

STANDING ROCK SIOUX TRIBE

FOR IMMEDIATE RELEASE

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STANDING ROCK SIOUX TRIBE FILES #NODAPL FEDERAL LAWSUIT AGAINST U.S. ARMY CORPS OF ENGINEERS SEEKING IMMEDIATE SHUTDOWN OF DAKOTA ACCESS PIPELINE

Standing Rock/Fort Yates, ND - Today, on Indigenous Peoples' Day, the Standing Rock Sioux Tribe filed a historic lawsuit against the U.S. Army Corps of Engineers seeking immediate shutdown of the Dakota Access Pipeline, pending full compliance with federal laws and regulations. The Tribe claims the operation of DAPL violates the federal Clean Water Act, the National Historic Preservation Act, and the 1868 Treaty of Fort Laramie, among other important laws and regulations, and the Tribe is at great risk as a result. The lawsuit addresses the need to protect Standing Rock's water, cultural resources, and treaty rights threatened by the Corps by its failure to regulate DAPL, despite the lack of a required easement since 2020 and absence of a lawful environmental impact analysis.

The Dakota Access Pipeline is a 1,174 mile-long hazardous liquid material pipeline with an original capacity of 574,000 barrels per day. The Dakota Access Pipeline crosses into unceded treaty lands guaranteed by the 1851 Treaty of Fort Laramie to the Oceti Sakowin Oyate ("Seven Council Fires," commonly known as Great Sioux Nation) at the crossing of the Heart River in present-day central North Dakota. Originally rerouted from a crossing above Bismarck, North Dakota, the pipeline crosses the Missouri River at the mouth of the CannonBall river on the Lake Oahe reservoir, less than one-half mile upstream from the Standing Rock reservation. On March 25, 2020, the D.C. Circuit Court vacated the easement, due to defendants' failure to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §4231 *et seq.* *Standing Rock v. U.S. Army Corps of Engineers*, 471, F.Supp.3d 71, 77-78 (D.D.C. 2020). Despite this and the fact that any release of oil will directly and adversely affect public health and welfare of the Tribe, the Corps has failed to act to adequately protect the Tribe.

The lawsuit raises these treaty rights violations along with several other issues, including the intentional destruction of Native American burials and traditional cultural properties by Energy Transfer LP. Under the National Historic Preservation Act Section 110(k) mandates federal agencies like the Corps to ensure no federal permits issued to any applicant that intentionally avoids Section 106 consultation or intentionally adversely affects a historic property. 54 U.S.C. §306113. The case recalls Energy Transfer's September 3, 2016 destruction of burial sites and stone features identified by the Tribe's expert on traditional cultural and historical sites, Makoche Wowapi. This intentional destruction, the Tribe argues, renders Energy Transfer ineligible for any easement given the intentional adverse effects to historic and cultural properties.

The case also calls attention to the 2022 federal debarment of Energy Transfer due to 23 criminal convictions in Pennsylvania for polluting the water. Under Article 1 of the 1868 Fort Laramie Treaty, the United States guaranteed it would keep “bad men” out of Sioux Treaty territory. The lawsuit argues that allowing Energy Transfer (a corporate “person” and “bad man”) to operate DAPL on Treaty land is an abuse of Corps discretion and a treaty violation. In addition, the debarment renders Energy Transfer ineligible for the critical NWP 12 easement across Lake Oahe, currently still under consideration by the U.S. Army Corps.

“Energy Transfer and the Corps continue to avoid their obligations to the Tribe. We’ve asked for unredacted Emergency Response Action Plans continuously, but instead what we get are redacted plans over and over again with no actual plan to clean up a worst case oil discharge or spill during low water conditions,” said Doug Crow Ghost, Standing Rock’s Water Resources Director. *“We deserve better than that. Our children deserve better. We shouldn’t have to worry about whether the water from Mni Sose that has given life to our people for centuries, will be safe tomorrow.”*

This last concern is highlighted by the lawsuit’s claim of a violation of the Clean Water Act, which requires Energy Transfer LP to submit a rational Facility Response Plan for DAPL designed to clean up a worst case discharge of oil. The Tribe has only received redacted plans which fail to provide practicable solutions and no realistic process to remediate a spill.

The Corps is currently weighing whether to grant Energy Transfer a new easement for the pipeline and has yet to issue a Record of Decision after closing its public comment period last year on the draft environmental impact statement (DEIS), which discounted much of Energy Transfer’s spill record as irrelevant. On August 28, 2024, the Tribe sent a letter to the Corps requesting information on reports of a 1.4 million gallon release of drilling fluid into Lake Oahe akin to the drilling fluid releases that contaminated the water of Pennsylvania and Ohio and led to Energy Transfer’s debarment. The letter also asked the Corps to re-open the public comment period on Dakota Access Pipeline EIS. The Corps has not provided a response to the Tribe.

This lawsuit asks the D.C. Circuit court to prohibit Energy Transfer from continued DAPL operation pending full compliance with the requirements of federal law. The Tribe is represented by attorneys Peter Capossela and Jeffrey Parsons.