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THE STANDING ROCK SIOUX INDIANS: AN INCONVENIENCE FOR THE BLACK GOLD

Alina Yohannan

I. INTRODUCTION

The issue of the Native American (“Indian”) tribes’ rights to their lands started with the application of the European doctrine of discovery, continued with series of wars and population decimations, and finished with broken treaties and territorial occupations. After centuries of struggle for land and sovereignty, Indians still fight for their rights to the North American territories.

The lawsuit brought by the Standing Rock Sioux Tribe against the U.S. Army Corps of Engineers (“the Corps”) is the latest and most publicized in recent years. The Tribe’s main concerns are the passing of a major crude-oil pipeline (Dakota Access Pipeline, or “DAP”) under Lake Oahe on the Missouri River, which could have a great environmental impact on the only major source of water for the tribal lands, and the passing of the pipeline through sacred lands and burial sites, areas of great cultural significance for the Sioux tribes.¹ In light of the Tribe’s tumultuous relationship with the U.S. government over the past 150 years, the Corps decided to use the advice of the Council on Environmental Quality and perform a heightened analysis of alternatives and potential oil spill risks and impacts.² On December 4th 2016, the Corps announced that it would not grant the easement needed to construct the pipeline under the lake, required by the Mineral Leasing Act, 30 U.S.C. § 185, and moved to prepare an Environmental Impact Statement under the National Environmental Policy Act of 1969,³ considering the Tribe’s treaty rights and alternative routes.⁴ While the Corps’

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1. *The Standing Rock Sioux Tribe’s Litigation on the Dakota Access Pipeline*, EARTHJUSTICE (last visited January 12, 2017) <http://earthjustice.org/features/faq-standing-rock-litigation>.
 2. *Memorandum for Commander, U.S. Army Corps of Engineers*, U.S. DEPARTMENT OF THE ARMY, (December 4, 2016) <http://earthjustice.org/sites/default/files/files/stmt.pdf>.
 3. National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. § 4321 (1970).
 4. *Victory for Standing Rock: DAPL Easement Not Granted*, EARTHJUSTICE (December 4, 2016) <http://earthjustice.org/news/press/2016/victory-for-standing>

decision is a major victory for the Sioux, there are still questions to be answered: what happens to the Tribe's lawsuit and to Dakota Access, LLC's cross-claim against the Corps and how will the Trump administration influence the Corps' decision?

II. BACKGROUND

A. *Historical background*

Indians are still fighting for the same rights that they have been for centuries. The doctrine of discovery allowed European explorers to occupy and obtain legal title of non-Christian lands. In the United States, the doctrine became law in 1823 when the Supreme Court decided that Indians could occupy land, but only the U.S. government could own it.⁵ From 1778 to 1871, individual American Indian nations used treaties to define their relations with the U.S.A.⁶

The most notable treaty for the Great Sioux Nation from the Great Plains was the Fort Laramie treaty of 1851.⁷ This treaty determined the boundaries of eight Indian nations in the Dakotas, Nebraska, Wyoming, and Montana and the rights and privileges to other lands for hunting, fishing, or crossing.⁸ It also recognized the right of the U.S. government to build roads and military posts within the Indian territories, in exchange for protection against white settlers.⁹ The Fort Laramie Treaty of 1868 created the Great Sioux Reservation, and the surrounding territories (included in the 1851 treaty) became hunting grounds or unceded Indian Territory.¹⁰ The U.S. agreed that no white person or military personnel shall settle or occupy any part of these areas in exchange for the Indians agreeing to the railroad being built through the territory.¹¹ In addition, the U.S. would set up "agencies" on Indian lands where an appointed government agent would oversee the life in the reservation.¹² As part of their plan to "civilize" the Indians, the U.S.

rock-dapl-easement-not-granted.

5. *Johnson v. M'Intosh*, 21 U.S. 543, 592 (1823).

6. *Frequently Asked Questions*, U.S. DEPARTMENT OF THE INTERIOR, INDIAN AFFAIRS (last accessed January 12, 2017) <http://www.bia.gov/FAQs/>.

7. Treaty of Fort Laramie with Sioux, Etc., Sept. 17, 1851, 11 Stat. 749, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0594.htm#mn6>.

8. *Id.* at 595.

9. *Id.* at 594.

10. John Hult, *7 History Lessons That Help Explain the Dakota Access Pipeline Protests*, *Argus Leader*, USA TODAY (November 16, 2016, 5:10 pm) <http://www.usatoday.com/story/news/nation-now/2016/11/16/7-history-lessons-help-explain-dakota-access-pipeline-protests/93979484/>.

11. Treaty with the Sioux Art. 11, Apr. 29, 1868, 15 Stat. 635, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0998.htm>.

12. *Id.* at 999.

agreed to allot tracts of land within the reservation to Indian families who want to settle and farm, and also to provide physicians, teachers, blacksmiths, engineers, millers and carpenters.¹³

In 1874 the treaty was violated by the U.S. when the army and the white settlers moved west into the Black Hills, the Sioux's sacred place, during the Gold rush. At the end of the Great Sioux War of 1876, the Sioux lost the Black Hills. The Act of 1877 imposed harsher conditions on the Indians after the U.S. government took control of the hunting grounds established in the 1868 treaty, forcing the Sioux to settle in the now smaller territory, also limiting the supplies promised in the Indian Act of 1871¹⁴ to the reservation's newly redrawn boundaries (See Appendix).¹⁵

The Indian General Allotment Act of 1887 provided for the allotment of land to Indians on their reservations, land held in trust for 25 years by the U.S. government, and offered citizenship to Indians adopting "civilized life."¹⁶ In March 1889, Congress further shrank the Great Sioux Reservation by opening the lands to settlers and splitting it into five reservations: Standing Rock, Cheyenne River, Lower Brule Indian, Upper Brule or Rosebud Indian, and Pine Ridge.¹⁷

The Peak Sloan plan of 1944, also known as the Flood Control Act, following a series of floods in the Great Plains along the Missouri River, built the dam that formed Lake Oahe on the eastern border of the Standing Rock and Cheyenne River reservations. In 1958, the U.S. Army Corps of Engineers, charged with regulating the waters of the U.S., took 56,000 acres of land from Standing Rock without consent or agreement,¹⁸ causing irreparable social and economic harm, land with an estimated value of 23 million dollars, for which the tribe received only 1.3 million dollars.¹⁹

In 1980, the Sioux nations brought suit against the U.S. government for the 1877 taking of the Black Hills under the Takings Clause of the Fifth

13. *Id.*

14. 25 U.S.C. § 71 ("No Indian nation or tribe... shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.")

15. Forty-Fourth Congress Session II, Ch. 72, p. 254 (1877) available at <http://legisworks.org/sal/19/stats/STATUTE-19-Pg254.pdf>.

16. General Allotment Act, 25 U.S.C. § 331 (1887).

17. *Sioux Tribe of Indians v. United States*, 105 Ct. Cl. 658, 710, 64 F. Supp. 303, 305 (Ct. Cl. 1946).

18. Complaint for Declaratory and Injunctive Relief at para. 8, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, No. 1:16-cv-01534, 2016 WL 4033936 (D.D.C. Sept. 9, 2016).

19. Hult, *supra* note 10.

Amendment of the U.S. Constitution.²⁰ They were awarded 105 million dollars, money that was entrusted with the Bureau of Indian Affairs.²¹

B. The Case of the Standing Rock Sioux Tribe against the Dakota Access Pipeline

On July 27, 2016 the Standing Rock Sioux Tribe filed a lawsuit against the U.S. Army Corps of Engineers for declaratory and injunctive relief with regard to permits issued to Dakota Access Pipeline (DAPL) for the construction of a 1,168-mile long crude-oil pipeline running from North Dakota to Illinois.²² The Tribe claims that the Corps violated the National Historic Preservation Act (NHPA), the Clean Water Act (CWA), and the National Environmental Policy Act (NEPA) by pre-authorizing the construction of DAPL, which threatens the existence of culturally significant sites and the waters of Lake Oahe on the Missouri River, the main source of water for the Reservation.²³ On August 4, the Tribe asked the court for a preliminary injunction to halt the ongoing construction of the pipeline.²⁴ While awaiting the judge’s decision, Dakota Access bulldozed tribal sacred sites and burial grounds, and the tribe filed an emergency motion for a temporary restraining order.²⁵ Protesters on site were pepper sprayed and attacked by guard dogs.²⁶

On September 6, the judge granted the temporary restraining order as to the Lake Oahe area of the pipeline corridor but refused to halt construction at the burial sites. On September 9 the court denied the motion for a preliminary injunction and the Department of Justice, Department of the Army, and Department of the Interior halted any additional permitting related to the project, recognizing that the Tribe raised important issues that require additional consideration.²⁷ On September 16 the court enjoined Dakota Access from construction for 20 miles on both sides of the Lake. The three agencies asked the company to halt its activities voluntarily, but Dakota Access continued the construction in proximity to the lake and the camps of protesters.²⁸ Meanwhile, the North Dakota Public Service Commission filed

20. United States v. Sioux Nation of Indians, 448 U.S. 371, 424 (1980).

21. Hult, *supra* note 10.

22. See Complaint for Declaratory and Injunctive Relief, *supra* note 18 at para. 1.

23. *Id.*

24. *Updates & Frequently Asked Questions: The Standing Rock Sioux Tribe’s Litigation on the Dakota Access Pipeline*, EARTHJUSTICE, (Feb. 9, 2017, 7: 53 PM), <http://earthjustice.org/features/faq-standing-rock-litigation>.

25. *Id.*

26. *Guards Accused of Unleashing Dogs, Pepper-spraying Oil Pipeline Protestors*, CBS/AP, (Sept. 5, 2016), <http://www.cbsnews.com/news/dakota-access-pipeline-protest-turns-violent-in-north-dakota/>.

27. *Updates & Frequently Asked Questions: The Standing Rock Sioux Tribe’s Litigation on the Dakota Access Pipeline*, *supra* note 24.

28. *Id.*

a complaint against Dakota Access for failing to notify it about cultural artifacts found in the pipeline route and for rerouting the pipeline, in violation of the permit's conditions.²⁹

On October 24, as confrontations between tribal water protectors and the private and public law enforcement forces heated up, tribal chairman David Archambault called for an investigation into violations of civil rights, and a few weeks later tribal members asked the Inter-American Commission on Human Rights to stop the violence against water protectors at Standing Rock.³⁰ On November 14, the Corps announced that it would delay the consideration of an easement to the DAPL until further environmental review with the Tribe is concluded.³¹ Dakota Access filed a suit against the Corps for causing the delay. On November 25, the federal officials announced the closing of the protest camp for security concerns and, three days later, the National Lawyers Guild filed a class action suit against Morton County Sheriff's Department and other law enforcement agencies for using excessive force against protesters.³²

On December 4, the Corps denied the easement to Dakota Access and moved to prepare an Environmental Impact Statement for alternative routes. On December 5, Dakota Access moved for summary judgment.³³ On January 6, 2017 the Tribe and the Department of Justice filed separate motions to dismiss Dakota Access' case against the Corps.

29. Amy Dalrymple, *\$15K Fine Proposed for Dakota Access*, WEST FARGO PIONEER (Nov. 8, 2016), <http://www.westfargopioneer.com/news/4154869-15k-fine-proposed-dakota-access>.

30. Daniel A. Medina, "Tribe Asks DOJ to Intervene in Escalating Dakota Access Pipeline Protests," NBC NEWS (Oct. 24, 2016), <http://www.nbcnews.com/storyline/dakota-pipeline-protests/tribe-asks-doj-intervene-escalating-dakota-access-pipeline-protests-n671541>.

31. U.S. DEP'T OF THE ARMY, OFFICE OF THE ASSISTANT SECRETARY, CIVIL WORKS, STATEMENT LETTER REGARDING THE DAKOTA ACCESS PIPELINE (2016) *available at* http://earthjustice.org/sites/default/files/files/NRS-1125496-v1-Standing_Rock_-_11_14_16_Statement-letter.pdf.

32. Tasha Moro, *Water Protector Legal Collective Files Suit for Excessive Force against Peaceful Protesters*, NATIONAL LAWYERS GUILD (November 28, 2016), <https://www.nlg.org/water-protector-legal-collective-files-suit-for-excessive-force-against-peaceful-protesters/>.

33. Motion for Summary Judgement, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, No. 1:16-cv-01534 (JEB), 2016 WL 7189652, (D.D.C. Dec. 5, 2016).

III. ANALYSIS

A. *U.S. Army Corps of Engineers' violations of federal law in granting construction permits to Dakota Access, LLC.*1. *The Clean Water Act violation*

The Clean Water Act prohibits the discharge of pollutants into waters,³⁴ unless authorized through a permit issued by the Corps.³⁵ The Corps can issue two types of permits: general, nationwide permits (NWP) that pre-authorize certain types of discharge or require a “pre-construction notification” (PCN); and individual permits, granted on a case by case basis, after a review of “site specific documentation and analysis, public notice and opportunity for a hearing, public interest analysis, and formal determination.”³⁶

The Corps issued a NWP 12 to Dakota Access, which covers “utility line activities” (transportation of any gaseous, liquid, or slurry substance, for any purpose).³⁷ The General Condition 20 of the NWP 12, with regard to historic properties, requires the permittee to submit a PCN if the project or activity may affect historic sites listed or eligible for listing on the National Register of Historic Places, as required by the National Historic Preservation Act (NHPA).³⁸

Energy Transfer Partners, the company behind the Dakota Access Pipeline (DAPL) plans to construct one of the largest crude oil pipelines in the nation.³⁹ The pipeline’s route passes through the Tribe’s ancestral lands and areas of great cultural, religious and spiritual significance,⁴⁰ fact denied by Dakota Access.⁴¹ Tribal experts were not consulted in assessing the impact of the pipeline on cultural sites.⁴² Not only that, the company submitted PCNs for just two water-crossing sites in North Dakota instead of all federally regulated waters (approx. 700), and ten water sites in South Dakota (instead of approx. 400), but they did not submit any PCNs for historic sites.⁴³

34. Complaint for Declaratory and Injunctive Relief, *supra* note 18 at para. 12.

35. *Id.*

36. *Id.* at para. 13.

37. Reissuance of Nationwide Permits, 77 Fed. Reg. 10271 (Feb. 12, 2012).

38. *Id.* at 10284.

39. Complaint for Declaratory and Injunctive Relief, *supra* note 18 at para. 49.

40. *Id.* at para. 51 (“Such work would destroy burial grounds, sacred sites, and historically significant areas in its path.”)

41. *Addressing Misconceptions About the Dakota Access Pipeline*, Dakota Access Pipeline Facts, <https://daplpipelinefacts.com/common-misconceptions/> (last visited Feb. 4, 2017).

42. Complaint for Declaratory and Injunctive Relief, *supra* note 18 at para. 52.

43. *Id.* para. 54-55.

A more focused and thorough consultation with the tribe's members, as required by NHPA § 106, would have revealed to the Corps and Dakota Access the existence and location of burial sites, but the consultation process did not meet the statutory requirement.⁴⁴ On July 25, 2016, the Corps issued the NWP 12 verification and other authorizations for the PCNs submitted, at which time DAPL had already commenced construction at sites for which it did not submit PCNs but which included sites with historical significance for the tribe.⁴⁵

2. *The Rivers and Harbors Act violation*

The Rivers and Harbors Act of 1899, the nation's oldest environmental law, prohibits activities that impair ports and navigable waters.⁴⁶ RHA § 408 makes it unlawful to “build upon, alter, . . . or in any manner whatever impair the usefulness of any sea wall, . . . pier, or other work built by the United States” without an individual permit from the Corps.⁴⁷ In this case, the Corps must “determine whether the use or occupation will be injurious to the public interest or impair the usefulness of the project.”⁴⁸ In July 2016, the Corps issued authorizations pursuant to RHA § 408 for Dakota Access to cross federally managed or owned lands on the Missouri River at Lakes Sakakawea and Oahe.⁴⁹ In the final assessment, the Corps concluded that there was not sufficient adverse environmental impact to warrant EIS, a deeper environmental review with more public involvement⁵⁰, despite the fact that a crude-oil pipeline would cross the Tribe's public water supply and would impair tribal treaty rights on the Standing Rock reservation.⁵¹

3. *The National Historic Preservation Act violation*

Section 106 of the National Historic Preservation Act (“NHPA”) requires that, prior to issuance of a federal permit or license, federal agencies shall consider the effects of that “undertaking” on historic properties.⁵² It requires consultation with Indian Tribes about potential effects on sites that are cul-

44. *Id.* para. 58.

45. *Id.* para. 59.

46. *Id.* para. 16.

47. 33 U.S.C.S. § 408; Complaint for Declaratory and Injunctive Relief, *supra* note 18 at para. 19.

48. Complaint for Declaratory and Injunctive Relief, *supra* note 18 at para. 19.

49. *Id.* para. 69.

50. *Id.*

51. *Id.* para. 127.

52. 54 U.S.C. § 306108 (effective Dec. 19, 2014); 54 U.S.C. § 300320 (effective Dec. 19, 2014) (“...[U]ndertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency...”).

turally significant to them, including sites with “religious and cultural significance” on ancestral or ceded land.⁵³ The agencies are required to identify historic properties and give notice of their findings to the state and tribal historic preservation office and the Advisory Council on Historic Preservation (“ACHP”), which administers the NHPA, in order to give them an opportunity to object, and the undertaking cannot go forward until the issues are resolved.⁵⁴ Section 106 provides an alternative compliance, a “programmatic agreement,” for situations that are multi-state or regional in scope or when effects cannot be determined, and which requires consultation with tribes and public participation.⁵⁵

Several courts held that the Corps procedures for compliance with §106 are deemed invalid by the ACHP because they did not adopt a programmatic agreement.⁵⁶ In May 2016, the ACHP asserted that the Corps misapplied §106 by considering only historic properties within its areas of jurisdiction, on a very narrow strip of land immediately surrounding the drilling area at Lake Oahe, but not indirect impacts to historic sites outside its areas.⁵⁷ The clearing, digging, and excavating would destroy any historically significant sites on ancestral lands.⁵⁸ The Tribe also alleges that the communication between the Corps and the Tribal Historic Preservation Office was deficient, failing to respond to the Tribe’s concerns regarding the sites and the consultation process.⁵⁹

4. The National Environmental Policy Act violation

NEPA was enacted to ensure that federal agencies consider environmental impacts before any “undertaking”,⁶⁰ and relevant environmental assessments (EAs) must be made available to the public at large and to the parties involved in the process.⁶¹ If the adverse effects are significant, the agency has to provide an environmental impact statement (EIS).⁶² The EIS must consider direct and indirect effects, and analyze the cumulative impact of a proposed project.⁶³

The Corps and the Fish and Wildlife Services released EAs for each separate DAPL segment, without considering the total synergistic effect of the

53. 36 C.F.R. § 800.2(c)(2)(ii)(D).

54. *See Id.* § 800.4(b).

55. *Id.* § 800.14(b)(1).

56. Complaint for Declaratory and Injunctive Relief, *supra* note 18 at para. 29.

57. *Id.* para. 66.

58. *Id.* para. 84.

59. *See generally Id.* para. 85-111.

60. 42 U.S.C. § 4332.

61. 42 U.S.C. § 4332(C).

62. 40 C.F.R. § 1501.4 (1978).

63. 40 C.F.R. § 1508.25(c)(3) (1978).

pipeline construction on grassland and wetlands.⁶⁴ Further, the EA for North Dakota did not consider the potential environmental impact of the project as a whole, to which the EPA reacted that there is insufficient analysis of the impact on drinking water and irrigation supplies, and emergency preparedness measures.⁶⁵ In March 2016, DOI sent a letter requiring the Corps to proceed with a full EIS.⁶⁶

B. Adequacy of the government's environmental assessment regarding the environmental impact of the Dakota Access Pipeline (DAPL).

On November 3, 2016, an independent consultant with Accufacts, Inc. found that the Corps' environmental assessment of the Dakota Access Pipeline's environmental impact was inadequate and deficient.⁶⁷ According to the report, the EA "fails to properly evaluate the impact of the DAPL, including the risk of oil spills, on the federal easements and waters...; the ability to timely remotely identify oil releases are overstated and unsubstantiated; the lack of specific information in the EA strongly suggests deficiencies in the worst case discharge determination that could affect the unusually sensitive areas, and related oil spill response planning...."⁶⁸ A major risk not analyzed in detail is the high incidence of landslide activity in areas along the pipeline route including in close proximity to Lake Oahe. Other critical aspects are the failure to identify the use of In Line Inspection tools that identify threats that cause pipeline ruptures,⁶⁹ failure to review impact to residents and environment downstream of the site, and a risk review of industry spills at similar sites.⁷⁰

The results of the independent evaluation prompted the tribe chairman to ask the Corps to reconsider its previous decisions and not grant the easement to Dakota Access. While it can be argued that Accufacts' assessment is biased as being financially supported by the Tribe, it points out the deficiencies in Dakota Access' impact analysis and prompted the Corps in-

64. Complaint for Declaratory and Injunctive Relief, *supra* note 18 at para. 115.

65. *Id.* para. 120.

66. *Id.* para. 121.

67. ACCUFACTS INC., ACCUFACTS REVIEW OF THE U.S. ARMY CORPS OF ENGINEERS (USACE) ENVIRONMENTAL ASSESSMENT (EA) FOR THE DAKOTA ACCESS PIPELINE ("DAPL") (2016) available at <http://earthjustice.org/sites/default/files/files/10-28-16-Final-Accufacts-Report.pdf> (last visited Feb. 16, 2017).

68. *Id.* at 1.

69. *Id.* at 3.

70. Tony Webster, *Pipeline Expert: Government Underestimated Risk of an Oil Spill from Dakota Access Pipeline*, EARTHJUSTICE (Nov. 3, 2016), <http://earthjustice.org/news/press/2016/pipeline-expert-government-underestimated-risk-of-an-oil-spill-from-dakota-access-pipeline>.

assessing their due-diligence with regard to statutory compliance in granting permits, and requiring a more detailed environmental analysis in light of its duties and responsibilities as a trustee of the tribal territories as established in the Fort Laramie 1868 Treaty.

C. Violation of civil rights and request for a lawful procedural process.

The Water Protector Legal Collective of the National Lawyers Guild filed a class action lawsuit on November 28, 2016 against Morton County, North Dakota, for use of excessive force against peaceful Water Protectors,⁷¹ to stop protesters from exercising their First and Fourth Amendment rights.⁷² Unprecedented participation of Indian nations from across the country, and an increasing number of supporters such as environmental organizations and activist groups merged at the Sacred Stone camp.⁷³ The Standing Rock reservation became a symbol of perseverance, strength, and determination of constitutional rights.

The tribes' petition to the Inter-American Commission on Human Rights requested that the Commission call on the Government of the United States to adopt precautionary measures pursuant to Article 25 of the IACHR Rules of Procedure concerning serious and urgent risks of irreparable harm.⁷⁴ Their list included requests to deny the easement allowing construction of the pipeline under Lake Oahe, to complete a full environmental impact statement in formal consultation with the Tribes, to establish clear rules requiring that indigenous peoples have the opportunity for full and meaningful prior informed consent, and to take all actions necessary to ensure the full enjoyment of their rights to expression and assembly.⁷⁵

D. The U.S. Army Corps of Engineers' decision on the easement and the legal implications

The decision of the Corps not to grant the easement to Dakota Access Corp. is a historic achievement for the Standing Rock Sioux tribe and its

71. Plaintiffs' Memorandum in Support of Temporary Restraining Order and Preliminary Injunction, *Dundon v. Kirchmeier*, No.1:16-cv-406, (D.N.D. Nov. 28, 2016)

72. *Id.* at 6.

73. Leah Donnell, *The Standing Rock Resistance Is Unprecedented (It's Also Centuries Old)*, NATIONAL PUBLIC RADIO (Nov. 22, 2016) <http://www.npr.org/sections/codeswitch/2016/11/22/502068751/the-standing-rock-resistance-is-unprecedented-it-s-also-centuries-old>.

74. *Updates & Frequently Asked Questions: The Standing Rock Sioux Tribe's Litigation on the Dakota Access Pipeline*, *supra* note 24.

75. *Tribes Ask International Human Rights Commission to Stop Violence Against Water Protectors at Standing Rock*, STAND WITH STANDING ROCK (Dec. 2, 2016), <http://standwithstandingrock.net/tribes-ask-international-human-rights-commission-stop-violence-water-protectors-standing-rock/>.

many supporters and advocates from across the country. In its memorandum, the Corps acknowledged that a more heightened analysis is appropriate under the circumstances where environmental effects on tribal resources are at stake and that the Corps will produce a more rigorous exploration and evaluation of reasonable siting alternatives as required by NEPA under 42 U.S.C. §4332(2).⁷⁶ The decision does not rule out approval of the easement for the current plan in the future. In light of the Corps' decision, the lawsuit was put on hold.

Responding to the Corps' decision, ETP states that the move was a "purely political action... intended to delay a decision until President Obama is out of office."⁷⁷ ETP further stated that the current Administration "abandoned the rule of law", and chose to favor a "narrow and extreme political constituency."⁷⁸ Although ETP, one of the largest energy infrastructure companies in the nation, invested a considerable amount of dollars in the DAPL project, the aggressive plan to build it in a relatively short period of time inherently came with an oversight of procedural steps and unorthodox methods of obtaining easements on private and federal lands, which inevitably led to legal implications. The Indian nations for one more time proved, contrary to ETP's opinion, that as a "narrow and extreme constituency," their voice matters and their rights are established not by political favors but by a treaty that bound the U.S. government 150 years ago to respect their right to the lands and to protect those rights against any intrusion.

E. Politics and potential issues under the Trump administration

President-elect Donald Trump's close financial ties to Energy Transfer Partners, operators of the controversial Dakota Access oil pipeline, have been made public: the president-elect invested in the company and received more than \$100,000 in campaign contributions from its chief executive.⁷⁹ In turn, Trump invested \$500,000 in company's assets and he is therefore indirectly linked to Dakota Access. Trump has signaled his opposition to any restrictions on the development of oil, coal or gas, telling a crowd in Get-

76. Memorandum from Jo-Ellen Darcy to Commander, U.S. Army Corps. Of Engineers (Dec. 2, 2016) (on file with author) *available at* <https://www.army.mil/e2/c/downloads/459011.pdf>.

77. *Energy Transfer Partners and Sunoco Logistics partners Respond to the Statement from the Department of the Army*, BUSINESS WIRE (Dec. 4, 2016, 11:05 PM), <http://www.businesswire.com/news/home/20161204005090/en/>.

78. *Id.*

79. Oliver Milman, *Dakota Access Pipeline Company and Donald Trump Have Close Financial Ties*, THEGUARDIAN.COM (Oct. 26, 2016 4:38 PM) <https://www.theguardian.com/us-news/2016/oct/26/donald-trump-dakota-access-pipeline-investment-energy-transfer-partners>.

tysburg, Pennsylvania, in October that he would “lift the Obama-Clinton roadblocks to allow these vital energy infrastructure projects to go ahead”.

The Standing Rock tribe is prepared and ready to stand up to Trump and continue its fight.⁸⁰ While reversing the Corps’ decision not to grant the easement may not be easy, the new administration puts a question mark on many legal issues, and reversing the forward-looking steps of Obama’s administration in securing a clean energy economy is one of the main agenda points in order to push up on the market the demand for the black gold.

IV. CONCLUSION

The Indian nations in North America have been fighting for centuries for their rights over the lands they once freely roamed and sustainably exploited. The Fort Laramie Treaty of 1868 secured their rights to the territories delimited by the U.S. government, in exchange for security against intrusion of white settlers and military. History shows that the treaty has been broken by the U.S. government on many occasions, but the Indians vehemently refuse to give up and continue fighting for their rights.

One such fight broke up when Dakota Access, LLC starting building one of the major oil pipelines on treaty land and waters. The Sioux nation held the U.S. government and the company responsible for breaking the terms of the treaty and subsequent statutory law designed to protect them. At the expense of the private company in short and the oil industry at large, the U.S. government refused to grant the easement without first following the law. Arguably a political decision, the government set the precedent of respecting the first nation’s rights first and then open the doors to private profits.

80. Jason Hanna, *Dakota Access Pipeline Could be Rerouted*, CNN.COM (Dec. 5, 2016, 2:01 PM), <http://www.cnn.com/2016/12/05/us/dakota-access-pipeline/index.html>.

V. APPENDIX

Figure 1 Sioux lands as defined in the Fort Laramie treaty of 1851

Source: North Dakota Studies, The History and Culture of the Standing Rock Oyate, (last accessed 27 November, 2016) <http://www.ndstudies.org/resources/IndianStudies/standingrock/maps.html>

Figure 2 The Great Sioux Reservation and other Sioux lands as defined in the Fort Laramie Treaty of 1868

Source: North Dakota Studies, The History and Culture of the Standing Rock Oyate, (last accessed 27 November, 2016) <http://www.ndstudies.org/resources/IndianStudies/standingrock/maps.html>

Figure 3: Dakota Access Pipeline and the Sioux Lands

Source: The Huffington Post, Politics, Carl Sack “A #NoDAPL Map” (November 4, 2016) http://www.huffingtonpost.com/entry/a-nodapl-map_us_581a0623e4b014443087af35