

Dakota Access Pipeline: Siting Controversy

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Background

Recent growth of domestic crude oil production has resulted in an unprecedented expansion of the United States' oil pipeline network. One major oil pipeline recently constructed is the [Dakota Access Pipeline](#), a 30-inch diameter, 1,172-mile project that carries crude oil produced in northwest North Dakota to southern Illinois ([Figure 1](#)). The Dakota Access Pipeline's maximum capacity is 570,000 barrels per day.

Figure 1. Dakota Access Pipeline Route



Source: CRS using data from Platts PowerMap 2016, and Esri Data and Maps 2014.

Siting Approval

The federal government does not have jurisdiction over the siting of domestic oil pipelines. Instead, authorization for the

overall route must be granted by individual states. The Dakota Access Pipeline developer, [Energy Transfer Partners](#), was granted siting approval from state utility regulators in [South Dakota](#) and [Illinois](#) in 2015, and from [North Dakota](#) and [Iowa](#) early in 2016.

In addition to state siting approval for an overall route, a pipeline developer may require federal government approvals for specific parts of a pipeline project. For example, interstate pipelines usually require [permits](#) from the U.S. Army Corps of Engineers (Corps) in compliance with the 1899 Rivers and Harbors Act and the Clean Water Act due to numerous water crossings, disturbance of wetlands, or the use of Corps property or easements. U.S. Fish and Wildlife Service (USFWS) permits under the [National Wildlife Refuge System Administration Act](#) are required where wildlife refuge lands could be affected. The review of these federal permit applications must examine potential environmental impacts in accordance with the [National Environmental Policy Act \(NEPA\)](#). Other federal statutes may also come into play, notably the [National Historic Preservation Act \(NHPA, Section 106\)](#). Along with federal permits, a range of other state and local permits may be required.

In June 2016, the Dakota Access Pipeline developer secured a "[finding of no significant impact](#)" from the USFWS for a permit allowing temporary disturbance of the agency's wetland easements in North Dakota and South Dakota. In July 2016, the Army Corps of Engineers [granted the developer a series of permits](#) authorizing the parts of the pipeline under the [Corps' jurisdiction](#). The Corps provided the developer with verification of [Nationwide Permit 12](#) ("Utility Line Activities") permits under the Rivers and Harbors Act (Section 10) and the Clean Water Act (Section 404) for 202 proposed water crossings along the route. The Corps also granted permissions under separate provisions of the Rivers and Harbors Act (33 U.S.C. Section 408) for the pipeline to cross federal lands or flowage easements acquired and administered by the Corps in seven locations, including Lake Sakakawea, ND; Lake Oahe, SD; and five locations in Illinois. The actual easements, pursuant to the Mineral Leasing Act (30 U.S.C. Section 185), were subsequently issued. Together with the USFWS permit, the Corps permits and easements comprised all the federal permissions required for the Dakota Access Pipeline. Accordingly, the developer completed construction on the pipeline and put it into [commercial service](#) as of June 1, 2017.

Pipeline Opposition and Litigation

The Dakota Access Pipeline has been opposed by various stakeholders, including Native American groups with direct interests in the pipeline's route and environmental groups, such as the [Sierra Club](#), with broader interest in fossil fuel infrastructure. On July 27, 2016, the [Standing Rock Sioux Tribe](#) of North Dakota filed in federal court a request for declaratory and injunctive relief. The [complaint](#) argued that the Corps did not properly comply with the NHPA when it authorized construction under Nationwide Permit 12, and that the Corps violated the Clean Water Act, NEPA, and the NHPA when it authorized pipeline construction under the Missouri River at Lake Oahe and also authorized discharge into waters on the tribe's ancestral lands. On August 4, 2016, the tribe sought a [preliminary injunction](#) requiring the Corps to withdraw its verifications under Nationwide Permit 12. On September 4, 2016, the tribe filed an [emergency motion](#) for a temporary restraining order against the developer to halt construction where the tribe believes it has identified historic sites of cultural significance that were overlooked by the Corps. On September 9, 2016, the federal court [denied](#) the tribe's request for an injunction.

Shortly after the court issued its opinion, the Department of Justice, the Department of the Army, and the Department of the Interior issued a [joint statement](#) that the Corps would "not authorize constructing the Dakota Access pipeline on Corps land bordering or under Lake Oahe until it can determine whether it will need to reconsider any of its previous decisions" regarding that site. On December 4, 2016, the Corps issued a [statement](#) that the agency would "not grant an easement to cross Lake Oahe at the proposed location based on the current record." On January 18, 2017, the Corps published a [Notice of Intent](#) to prepare an Environmental Impact Statement for the Lake Oahe crossing.

On January 24, 2017, President Trump issued an [executive memorandum](#) directing the Corps to consider rescinding or modifying its December decision as well as rescinding the January 2017 Notice of Intent. In a [federal court filing](#) on February 7, 2017, the Corps stated that it no longer intended to prepare an environmental impact statement in connection with the Lake Oahe easement—which it subsequently [issued](#)—clearing the way for the pipeline's completion.

On June 14, 2017, a [federal court ruled](#) on the environmental complaints in Standing Rock Sioux Tribe's July 2016 filing. The court concluded that

Although the Corps substantially complied with NEPA in many areas, ... it did not adequately consider the impacts of an oil spill on fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline's effects are likely to be highly controversial.

The court ordered the Corps to "reconsider those sections of its environmental analysis," but did not order the pipeline to shut down, viewing its continued operation as a "separate question" subject to further briefing at a later date.