



# USET

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## Standing with Standing Rock: USET SPF Takes Action Against the Dakota Access Pipeline

### Issue Summary

An 1168-mile-long crude oil pipeline, known as the Dakota Access Pipeline (DAPL), is set to be built from North Dakota into South Dakota, Iowa, and Illinois, including making crossings over land sacred to the Standing Rock Sioux Tribe (SRST) and other Lakota peoples. If allowed to proceed, DAPL stands to destroy sacred sites, as well as jeopardize public health and the environment. SRST, along with other affected Tribal Nations, is pursuing legal action against the U.S. government regarding the permitting of DAPL. In addition, SRST and thousands of representatives from Tribal Nations across the country are engaging in non-violent protest of DAPL at Sacred Stone Camp near Cannon Ball, ND.

On July 27, 2016, SRST filed suit in federal district court against the Army Corps of Engineers citing lack of meaningful consultation and violation of laws, including The Clean Water Act, The National Historic Preservation Act, and the National Environmental Policy Act, in the issuance of permits for DAPL. As the lawsuit proceeds, SRST continues to request a preliminary injunction against DAPL construction, which has been denied by both the District Court and on appeal. On September 9, 2016, DC District Court Judge, James Boasberg, denied the injunction and ruled that the Army Corps of Engineers, "likely complied with [the National Historic Preservation Act (NHPA)] and that the Tribe has not shown it will suffer any injury that would be prevented by any injunction the Court could issue."

Very soon after the decision was handed down, however, the U.S. Department of Justice, Department of the Army, and Department of the Interior announced that the federal government will put a halt to any DAPL construction on Army Corps land bordering or under the SRST sacred site, Lake Oahe, until it determines whether decisions regarding construction this site need to be reconsidered. Additionally, the agencies are initiating consultation with Tribal Nations on two questions: (1) within the existing statutory framework, what should the federal government do to better ensure meaningful Tribal input into infrastructure-related reviews and decisions and the protection of Tribal lands, resources, and treaty rights; and (2) should new legislation be proposed to Congress to alter that statutory framework and promote those goals?

On September 12, 2016, SRST appealed the denial to the DC Circuit Court of Appeals, requesting an injunction pending appeal, which was denied on October 9, 2016. Dakota Access has been asked repeatedly by the U.S. government to voluntarily pause all construction within 20 miles of Lake Oahe, though construction continues outside of federal land. An amicus brief strategy is being coordinated by the Native American Rights Fund (NARF) and EarthJustice for the case.

### USET SPF Action to Date

- ✓ Letter and modest financial support to Chairman Archambault
- ✓ Regular updates and communication to member Tribal Nations (via our website and email)
- ✓ Participation on NARF amicus brief working group
- ✓ Advocated for Eastern Region consultation on infrastructure
  - \* *Despite our region being initially neglected, a consultation for our region will be held on November 10<sup>th</sup> at Penobscot Indian Nation. It is critically important that we achieve strong Tribal leader attendance and engagement.*
- ✓ Letter to White House requesting denial of easement and full Environmental Impact Statement (EIS)
- ✓ Invitation (accepted) to SRST Chairman Archambault to attend the USET SPF 2016 Annual Board of Director's Meeting.

### **Upcoming Activity**

- ✓ Assist in drafting Tribal amicus brief
- ✓ Provide Tribal Leader support and USET SPF comments during regional consultation on infrastructure
- ✓ Involvement in efforts to strengthen, improve, and advance consultation from a Tribal Nation directed perspective that has consent as its ultimate goal
- ✓ Made request to NCAI to convene a discussion amongst national and regional organizations to discuss a coordinated response of support offerings
- ✓ Any consultation policy reform effort can tie directly to our ongoing Trust Modernization initiative
- ✓ Involvement in the coordinated effort to fix Executive Order 13604 (EO13604) that created the permitting fast track via the OMB Permitting Dashboard Steering Council

*\*As part of this, we will be seeking a Tribal Nation trust compliance role in the permitting process.*