

VICTORY FOR STANDING ROCK SIOUX TRIBE-

Mon Jun 22nd, 2020 | Categories: *Litigation* |

Since 2016, The Standing Rock Sioux Tribe of North Dakota has been fighting for a more extensive and thorough review of the environmental impact of the Dakota Access Pipeline (“DAPL”).

The Standing Rock Tribe and numerous environmental activist groups heavily opposed construction of the pipeline underneath Lake Oahe.- Among their main concerns was the high potential for environmental damage to the lake, which the tribe relies on for drinking water, agriculture, industry, and sacred/religious practices. In 2016, the Army Corps released an Environmental Assessment of the project in which they determined that they would not need to prepare an Environmental Impact Statement (“EIS”).- Soon thereafter, the Standing Rock Tribe filed suit against the Army Corps, alleging violations of the National Historic Preservation Act (“NHPA”) and the National Environmental Policy Act (“NEPA”).-

On September 9, 2016, the court denied the Tribe’s motion to enjoin construction of the pipeline, finding the tribe was unlikely to prevail on its NHPA claim that the construction process desecrated sacred lands adjoining Lake Oahe. Soon after, as political protests near the pipeline intensified, the Army, the Department of Justice, and the Department of the Interior jointly announced that construction would be suspended as the Corps reconsidered its statutory obligation to prepare a complete EIS. Despite public controversy, Donald Trump signed an executive memorandum ordering the agency to expedite their review of the project four days into his presidential term. The agencies subsequently reconsidered its decision and decided not to prepare an EIS.-

In early 2017, the court consolidated Standing Rock’s claims against EPA with similar claims by the Oglala Sioux Tribe and the Yankton Sioux Tribe. The tribes moved for summary judgment under NEPA, arguing that the Corps was required to prepare an EIS. The court found that the “agency had inadequately considered, in accordance with its obligations under NEPA: (1) whether the project’s effects were likely to be “highly controversial,”; (2) the impact of a hypothetical oil spill on the Tribe’s fishing and hunting rights,; and (3) the environmental-justice effects of the project.”-

In February 2019 the Corps completed remand analysis, and the tribes again moved for summary judgment. Federal judge James E. Boasberg ruled that the USACE had again neglected to adequately recognize the environmental risks when preparing their report. More specifically, the court stated that the unrebutted expert critiques regarding leak-detection systems, operator safety records, adverse conditions, and worst-case discharge mean that the easement approval remains “highly controversial” under NEPA.” Based on these conclusions, the court again remanded the matter to the Corps, this time ordering an EIS. Judge Boasberg also asked both parties to submit briefs on what the possible continued operation of DAPL would entail and whether or not the continuance of the pipeline’s operation should remain whilst under the new environmental review.-

This decision is a major victory for the Standing Rock Sioux Tribe, Oglala Sioux Tribe and the Yankton Sioux Tribe, who have fought tirelessly against the pipeline for the last four years.-

The California Environmental Attorneys at Bick Law LLP will continue to monitor the impacts and implications of decisions related to environmental litigation across the country.-

-

-