



Standing Rock Sioux Tribe

SETTING THE RECORD STRAIGHT:

STANDING ROCK'S ENGAGEMENT IN THE DAKOTA ACCESS PIPELINE

DAPL and its political allies have a favored talking point: that the Standing Rock Sioux Tribe failed to “engage” with DAPL and the Corps over the pipeline until late in the process. Kelcy Warren went so far as to tell investors that, had the Tribe spoken up sooner, alternative routes could have been considered. This narrative is a false one. Here’s the real story.

DAPL’s false narrative is based on a court’s preliminary order on a narrow issue.

- Early in the litigation, the Tribe moved for a preliminary injunction on a narrow legal issue—the government’s compliance with § 106 of the National Historic Preservation Act. “Consultation” has a specific technical meaning within that statute (addressing a process to identify historically and culturally significant sites) that is different than the larger issues at play, including the need for an Environmental Impact Statement (EIS) or the Tribe’s treaty rights.
- The Court denied the Tribe’s request for a preliminary injunction based on an incomplete record, and on a highly compressed timeline. It was a preliminary ruling, and did not constitute a final court determination on any factual or legal issue.

The Corps did not hold 389 meetings with Tribes.

- DAPL supporters like to claim the Corps “held 389 meetings with 55 tribes regarding the Dakota Access project.” That is false.
- That number comes from a spreadsheet produced by the Corps, and submitted to the Court, at a preliminary stage in the litigation. The spreadsheet logged every “contact” between the Corps and any Indian Tribe. If the Corps sent a letter, or an email, or made a phone call to any Tribal official (even if it was merely to get an address), it was logged on the spreadsheet as a contact.
- Similarly, a letter, email, or call *to* the Corps *from* a Tribe was logged as one of these 389 contacts. A significant number of the 389 contacts were requests *from* Tribes to the Corps seeking information about the proposed pipeline and the Corps’ process for reviewing it, raising concerns and objections, and requesting meetings to discuss those concerns—many of which were ignored by the Corps. The Standing Rock Sioux Tribe wrote, emailed, and called dozens of times during the process.



Standing Rock Sioux Tribe

The Tribe was fully engaged from the very beginning of the process.

- In September of 2014, DAPL representatives met with Chairman Archambault and the entire Standing Rock Tribal Council to discuss the proposed project, which would cut through the Tribe's historic treaty lands, sacred sites, and cross the Missouri River just upstream of the reservation. The Tribe made its overwhelming objection to the proposal absolutely clear to DAPL representatives, and promised to fight them if they proceeded in the proposed location. A transcript of that meeting is available [here](#).
- The Tribe also contacted the Corps, even before DAPL applied for permits, to express its deep concerns about the pipeline in this location and its effect on the Tribe's treaty rights and cultural sites. The full story of the Tribe's engagement is available [here](#).
- From the very start of the administrative process, the Tribe repeatedly and vocally expressed its concerns about damage to sacred sites, risks of oil spills, and the Government's heightened responsibility to ensure that the Tribe's treaty rights were protected. During the early part of the process, these concerns were totally ignored.

The Tribe participated fully in the NEPA process.

- In December of 2015, the Army Corps released a draft of an abbreviated environmental review (called an environmental assessment, or EA), saying that no EIS was necessary for the Lake Oahe crossing. Despite the Tribe having raised numerous concerns about the project, the EA did not even mention the Tribe. It did not discuss oil spill risks or response. It left the reservation completely off the maps, even though it was only half a mile downstream and would bear the full brunt of an oil spill.
- The Tribe submitted three lengthy sets of technical and legal comments on the draft EA, comprising hundreds of pages, raising objections and seeking better analysis of spill risks and the Tribe's treaty rights.
- The Tribe also sought meetings with the Corps to share its views, as well as other government officials like EPA, Department of Interior, and Advisory Council on Historic Preservation, all of whom agreed with the Tribe that the Corps' EA was deeply flawed.
- After the government decided in September that the Tribe's concerns needed further review, the Tribe participated fully by laying out its rights in multiple letters, and hiring experts who found major flaws in the DAPL's oil spill analyses. These concerns were ultimately vindicated by the government when it found that



Standing Rock Sioux Tribe

a full EIS was necessary—something that the Tribe had been saying from the very first meetings.

The Tribe didn't fail to engage—it just sought to protect its rights when no one else would.

- When DAPL says that the Tribe refused to “engage,” what they really mean is that the Tribe refused to simply get out of DAPL’s way and allow them to do something the Tribe thought was illegal and immoral. The Tribe was well within its rights to do so.
- The Tribe made its objections to the route that DAPL chose at the doorstep of the reservation totally clear. DAPL and the Corps repeatedly dismissed Tribal concerns, claiming that the risk of an oil spill to the Reservation was low. But neither the Corps nor DAPL ever explained why, if the pipeline was so safe, they didn’t select the alternative route and cross the Missouri River north of Bismarck where the river is narrower. Given the strength of these objections, the Tribe rightfully refused to discuss any “mitigation” with DAPL (like pipeline safety measures) other than alternative routes.

The whole engagement issue ultimately misses the point.

- Ultimately, it’s not how many meetings were held, or how many letters were sent—although the Tribe sent many letters and participated in many meetings. The real issue is what the Corps does with that information in light of the Tribe’s treaty rights.
- Here, the Corps relied on flawed, one-sided analysis prepared by DAPL—and never subjected to any independent review—minimizing the risks of oil spill, and ignored the Tribe’s treaty rights to water, fishing, and hunting. In December, the Corps correctly found that those issues needed further consideration through an EIS process.
- On his second full day in office, the Trump administration overruled the Corps and ordered the permits to be granted. Standing Rock Chairman Archambault was on his way to meet with the White House when the easement was issued—no one from the Trump administration ever talked to a representative of the Tribe before ordering the project to go forward. It was the new administration, not the Tribe, who failed to engage in good faith in the process.