

Section IV:

**Evidence Strongly Indicates
Army Corps of Engineers Officers
Colonel John W. Henderson,
former *Civil Works Directorate* Michael B. White,
& former *State Engineer* of the
North Dakota State Water Commission, Todd Sando,
Violated the following U.S. Codes**

Some Relevant Excerpts from C.F.R. § 800.2 Participants in the Section 106 Consultation process:

- (a) **Agency official.** It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 & to ensure that an agency official with jurisdiction over an undertaking takes legal & financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking & can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law
- (3) **Use of contractors** “If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards & guidelines.”
- (c) **Consulting parties.** The following parties have consultative roles in the section 106 process.
- (2) **Indian tribes & Native Hawaiian organizations.**
- (ii) **Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.** Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious & cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.
- (B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, & court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty.
- (4) **Applicants for Federal assistance, permits, licenses & other approvals.** An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO & others, but remains legally responsible for all findings & determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government to government relationships with Indian tribes.¹⁷

¹⁷ 36 CFR PART 800 -- PROTECTION OF HISTORIC PROPERTIES (incorporating amendments effective August 5, 2004), § 800.2 Participants in the Section 106 process: www.achp.gov/regs-rev04.pdf

John W. Henderson affirmed the following via Authorization:

- “Tribes are concerned that a leak or rupture would contaminate the river, including the SRST's drinking water.”
- “Tribes are concerned that the installation of the pipeline and a potential leak or rupture could damage or destroy cultural and sacred resources in the area.”
- “The Tribes argue the District did not adequately **consult** on the DAPL pipeline alignment.”

Inconsistencies within Mr. Henderson's Assertion:

Though Colonel Henderson affirmed “The EA establishes that the District made a good faith effort to consult with the tribes and that is considered all tribal comments.” (page 4), **the EA does not substantiate his claim, but in fact proves the opposite:**

- Only one Standing Rock *Agent* was contacted by a Dakota Access, L.L.C Representative according to the “Federal, Tribal, State, & Local Agency Consultation & Coordination” section of the EA (pages 8–23).
- The only individual who was contacted, *Mr. Robert Demery, did not work at the BIA at the time he was contacted (pages 25–27)*
- According to the Standing Rock Sioux Tribe's webpage¹⁸, *Robert Demery is not listed as a contact*; there is no blatant evidence as to why Robert Demery should be considered a primary contact for Dakota Access, L.L.C. *or* the Omaha District.
- Henderson confirmed: “I have evaluated the anticipated environmental, economic, cultural, and social effects, and any cumulative effects of the Proposed Action and determined that the Proposed Action is not injurious to the public interest” (page 4). **However, violating The Constitution is injurious to the public interest.**

18 "STANDING ROCK SIOUX TRIBAL COUNCIL", *Official Website*: <http://standingrock.org/tribal-council/>

**Colonel John W. Henderson's *Negligent Evaluation*
Resulted in the *Deprivation of the Tribe's Reserved Senior Water Rights*¹⁹,
& was an Act of *Criminal Gross Negligence*:**

Criminal Gross Negligence: “An act of omission or commission where a person demonstrates the willful disregard to the rights of other people that results in possible or actual harm.”²⁰

Whereas John W. Henderson (*page 5*) commit an act of extortion via signing away “someone else's rights” which were “beyond his authority to sign away”, Therefore **John W. Henderson violated United States Code Title 18 - CHAPTER 41- §872. Extortion by officers or employees of the United States and U.S. Code Title 18 – PART I – CHAPTER 13 – §241 - Conspiracy against rights:**

Extortion: “The offense committed by a public official who illegally obtains property under the color of office; especially an official's collection of an unlawful fee.”²¹ Extortion consists in any public officer unlawfully taking, by color of his office, from any person any money or thing of value that is not due to him, or more than his due.²²

**U.S. Code Title 18 – CRIMES AND CRIMINAL PROCEDURE
PART I – CRIMES
CHAPTER 41 – EXTORTION AND THREATS
§872. Extortion by officers or employees of the United States**

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.²³

19 *Standing Rock; A Path Forward Book 1, “Summary Analysis of The Fiduciary ('Trust') Relationship Between Indigenous ('Indian') Tribes & Tribal Nations & The United States Government, with particular focus on The Reserved Senior Water Rights of The Standing Rock Sioux Tribe in accordance with the 1851 & 1868 Fort Laramie Treaties”, pages 45-54:* www.standingrockclassaction.org/?page_id=3258

20 *Black's Law Dictionary Online, “GROSS CRIMINAL NEGLIGENCE”:*
<http://thelawdictionary.org/criminal-gross-negligence/>

21 *Black's Law Dictionary Deluxe Tenth Edition. Compiled by Henry Campbell Black. Editor in Chief Bryan A. Garner. ISBN: 978-0-314-61300-4, page 704.*

22 *Black's Law Dictionary Second Edition Online. “Extortion”:* <http://thelawdictionary.org/extortion/>

23 **U.S. House of Representatives, Office of Law Revision Counsel, United States Code Title 18 – CRIMES AND CRIMINAL PROCEDURE, PART I – CRIMES, CHAPTER 41 – EXTORTION AND THREATS §872. Extortion by officers or employees of the United States:**
<http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section872&num=0&edition=prelim>

U.S. Code Title 18 – CRIMES AND CRIMINAL PROCEDURE
PART I – CRIMES
CHAPTER 13 – CIVIL RIGHTS
§241 - Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.²⁴

Whereas **John W. Henderson's Act of Extortion served to violate the Fiduciary Duty of the United States, to Tribes**²⁵, Therefore *he violated*:

United States Code

Title 7 – CHAPTER 50 – SUBCHAPTER VIII

§2009cc–14. Unlawful acts and omissions; breach of fiduciary duty

(b) Fiduciary duties:

“It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a rural business investment company to engage in any act or practice, or to omit any act or practice, in breach of the fiduciary duty of the officer, director, employee, agent, or participant if, as a result of the act or practice, the [trust] suffers or is in imminent danger of suffering [financial or otherwise] loss or other damage (i.e. “injury to rights”).”²⁶

²⁴ U.S. Government Publishing Office, United States Code Title 18 - CRIMES AND CRIMINAL PROCEDURE, PART I – CRIMES, CHAPTER 13 - CIVIL RIGHTS §241. Conspiracy against rights: www.gpo.gov/fdsys/pkg/USCODE-2011-title18/html/USCODE-2011-title18-partI-chap13-sec241.htm

²⁵ Standing Rock; A Path Forward Book 1, “*Summary Analysis of The Fiduciary ('Trust') Relationship Between Indigenous ('Indian') Tribes & Tribal Nations & The United States Government...*”, pages 32-33.

²⁶ U.S. House of Representatives, Office of Law Revision Counsel, United States Code Title 7- AGRICULTURE CHAPTER 50-AGRICULTURAL CREDITS SUBCHAPTER VIII-RURAL BUSINESS INVESTMENT PROGRAM §2009cc–14. Unlawful acts and omissions; breach of fiduciary duty: <http://uscode.house.gov/view.xhtml?req=fraud+officer&f=treesort&fq=true&num=37&hl=true&edition=prelim&granuleId=USC-prelim-title7-section2009cc-14>

Colonel Henderson's Acts of Omission in the Evaluation were Reckless:

Recklessness: “1. Conduct whereby the actor does not desire harmful consequence but nonetheless foresees the possibility & consciously takes the risk. Recklessness involves a greater degree of fault than negligence but a lesser degree of fault than intentional wrongdoing. 2. The state of mind in which a person does not care about the consequences of his or her actions. — also termed *heedlessness* or *wantonness*.”²⁷

“The ordinary meaning of the work *recklessness* is a high degree of carelessness. It is the doing of something which in fact involves a grave risk to others, whether the doer realizes it or not. The test is therefore objective and not subjective.”

— Salmond & Heuston on the Law of Torts 17th ed. (1977)
by R.F.V. Houston & R.A. Buckley, p194²⁸

“... the meaning of recklessness... include(s) those who failed to give thought to an obvious risk that the consequence would occur...”

— Andrew Ashworth, *Principles of Criminal Law* (1991), p154²⁹

Whereas **Colonel Henderson's Act of Extortion & Omission put Tribes, The U.S., the State of North Dakota, and numerous Civilians & Officers at Substantial Risk of Death or Serious Injury, Therefore, John W. Henderson's actions showed Reckless Endangerment:**

Reckless Endangerment: “The criminal offense of putting another person at substantial risk of death or serious injury. This is a statutory, not a common-law offense.”³⁰

Endangerment: “The act or an instance of putting someone or something in danger; exposure to peril or harm.”³¹

UNIFORM CODE OF MILITARY JUSTICE 934. ART. 134. GENERAL ARTICLE

“Though not specifically mentioned in this chapter, all disorders & neglects to the prejudice of good order & discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, & crimes & offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature & degree of the offense, & shall be punished at the discretion of that court.”³²

27 **Black's Law Dictionary Deluxe Tenth Edition.** Compiled by Henry Campbell Black. Editor in Chief Bryan A. Garner. ISBN: 978-0-314-61300-4, page 1426.

28 ISBN-10: 0421459808

29 ISBN-10: 0199672687

30 **Black's Law Dictionary Deluxe Tenth Edition.** “*Reckless Endangerment*”, page 1462

31 **Black's Law Dictionary Deluxe Tenth Edition.** “*Endangerment*”, page 644

32 **UNIFORM CODE OF MILITARY JUSTICE 934. ART. 134. GENERAL ARTICLE:**

www.au.af.mil/au/awc/awcgate/ucmj2.htm#927. ART. 127. EXTORTION

John W. Henderson's Reckless Act of Extortion served to Defraud the Tribe of their Water Rights, and the United States of our Fiduciary Duty. The Act of Fraud is a case of “Actual Extrinsic Constructive Fraud”:

Defraud: “To practice fraud; to cheat or trick; to deprive a person of property or any interest, estate, or right by fraud, deceit, or artifice.”³³

Actual Fraud: “A concealment or false representation through an intentional or reckless statement or conduct that injures another who relies on it in acting.”³⁴

Extrinsic Fraud: “(1851) 1. Fraud that is collateral to the issues being considered in the case; specifically intentional misrepresentation or deceptive behavior outside the transaction itself (whether a contract or a lawsuit), depriving one party of informed consent or full participation. 2. Fraud that prevents a person from knowing about or asserting certain rights.”³⁵

Fraud In Law aka Constructive Fraud: “Fraud that is presumed under the circumstances, without regard to intent, usually through statutorily created inference. This type of fraud arises by operation of law, from conduct that, if sanctioned, would secure an unconscionable advantage, irrespective of evidence of an actual intent to defraud. — Also termed *constructive fraud*. *Fraus legis* [Latin “fraud on the law”]: evasion of the law; specifically, doing something that is not expressly forbidden by statute, but that the law does not want done.”³⁶

Fraudulent Act: “1. Conduct involving bad faith, dishonesty, a lack of integrity, or moral turpitude. 2. Conduct satisfying the elements of a claim for actual or constructive fraud.”

The subversive Policy instituted by Michael B. White which undermined & subverted U.S. Law (pages 38-39), in conjunction with John W. Henderson's reckless, premeditated fraudulent act of extortion and Todd Sando's illegally-issued “Sovereign Land Permits” (pages 29-33), violated:

United States Code Title 18 – CRIMES AND CRIMINAL PROCEDURE

PART I – CRIMES

CHAPTER 19 – CONSPIRACY

§371 - Conspiracy to commit offense or to defraud United States:

“If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both...”³⁷

33 Black's Law Dictionary Online, “DEFRAUD”: <http://thelawdictionary.org/defraud/>

34 Black's Law Dictionary Deluxe Tenth Edition. “Actual Fraud”, page 775.

35 Black's Law Dictionary Deluxe Tenth Edition. “Extrinsic Fraud”, pages 775-776.

36 Black's Law Dictionary Deluxe Tenth Edition. “Fraud In Law” aka “Constructive Fraud”, “*Fraus Legis*”, pages 776-777.

37 U.S. Gov't Publishing Office, “U.S. Code Title 18 - CRIMES AND CRIMINAL PROCEDURE - PART I – CRIMES - CHAPTER 19 – CONSPIRACY - §371 - Conspiracy to commit offense or to defraud U.S.”: www.gpo.gov/fdsys/pkg/USCODE-2011-title18/html/USCODE-2011-title18-partI-chap19-sec371.htm

Article VI of The Constitution of The United States Establishes Treaties as The Supreme Law of the Land, & requires an “Oath of Office” to support such:

"This Constitution... & all treaties made... under the authority of the United States, shall be the supreme law of the land... anything in the Constitution or laws of any State to the contrary notwithstanding.

... all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution.”³⁸

John W. Henderson Swore to Defend *Treaty-Protected Indian Rights* During His Constitutional Oath of Office:

In order to assume the office of *Colonel*— a type of *Commissioned Officer*— John W. Henderson was required to swear the U.S. Army's *Oath of Commissioned Officers*:

“I, John W. Henderson, having been appointed as an officer in the Army of the United States, as indicated above in the grade of do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same; that I will take this obligation freely, without any mental reservations or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter; So help me God.”³⁹

Mr. Henderson Violated:

United States Code

Title 18 – CRIMES AND CRIMINAL PROCEDURE

PART I – CRIMES

§1621(1). Perjury generally:

“Whoever— having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.”⁴⁰

38 **Transcript of Constitution of The United States (1787):** www.ourdocuments.gov/doc.php?flash=true&doc=9&page=transcript

39 **U.S. Army, “Oath of Commissioned Officers”:** www.army.mil/values/officers.html

40 **U.S. House of Representatives Office of Law revision Counsel, “United States Code Title 18—CRIMES AND CRIMINAL PROCEDURE - PART I—CRIMES §1621. Perjury generally”:** <http://uscode.house.gov/view.xhtml?path=/prelim@title18/part1/chapter79&edition=prelim>