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N Dakota pipeline protest is a harbinger of many more

We must understand that climate action, social justice and indigenous sovereignty are closely intertwined.

Lauren Carasik
21 November 2016

Lauren Carasik is the Director of the International Human Rights Clinic at Western New England University School of Law.

As a Native American-led opposition to a \$3.7bn North Dakota pipeline that galvanised an international movement takes on increased urgency with the election of Donald Trump, repression by law enforcement response continues to escalate.

If completed, the 1,886km Dakota Access Pipeline (DAPL) would transport a half million barrels of fracked crude oil from the Bakken oil fields in North Dakota to Illinois, crossing multiple waterways including the Missouri River, that serves as the drinking water source for millions of people.

The Standing Rock Sioux Tribe's organised resistance to the pipeline, which began in April as a small prayer camp, has swelled to thousands and drawn support from some 300 tribes, representing the largest Native American gathering in a generation.

The uprising has been joined by climate and social justice activists. The tribe is determined to peacefully resist the pipeline's current path, which runs within less than one kilometre of their reservation and, they argue, endangers their sacred cultural sites and water supply.

The conflict inflames a long, brutal and disgraceful history of Native American dispossession and the elevation of private and corporate rights over indigenous ones, and overlaps with urgent efforts to curb fossil fuel dependency.

Historical injustice

A "day of action" on November 15 mobilised protests in 300 cities across the globe, many in front of offices of the US Army Corps of Engineers, in whose hands the pipeline's fate currently resides.

The Army Corps has not issued the easement required to drill under the Missouri River, the only impediment to completing pipeline construction in North Dakota.

Because of the colonial legal framework, the dispute being litigated in federal court is narrowly framed around whether the tribe was meaningfully consulted about the project, though the international standard is consent ([PDF](#)).

Historical injustice casts a dark and enduring shadow: much of the pipeline traverses territory taken from the tribe [in violation](#) of the Treaties of Fort Laramie of 1851 and 1868. After centuries of colonisation and the intergenerational misery it has inflicted, the tribe is determined to protect its sovereignty, self-determination and indigenous ways of life.

In a scenario hauntingly familiar to indigenous environmental and land activists around the world, peaceful resistance has been [met with militarisation](#) and criminalisation.

Nearly 500 water protectors, as they prefer to be called, have been arrested, including tribal elders, and many were patently overcharged.

Images of law enforcement brutality have elicited widespread outrage. Most recently, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association [denounced the excessive force](#) deployed by law enforcement and private security, and said those detained had been kept in "inhuman and degrading conditions".

International opprobrium has not tempered the law enforcement response. On November 20, police [responded aggressively](#) to hundreds of unarmed water protectors gathered in the freezing temperature at a contested bridge barricade between the main encampment and the drill site with water cannons, rubber bullets and chemical agents, injuring many of them.

Trump's connections with the project

The spectre of the incoming administration has only heightened the tension. Trump has vowed to revisit the Keystone XL pipeline that was nixed under the Obama administration, dismantle the Environmental Protection Agency (EPA) and pull out of the Paris Agreement on climate change.

Though he hasn't commented directly on the DAPL controversy, Trump has signalled his support for energy infrastructure projects, and doesn't seem inclined to recognise indigenous rights, especially when they impinge on the profits of the powerful oil and gas industries.

It remains opaque how the new president will navigate conflicts of interest, given his [investment](#) in the pipeline's Texas-based developer, Energy Transfer Partners. Company CEO Kelcy Warren donated more than \$100,000 to Trump's campaign and has expressed confidence the pipeline will be completed as planned.

Earlier this month, President Barack Obama indicated that the Army Corps was [considering re-routing](#) the pipe.

In the latest salvo, the agency said on November 14 that additional discussion and environmental analysis are warranted before the easement is issued, especially "in light of the history of the Great Sioux Nation's dispossessions of lands [and] the importance of Lake Oahe to the Tribe." ([PDF](#))

A defiant Warren, who has ignored the administration's repeated requests to pause construction within 32km of the river, responded by asking the federal court judge presiding over the tribe's legal challenge for a declaratory judgment allowing the company to move forward, decrying political interference ([PDF](#)).

He has continued to amass equipment on the drill pad by the river and fortified barricades to protect it, and has [indicated](#) that there will be no re-route.

Between the costs of delay and a declining economic outlook for the project since its inception in 2014, financial pressures on the company are mounting ([PDF](#)). An activist campaign targeting DAPL's financiers to withdraw support are adding to the fray. DNB, Norway's largest bank, [sold its assets](#) in the DAPL and is considering terminating its loans to the company.

Options ahead

Though it has encouraged dialogue, the Army Corps has other options at its disposal. The agency could deny the easement to drill under the river.

It could also order a full Environmental Impact Statement, which would consider the cumulative impacts of the pipeline in its entirety instead of narrowly focusing on small segments, a study it should have undertaken in the first place.

It's unclear how either option would fare under the Trump administration, prompting former presidential candidate Bernie Sanders to implore Obama to declare "the historic treaty lands of the Standing Rock Sioux threatened by the pipeline a federal monument."

The Obama administration has to act quickly, since the decision will soon reside with an administration presumed to be hostile to the tribe's interests.

As the world closely gauges how the new political reality in the US bodes for global efforts to ameliorate impending climate disaster, it will be watching the events unfolding at Standing Rock.

While climate change imperils us all, some are more vulnerable than others, and it is critical not eclipse the demands of the indigenous rights movement that propelled this uprising onto the international stage in the first place. That goal requires recognition that climate justice and indigenous sovereignty are closely intertwined.

Lauren Carasik is a clinical professor of law and the Director of the International Human Rights Clinic at Western New England University School of Law. She has provided legal support for the water protectors.

Source: Lauren Carasik, *N Dakota Pipeline Protest Is a Harbinger of Many More*, ALJAZEERA (Nov. 21, 2016), <http://www.aljazeera.com/indepth/opinion/2016/11/dakota-pipeline-protest-harbinger-161120150300919.html>.