouri River above the white-dominated border town of Bismarck, North Dakota. The Army Corps of Engineers rerouted the DAPL from above Bismarck, citing environmental and economic concerns, to its current location just north of Standing Rock.<sup>3</sup> Standing Rock had no say in

this proposed reroute and stridently opposed the pipeline as early as September 2014. As it had in previous years, the Corps simply ignored Standing Rock's concerns, claiming sole jurisdiction over the parts of Oceti Sakowin treaty territory that includes the river.<sup>4</sup>

How and why did this happen?

In 1803 the wasicu—the fat-takers, the settlers, the capitalists—claimed this stretch of the river as part of what became the largest real estate transaction in world history. The fledgling U.S. settler state “bought” 827 million acres from the French Crown in the Louisiana Purchase and sent two white explorers, Lewis and Clark, to claim and map the newly acquired territory. None of the Native nations west of the Mississippi consented to the sale of their lands to a sovereign they neither recognized nor viewed as superior. It was only after we rebuffed Lewis and Clark for failing to pay tribute for their passage on our river that they labeled the Oceti Sakowin “the vilest miscreants of the savage race.”<sup>5</sup> Thus began one of the longest and most hotly contested struggles in the history of the world.

For the next hundred years, the United States led various unsuccessful military campaigns to suppress, annihilate, and dispossess us of our rightful claim to the river and our lands. Despite popular belief, we were never militarily defeated. Red Cloud's War and the War for the Black Hills led to the military defeat of the U.S. Cavalry, most famously, the annihilation of Gen. George Armstrong Custer's forces at the Battle of Greasy Grass in 1876. These wars, for our part, were entirely defensive. The Oceti Sakowin signed peace treaties with the invading settler government. The 1851 and 1868 Fort Laramie Treaties provided temporary reprieve and defined the 25-million-acre territory of what became the Great Sioux Reservation and outlying, unceded treaty territory, which stretched from the eastern shore of the Missouri River to the Bighorn Mountains. Four decades of intense warfare, however, took their toll. More than ten million buffalo were slaughtered to starve us out. Settler hordes invaded and pillaged our Black Hills for its gold. Our vast land base diminished, and the treaties were nullified when Congress passed the Indian Appropriations Act of 1876, which abolished treaty making with Native nations, and the Black Hills Act of 1877, which illegally ceded the Black Hills and created the present-day reservation system.

The Oceti Sakowin have vigorously opposed these bald imperialistic maneuvers to usurp our self-determining authority over our lives and lands. Settler society entreated the Oceti Sakowin for the 1851 and 1868 agreements, not the other way around. We entered these relationships with the understanding that both parties respected a common humanity with the people and the lands. In our view, the settler state lost its humanity when it violated the treaties. Every act on our part to recover and reclaim our lives and land and to resist elimination is an

attempt to recuperate that lost humanity—a humanity this settler state refuses and denies even to its own.

South Dakota and North Dakota statehood also played a major role in suppressing the Oceti Sakowin. Although we have never signed any treaties with these states, they lay claim to the destinies of our lands, our river, and our people. To do so, they have always used violence and hatred. In 1890, a year after statehood, these two states drummed up anti-Indian sentiment to further break up and open reservation lands for settlement. As a result, they fabricated the Ghost Dance crisis and called for federal troops to intervene to protect white property, resulting in the incarceration and assassination of our military and political leaders such as Sitting Bull. The culmination of statehood resulted in the killing of over three hundred mostly unarmed women, children, and elders at Wounded Knee in the Pine Ridge Indian Reservation.<sup>6</sup>

Outright murder was never enough. The Dawes Allotment Act of 1887 and the creation of five smaller reservations attempted to factionalize the Oceti Sakowin and opened “surplus” lands to white homesteaders. From 1907 to 1934 millions of acres of the remaining Great Sioux Reservation were lost. In the early 1900s Missouri River Basin states began organizing to usurp Native water rights for large-scale irrigation projects. These states envisioned a dam system that would create large reservoirs that would primarily flood Native lands. But there was a major problem. In 1908 a U.S. Supreme Court decision held that tribes maintained access to and control of water within original treaty territory, even if that territory was diminished. This became known as the Winters Doctrine. For the Missouri River, the Oceti Sakowin possessed the prior claim to both the river and its shorelines as spelled out in the 1851 and 1868 Fort Laramie Treaties.<sup>7</sup>

An opportunity for the states arose. After unseasonal mass flooding, Congress passed the Flood Control Act in 1944, or what became known as the Pick-Sloan Plan, authorizing the Army Corps of Engineers and the Bureau of Reclamation to erect five dams on the main stem of the river, all of which targeted and disproportionately destroyed Native lands and lives. Of the five Pick-Sloan dams, four flooded the lands of seven nations of the Oceti Sakowin: the Santee Sioux Tribe, the Yankton Sioux Tribe, the Sicangu Oyate, the Lower Brule Sioux Tribe, the Crow Creek Sioux Tribe, the Cheyenne River Sioux Tribe, and the Standing Rock Sioux Tribe. Of the 611,642 acres condemned through eminent domain in what was called the “taking area,” these nations lost 309,584 acres of vital bottomlands. Inundation also forced more than a thousand Native families, in patent violation of treaties and without their consent, to relocate. Entire communities were removed to marginal reservation lands, and many were forced to leave the reservation entirely. As a result of condemnation, the Army Corps of Engineers claims sole jurisdiction over the

river and its shoreline, although Congress never granted it the authority to do so.<sup>8</sup>

The dams, which promised and delivered wholesale destruction, coincided and worked in tandem with the federal policies of termination and relocation. In 1953 Congress passed House Concurrent Resolution 108 (HCR 108), which inaugurated termination policy, and called for the immediate termination or ended federal recognition of the Flathead, Klamath, Menominee, Potawatomi, and Turtle Mountain Chippewa tribes. That same year, Congress passed Public Law 280 (PL 280), which authorized states to assume criminal and civil jurisdiction over Native lands. The Bureau of Indian Affairs supported these programs and carried out the Indian Relocation Act of 1956, which relocated thousands from the reservation to far-off urban centers. HCR 108, PL 280, relocation, and the Pick-Sloan dams did not just promote assimilation—they enforced genocide and elimination.<sup>9</sup>

Through termination, relocation, and massive flooding, however, colonialism created its own gravediggers. The Oceti Sakowin unified to thwart the state of South Dakota's attempts to implement PL 280 to overthrow Native governments and assume control over their lands.<sup>10</sup> Natives on relocation also began to organize. Groups such as the National Indian Youth Council and the American Indian Movement (AIM) formed in the urban centers to combat the wholesale destruction of Native life on- and off-reservation.<sup>11</sup> In 1973 AIM occupied Wounded Knee in the Pine Ridge Indian Reservation, which was a culmination of more than a decade of Red Power organizing. The occupation was the catalyst for a mass gathering of thousands at Standing Rock in 1974, which resulted in the founding of the International Indian Treaty Council. At Standing Rock, more than ninety Native nations from around the world built the foundations of what would become four decades of work at the United Nations and the basis for the 2007 Declaration on the Rights of Indigenous Peoples.<sup>12</sup>

The anticolonial uprising taking place in Oceti Sakowin treaty territory and spilling onto the world stage was met with violent state repression. AIM leaders were assassinated, and many were imprisoned. For example, Native leader Leonard Peltier, who participated in this movement for the life and dignity of his people, to this day sits behind bars as one of the longest-serving political prisoners in U.S. history.<sup>13</sup> From 1977 to 2012 South Dakota's prison population increased 500 percent. One-third of its prison population is Native, although Natives make up only 9 percent of the total population.<sup>14</sup> The connections are clear: there is a direct correlation between the mass incarceration of Natives and the violent suppression of political dissent.

With the advent of tarsands extraction and heavy crude pipelines destroying water supplies and scorching the earth, Natives and the Oceti Sakowin have once again reunited. This unification first tar-

geted tarsands and pipeline construction in so-called Canada in First Nations' territory. Successful blockades have halted pipelines. In 2014 the Oceti Sakowin began a massive organizing effort, with help from allies, against the Keystone XL (KXL) pipeline, which also threatened to cross the Missouri River.<sup>15</sup> Our nation is made up of some of the poorest people in the western hemisphere organizing to oppose a fossil fuel industry made up of some of the most powerful and wealthiest people on the planet. Despite these odds, KXL was defeated on November 6, 2015. After mass protests, the Obama administration denied the pipeline's permit. (The Trump administration has since attempted to revive KXL.)

Two important lessons were drawn from the KXL struggle that were carried into #NoDAPL. The power of multinational unity between Natives and non-Natives was one of the movement's successes. The other proved the transformative power and potential of anticolonial resistance to successfully mobilize poor people against the rich and powerful—and win!

Like our ancestors' wars of the nineteenth century, our current war is also defensive—it is to protect water and land from inevitable spoliation in the name of profit. The #NoDAPL movement is explicitly nonviolent, which accounts for its mass appeal to Native and non-Native communities. In spite of this, political violence as a tactic of state repression has targeted water protectors who engage in nonviolent direct action to disrupt the construction of the pipeline, *as well as* those not engaged in direct actions.<sup>16</sup> Natives at or near camp—whether involved in direct actions or not—were also targets for surveillance and repression. The camp and the Standing Rock Reservation are under constant surveillance. The reason: Native bodies stand between corporations and their money. Halting the accumulation of capital, which in this context is the exploitation of our river and lands, has piqued settler ire and spite.<sup>17</sup>

The prolonged peaceful encampment practiced an unsettling countersovereignty. It drew the support and solidarity of more than three hundred Native Nations and countless thousands of allied forces, sending a clear message to corporate interests: North Dakota cannot manage its Indians, and the "Indian Problem" is out of control. After all, controlling the "Indian Problem" has always meant maintaining unrestricted access to Native lands and resources and keeping Indians silent, out of view, and factionalized. At Standing Rock, an unarmed, nonviolent prayer camp posed such a serious threat to settler proprietary claims that former North Dakota governor Jack Dalrymple, who has direct ties to the oil and gas industry, deployed the full force of the Highway Patrol, various national sheriff's offices, Homeland Security, the Border Patrol, and the National Guard. These forces were not there to service an impoverished Native community or protect the integrity of the land, river, or treaties. They were there to carry out the will of

DAPL backers Energy Transfer Partners, some of the richest and most powerful people in the world, who have used attack dogs against unarmed, nonviolent water protectors. More than eight hundred have been arrested, including journalists. Even after most of the protests have died down and the larger camps evicted, state repression continues against water protectors, as many remain tied up in the North Dakota legal system.

The Army Corps of Engineers, which maintains jurisdiction over the river in violation of the 1851 and 1868 Fort Laramie Treaties, claims it holds the final say about whether the DAPL can cross the Missouri River. The #NoDAPL encampment, in an exercise in Native sovereignty, sat atop lands claimed by the Corps, which “permitted” the camp’s presence and later ordered the forceful eviction of the camp on February 22, 2017. On December 4, 2016, the Obama administration ordered the Corps to not grant the easement to DAPL to cross the Missouri River until a full environmental impact statement review would be conducted. Months later, after his inauguration, Trump ordered a reverse course. He urged the secretary of the army to grant the easement, which it did. Construction on the pipeline and the tunneling under the Missouri River continued. The eviction of the camps and the drastic reversal of course between administration, however, do not diminish the importance of Native resistance and the unresolved issue of treaties. Oceti Sakowin and Native resistance, as it has for centuries, will also continue until our common enemy is defeated.

Early lessons from this ongoing struggle can be drawn to help strategize future possibilities. First, the colonial state does not possess, and never has possessed, the moral high ground. It defends corporate access to Native lands with pure violence as a political tactic to maintain its contested authority over the land. The North Dakota National Guard has never in its history been deployed in force against an unarmed “domestic” population—until now. The mobilization of the National Guard, the Morton County Sheriff’s Department, Homeland Security, the Border Patrol, and the seventy-six law enforcement jurisdictions that aided Morton County under the Emergency Management Assistance Compact (EMAC) must be fully considered for future struggles. Disaster relief, EMAC’s original intention, has become not only a new mode to quell uprisings (however peaceful or nonviolent they may be) but also a way to facilitate the expropriation of Natives from their rightful land base. Second, the #NoDAPL camp has galvanized multinational unity, primarily mobilizing everyday people in defense of Native sovereignty, self-determination, and treaty rights. Third, treaty rights, and by default Native sovereignty, protect everyone’s rights. In this case, they protect a vital freshwater source for millions—the Missouri River. Fourth, #NoDAPL’s anticolonial struggle is profoundly anticapitalist. It is the frontline. It is the future of struggles to come.

Finally, we must seriously pose the question, what would Native justice look like?<sup>18</sup> One solution would be to demand restoration and repair. The profits that corporations like Energy Transfer Partners reap from colonial projects like the DAPL should be seized and used to repair damage to the land and river. With this also comes a long-term goal to restore the Missouri River to its rightful protectors—the Oceti Sakowin—and its natural path. This means the Army Corps of Engineers must relinquish its claim to the river and begin to demolish the Pick-Sloan dams so that the river and its people may once again live.

#### A U T H O R   B I O G R A P H Y

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#### N O T E S

- 1 The Oceti Sakowin include the Lakota-, Dakota-, and Nakota-speaking people. This essay builds upon Nick Estes, "Fighting for Our Lives: #NoDAPL in Historical Context," *Red Nation*, September 18, 2016, <https://therednation.org/2016/09/18/fighting-for-our-lives-nodapl-in-context/>.
- 2 For the Oceti Sakowin Camp, see <http://www.ocetisakowincamp.org/>; for Sacred Stone Camp, see <http://sacredstonecamp.org/>; for Red Warrior Camp (now known as Red Warrior Society), see <https://www.facebook.com/RedWarriorCamp/>; for Two-Spirit Camp, see <https://www.facebook.com/TwoSpiritNation/>; and for the International Indigenous Youth Council, see <https://www.facebook.com/IIYCFamily/>.
- 3 See T. J. Raphael, "Bismarck Residents Got the Dakota Access Pipeline Moved without a Fight," *PRI*, December 1, 2016, <https://www.pri.org/stories/2016-12-01/bismarck-residents-got-dakota-access-pipeline-moved-without-fight>.
- 4 For Standing Rock's opposition to DAPL in 2014, see *Sept 30th DAPL Meeting with SRST*, filmed September 2014, YouTube video, 1:08:17, posted by Standing Rock Sioux Tribe, December 6, 2016, <https://www.youtube.com/watch?v=GiFNVgsX77s>.
- 5 For more on this encounter, see Craig Howe, "Lewis and Clark among the Tetons: Smoking Out What Really Happened," *Wicazo Sa Review* 19, no. 1 (Spring 2004): 47–72.
- 6 For an account of the history and current politics of the Wounded Knee Massacre, see Mario Gonzalez and Elizabeth Cook-Lynn, *The Politics of Hallowed Ground: Wounded Knee and the Struggle for Indian Sovereignty* (Urbana: University of Illinois Press, 1999).
- 7 For an account of the history of treaties and water rights concerning Standing Rock and the Dakota Access Pipeline, see Jeffrey Ostler and Nick Estes, "'The Supreme Law of the Land': Standing Rock and the Dakota Access Pipeline," *Indian Country Today*, January 16, 2017, <https://www.indiancountrytoday.com>.



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- 8 For a history of the Pick-Sloan dams and their catastrophic effects on the Missouri River Sioux, see Michael L. Lawson, *Damned Indians Revisited: The Continuing History of the Pick-Sloan Plan and the Missouri River Sioux* (Pierre: South Dakota State Historical Society, 2009).
  - 9 For a history of the termination and relocation, see Donald L. Fixico, *Termination and Relocation: Federal Indian Policy, 1945–1960* (Albuquerque: University of New Mexico Press, 1990).
  - 10 Edward Charles Valandra, *Not without Our Consent: Lakota Resistance to Termination, 1950–59* (Urbana: University of Illinois Press, 2006), 10.
  - 11 For a history of the National Indian Youth Council and the origins of the Red Power movement, see Bradley G. Shreve, *Red Power Rising: The National Indian Youth Council and the Origins of Native Activism* (Norman: University of Oklahoma Press, 2014); and Daniel M. Cobb, *Native Activism in Cold War America: The Struggle for Sovereignty* (Lawrence: University Press of Kansas, 2008).
  - 12 For the history of AIM's rise to the international arena, see Roxanne Dunbar-Ortiz, "The First Decade of Indigenous Peoples at the United Nations," *Peace & Change* 31, no. 1 (February 2006): 58–74.
  - 13 For an account of brutal state repression against AIM and Leonard Peltier's case, see Peter Matthiessen, *In the Spirit of Crazy Horse* (New York: Penguin, 1992).
  - 14 For incarceration rates, see South Dakota Criminal Justice Initiative Work Group, *South Dakota Criminal Justice Initiative: Final Report 2012* (Pierre: State of South Dakota, 2012). For a history correlating the police and state violence and mass incarceration of Lakota people, see Nick Estes, "Off the Reservation: Lakota Life and Death in Rapid City, South Dakota," *Funambulist*, no. 5 (May–June 2016), <https://thefunambulist.net/history/off-the-reservation-lakota-life-and-death-in-rapid-city-south-dakota-by-nick-estes>.
  - 15 See Nick Estes, "Declaring War on KXL: Indigenous Peoples Mobilize," *Mass Dissent*, May 29, 2014, <http://www.nlgmasslawyers.org/declaring-war-kxl-indigenous-peoples-mobilize/>.
  - 16 For a discussion on state violence and DAPL, see David Maile Uahikeaikalei'ohu, "On the Violence of the Thirty Meter Telescope and the Dakota Access Pipeline," *Hot Spots, Cultural Anthropology* website, December 22, 2016, <https://culanth.org/fieldsights/1020-on-the-violence-of-the-thirty-meter-telescope-and-the-dakota-access-pipeline>.
  - 17 For a discussion on the tactics of Indigenous blockades and the halting of the flow of capital accumulation, see Glen Coulthard, "For Our Nations to Live, Capitalism Must Die," *Unsettling America: Decolonization in Theory and Practice*, November 5, 2013, <https://unsettlingamerica.wordpress.com/2013/11/05/for-our-nations-to-live-capitalism-must-die/>.
  - 18 To begin this conversation, I would suggest we take seriously the model proposed in Waziya-tawin, *What Does Justice Look Like? The Struggle for Liberation in Dakota Homeland* (St. Paul: Living Justice Press, 2009).