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TRIBAL CONSULTATION: A CRITICAL REMINDER OF CULTURAL RESOURCE MANAGEMENT LAWS AND OBLIGATIONS

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TRIBAL CONSULTATION: A CRITICAL REMINDER OF CULTURAL RESOURCE
MANAGEMENT LAWS AND OBLIGATIONS

By

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By categorizing the National Historic Preservation Act and National Environmental Policy Act as red tape hindering infrastructure, the current Presidential administration is attempting to streamline processes to approve federal undertakings. In doing so, it threatens the government-to-government relationship between federal agencies and tribal governments. This relationship is a work-in-progress that needs to be nurtured rather than reverting to assertion of plenary powers over tribal affairs. The purpose of this research is to remind federal agencies that there are legal obligations to include tribal entities in the decision-making processes for federal undertakings. Furthermore, this research can serve as a reference for tribal entities and citizens to help reinforce their right to be included on these types of projects.

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I made a promise to my Great Grandmother, Mary Jane Eagleman, that I would finish college. I would like to think the publication of this thesis is a testament to that promise I made her.

This educational milestone is dedicated to the memory of Pamela Stiffarm, an avid supporter of higher education, keeper of traditions, and beloved family matriarch.

Chapter 1: Introduction

This is an applied research project serving as a reminder that federal agencies have legal obligations to conduct meaningful consultation with American Indian tribes and organizations when it comes to federal projects and undertakings. I begin this thesis with a brief introduction of the research project and discuss my methodologies. I then review major Cultural Resource Management (CRM) Laws to give context to three case studies. Next, I discuss three case studies that are relevant to tribal consultation. I discuss each case study and discuss how each one displays meaningful or procedural consultation characteristics. I then discuss and reflect on my research findings with Tribal Historic Preservation Officers (THPO) and State Historic Preservation Officer (SHPO) offices. Finally, I introduce a model to enhance understanding of tribal involvement in, and undertaking of, federal projects, and offer insight into how students can assist in enhancing tribal CRM efforts.

Due to a rise in tribal involvement in governmental cultural resource management during the 1980s, tribes became major players in National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) litigations and influenced the enactment of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990 (King 2013: 27-28). Tribal consultation and involvement is crucial to maintaining and enhancing the relationship between government entities that manage land and natural resources as well as the relationship with anthropologists and archaeologists.

Consultation is explicitly required under Section 106 of NHPA and is necessary to identify historic and prehistoric properties that may be affected, and to determine the extent of the effects. Meaningful consultation allows for a project to be constructed and all parties involved satisfied with the outcome. However, as shown with the events involving the Standing Rock Sioux Tribe and the Dakota Access Pipeline, when a project happens in an uninformed manner, backlash may result in public protests (Hult 2016; Miller 2016).

This thesis takes a close look at three different case studies, showing how consultation and the effort of the overseeing agencies make a meaningful difference in the outcome of the project. Success of a project is not limited to the project's construction; rather, success means international investigation into possible impacts, analyses of alternatives and considering the voices of concerned citizens, parties, and stakeholders.

The first case study project is the Keystone XL pipeline project spanning three presidencies (Office of the Press Secretary 2015; Reuters 2017; U.S. Department of State 2008). The project was introduced towards the end of the Bush administration, rejected by the Obama administration, and recently resurrected by the Trump administration. While Keystone XL has gained governmental support through the changing administrations, the public is divided between both those who strongly support and those who oppose the construction and/or its proposed route.

Next, the Dakota Access Pipeline garnered national attention as individuals calling themselves "Water Protectors," launching a major resistance

camp in response to the construction of the pipeline near the Standing Rock Indian Reservation (AWAKE 2017; Sack 2016). Although many attempts to encourage the United States Army Core of Engineers (USACOE) and project proponents to review impacts of a possible oil spill, President Trump resurrected the Dakota Access Pipeline within days of taking office by issuing an executive order.

The final project case study is De'ek Wadapush or Cave Rock in Nevada (Makley and Makley 2010; McHugh 2003). This sacred site to the Washoe Tribe of Nevada and California is located near the vacation hot spot, Lake Tahoe. It took the tribe decades to gain the status of a traditional cultural place for De'ek Wadapush, to the dismay of recreational mountain climbers. Not only did this ruling take a concerted tribal effort, but it also took efforts of the Forest Service to foster the government-to-government relationships with the tribe to ensure the preservation of a tribal sacred site.

This thesis is relevant to current governmental proposals regarding cutbacks to environmental regulations. The new Trump administration is attempting to “streamline” processes of laws like the NHPA and the NEPA. In fact, in January 2018 the Society for American Archaeology (SAA) released a letter to its members regarding government affairs and international government affairs. Topics of discussion included the gutting of the NEPA and the NHPA. The SAA letter opens as follows:

The Trump Administration has started the new year with a renewed focus on gutting environmental regulations, including NEPA and

NHPA, falsely claiming that “Red tape has held back American infrastructure investment.” In addition, the BLM has introduced a new oil and gas leasing policy that claims to “simplify and streamline” the review process for leases. And when Trump’s proclamation reducing Bears Ears and Grand Staircase-Escalante National Monuments takes effect on February 2, 2018, former monument land will be open to mining under the General Mining Law of 1872 (Lindsay 2018).

This is a message of urgency from the SAA Manager of Government Affairs warning fellow archaeologists of the possibility of an impending stripping of CRM laws. Still, the letter is assuring and urges members to continue preservation efforts. The letter states, “We will continue to work with our preservation allies to keep the NHPA and NEPA review process intact as the debate progresses” (Lindsay 2018).

Rather than critiquing the consultation process, perhaps this verbiage will serve as a stern prompt to those on the federal agency side, reminding them of their obligations to encourage a relationship with tribes reinforcing self-determination and sovereignty rights. As for tribal entities and citizens, this is a public service announcement (PSA) about protecting tribal sovereignty, religion, self-preservation, history, culture, traditions, and way of life.

Methods

As a graduate of Salish Kootenai College's Tribal Historic Preservation Program, I was given a practical education in the major CRM laws. Transitioning into the University of Montana's M.A. program for Cultural Anthropology seemed like the next step towards a career in CRM. As the Fall 2016 semester approached, the #NoDAPL movement had been in full swing (Judge 2016; Petronzio 2016). This sparked my curiosity because I recently learned about CRM laws set in place calling for meaningful consultation with tribal governments on federal projects/undertakings. Clearly, the Standing Rock Sioux Tribe had qualms with the project and I wondered what transpired during the initial planning prior to construction. Full disclosure: In an effort to show transparency in the writing of this thesis, I wanted to know what I could do to help from behind the pile of readings in my seminar classes. I really wanted to go to the camp to show my support of the tribe's resistance to the pipeline, but educational obligations kept me in the classroom at the University of Montana. This is my way of shining the light on meaningful consultation.

This thesis evolved out of a case study on the Keystone XL project because it was the next major project for Energy Transfer Partners in the United States after the Dakota Access Pipeline. The Dakota Access Pipeline was chosen as a case study to understand how the project's process came about and to understand the level of tribal input it involved. The third case study serves as a successful tribal consultation example. Of the three case studies, I will analyze what worked and what did not work with each project in the conclusion. The

conclusion will also include my final thoughts and suggestions for effective CRM strategies.

My methods include scholarly research of governmental documents and distillation of texts read as part of class coursework. I sought out three Tribal Historic Preservation Offices (THPO) in Montana to investigate any consultations with either pipeline project: Fort Peck, Fort Belknap, and Rocky Boy. They were chosen based on the vicinity of the current reservation and because they are in the state of Montana. I reached out to the Montana State Historic Preservation (SHPO) office to see if they had any information on tribal consultation with either pipeline project. I also contacted the Nevada SHPO to see if they had documentation on the NRHP nomination for De'ek Wadapush. I will discuss and reflect on my contact with THPO and SHPO offices as part of my conclusion. During a visit to the University of Montana, Ladonna Allard, Standing Rock Sioux tribal member and instrumental voice in the #NoDAPL movement, shared her experience (personal communication, November 2, 2017). I took the opportunity to ask her about tribal consultation when she opened the floor up for Q&A.

The framework of 'meaningful v. procedural consultation' came from a law review article done by a fellow University of Montana student, Kathryn Sears Ore. She wrote *Form and Substance: The National Historic Preservation Act, Badger-Two Medicine, and Meaningful Consultation for a Public Land and Resources Law Review*. Sears Ore demonstrated how meaningful consultation resulted in the relinquishing of oil and gas leases in Badger-Two Medicine, a culturally significant landscape to the Blackfeet Indian Reservation. Sears Ore states:

Meaningful consultation necessitates open dialogue centered on actual recognition of tribal interests and concerns. Procedural consultation follows the minimal procedural requirements of Section 106, as delineated by federal courts, and generally involves cataloging contacts with American Indians as a means of avoiding liability without actual consideration of tribal interests and concerns (2017: 208-209).

This concept of 'meaningful v. procedural consultation' allowed me to critically review government actions outlined in the documents supporting these three case-study-projects.

Chapter 2: Cultural Resource Management Laws

The federal government has Cultural Resource Management (CRM) laws that help federal agencies manage and preserve natural, cultural, and historical resources. Of these CRM laws, some have clauses or sections pertaining to tribal input and inclusion. Section 106 of the National Historic Preservation Act (NHPA) specifically calls for tribal consultation during federal undertakings. Consultation and inclusion is important because it fosters a stronger government-to-government relationship between government and tribal entities.

This chapter will first focus on CRM laws and their implementation of tribal consultation. Additionally, this chapter will also serve as a reference for any Executive Order (EO) passed relating to tribal consultation and/or tribal natural and cultural resources as well as relevant memorandums. Finally, I discuss Native American civil liberties. This chapter illustrates how CRM and Native American rights intertwine and ultimately, reinforce understanding of Native Americans' right to be present, consulted, and considered during federal undertakings.

CRM Laws

CRM Laws are an alphabet soup of various laws covering historic, cultural, and natural resources (King 2002; King 2013; Stapp and Burney 2002). This section reviews the following major laws: National Historic Preservation Act (NHPA); National Environmental Policy Act (NEPA); and Native American Graves Protection and Repatriation Act (NAGPRA). A brief review of several

CRM laws pertaining to preservation and/or be used in conjunction with the previously mentioned major CRM laws are also presented: The Antiquities Act of 1906; Archaeological and Historic Preservation Act (AHPA); Archaeological Resources Protection Act (ARPA); Abandoned Shipwrecks Act (ASA); Federal Records Act (FRA); and Religious Freedom Restoration Act (RFRA).

National Historic Preservation Act

The National Historic Preservation Act (NHPA) is one of the core foundations of all CRM law. The NHPA became a law on October 15, 1966 (Advisory Council on Historic Preservation 1966: 1). It has been amended as CRM develops and evolves and the consultation process can be combined with other major CRM laws. The purpose behind this Act is to preserve historic properties. NHPA states, “the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans” (Advisory Council on Historic Preservation 1966: 1). Future generations of Americans are entitled in this Act. They have the right to historic properties and our efforts today will reflect the record we leave to future generations.

The Advisory Council on Historic Preservation (ACHP) is an excellent resource for NHPA regulations; it also serves as a good source for information on Section 106 of NHPA. Section 106 requires federal agencies to consider the effects on historic properties during federal undertakings and allow ACHP to

comment. Basic steps involved in the Section 106 process include: initiating 106, identifying historic properties, assessing adverse effects, and resolving adverse effects. Federal agencies are encouraged to consult with tribes during all these steps (King 2002; King 2013). However, after taking a closer look at these steps, it became apparent that they are not so basic after all and are very important to the success or failure of a project. Success may not be in the fact that the project is completed-rather that all parties feel their concerns have been properly addressed.

Initiating Section 106 involves the responsible federal agency determining if their project/undertaking affects historic properties; if so, they must consult with the proper SHPO/THPO. "It should also plan to involve the public and identify other potential consulting parties" (Advisory Council on Historic Preservation 2013). If the federal agency determines no historic properties are affected, then there are no more obligations to Section 106 to fulfil.

Should the project/undertaking affect historic properties; then a study is conducted on potential effects. During this process the federal agency should seek more background information on the affected properties. "Districts, sites, buildings, structures, and objects listed in the National Register are considered; unlisted properties are evaluated against the National Park Service's published criteria, in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious or cultural importance to them" (Advisory Council on Historic Preservation 2013). The National Park Service's published criteria reads as follows:

Criteria for Evaluation-The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of locations, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of significant person in our past;
- C. That embody the distinctive characteristic of a type, period, or method of construction, of that represent the work of a master, or that possess high artistic values or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded or may be likely to yield, information important in history or prehistory (National Park Service 2002).

At this point, if the federal agency finds no historic properties are affected or none are present, documentation is sent to the SHPO/THPO and, barring any objection in 30 days, proceeds with the project/undertaking (Advisory Council on Historic Preservation 2013). If there are historic properties present and affected, then the federal agency moves to assess adverse effects of said historic property.

If a historic property is affected, the agency must assess the effects on the property “in consultation with the SHPO/THPO” as stated by the ACHP (2013). This means adverse effects are evaluated in coordination with the consulting parties. If the property is tribal, tribal experts should be called in for a proper evaluation. Again, in this situation cultural heritage managers/stewards, etc. find themselves at a crossroads, the choices are: no adverse effect or adverse effect. If there is no adverse effect, the project/undertaking may proceed with agreed-upon conditions. However, in the event of adverse effects, or if parties cannot agree, “the ACHP determines within 15 days that there is an adverse effect, [and] the agency begins consultation to seek ways to avoid, minimize, or mitigate the adverse effects” (Advisory Council on Historic Preservation 2013).

Resolving adverse effects typically results in a Memorandum of Agreement (MOA), presenting the federal agency’s framework of to avoid, minimize, or mitigate adverse effects to the historic property. The ACHP’s *Section 106 Regulation Summary* points out that there are times when consulting parties agree that no such measures are possible, but that the adverse effects must be accepted in the public interest (2013). The Summary also states, “the agency consults to resolve adverse effects with the SHPO/THPO and others, who may include Indian tribes and Native Hawaiian organizations, local governments, permit or license applicants, and members of the public” (2013). ACHP may participate in consultation when there are substantial impacts to important historic properties, when a case presents important questions of policy

or interpretation, when there is a potential for procedural problems, or when there are issues of concern to Indian tribes or Native Hawaiian organizations.

Once a resolution has been found, the federal agency then releases a MOA or a Programmatic Agreement (PA). Again, this is the framework of the project/undertaking's dealing with adverse effects on historic properties. In the event of no resolution of adverse effects, the ACHP states:

If consultation proves unproductive, the agency of the SHPO/THPO, or ACHP itself, may terminate consultation. If a SHPO terminates consultation, the agency and ACHP may conclude an MOA without SHPO involvement. However, if a THPO terminates consultation and the undertaking is on or affecting historic properties on tribal lands, ACHP must provide its comments. The agency must submit appropriate documentation to ACHP and request ACHP's written comments. The agency must take into account ACHP's written comments in deciding how to proceed (Advisory Council on Historic Properties 2013).

This method to resolve a no-resolution proved beneficial for the Blackfeet tribe in regard to Badger Two Medicine and the oil leases (Sears Ore 2017).

NHPA Section 106 is a very important procedure because it calls for public involvement throughout the entire process. Tribes and citizens should take each opportunity offered by the responsible agency to participate in every level of consultation. Section 106 gives major emphasis to consultation with Indian tribes and Native Hawaiian organizations, explaining, "Consultation with an Indian tribe

must respect tribal sovereignty and the government-to-government relationship between the Federal Government and Indian tribes” (Advisory Council on Historic Properties 2013). From a tribal standpoint, it is in the tribe’s interest to engage early and often to ensure meaningful consultation does not fall to procedural consultation.

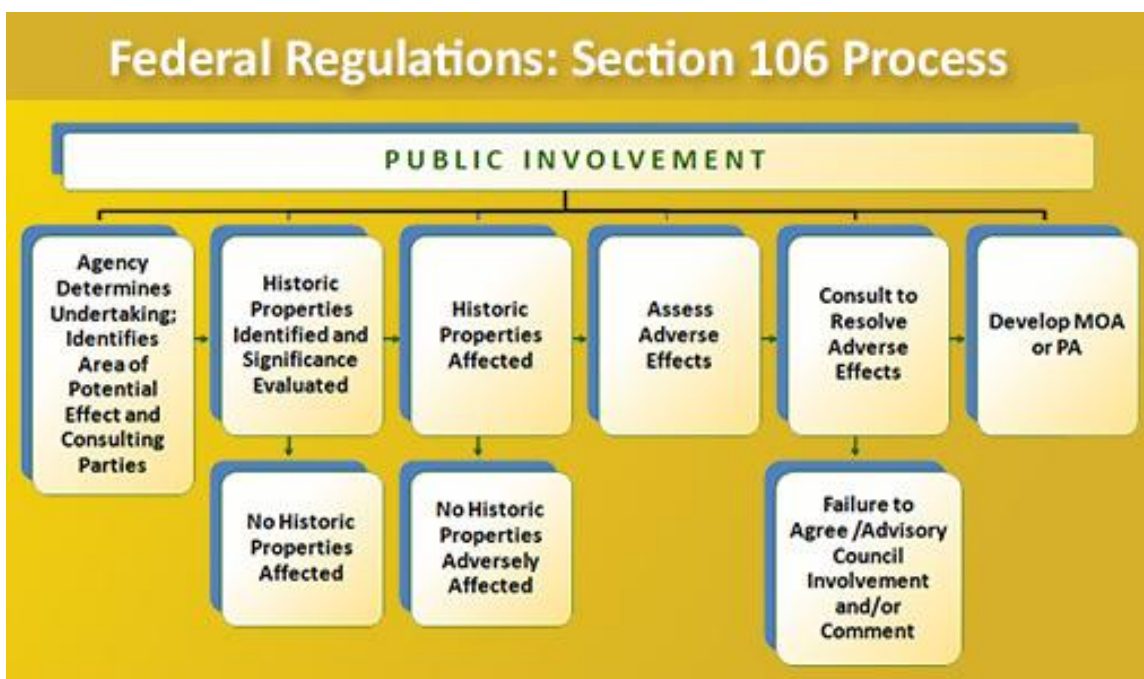


Figure 1. NHPA Section 106 Flow Chart (Department of Transportation n.d.).

National Environmental Policy Act

The next major CRM law often paired with NHPA during federal projects/undertakings, is the National Environmental Policy Act (NEPA). NEPA became a law January 1, 1970 and requires federal agencies to assess environmental impacts of their proposed actions prior to making decisions and ultimately requires agencies to use all practicable means to create and maintain conditions which “man and nature” can coexist (United States Environmental Protection Agency 2017b). The NEPA process occurs during permit applications,

adopting federal and land management plans, as well as construction of highways and other publicly-owned facilities. In sum, the process evaluates the environmental impacts of federal projects/undertakings. NEPA, like NHPA, allows for public comment and review during this evaluation process. Section 102 in Title I of the Act requires agencies to prepare an Environmental Assessment (EA) and/or Environmental Impact Statement (EIS).

The NEPA process should result in one of three levels of analysis: a categorical exclusion determination (CATEX); an Environmental Assessment/Finding of No Significant Impact (EA/FONSI); or an Environmental Impact Statement (EIS). A CATEX is typically any action that has no impact on the human environment; ordering supplies might be one example. An EA and EIS has a bit more detail in their levels of analysis.

An EA is prepared when an agency is unsure of the impacts, and if there are no significant impacts, then a FONSI is determined. If there are significant impacts, an EIS is prepared. Major components of an EA are:

- The need for the proposal;
- Alternatives (when there is an unresolved conflict concerning alternative uses of available resources);
- The environmental impacts of the proposed action and alternatives; and
- A listing of agencies and persons consulted (United States Environmental Protection Agency 2017a).

A FONSI should address why the federal agency found no significant impacts for the project/undertaking.

If impacts are significant, then an EIS is prepared. First, the federal agency must issue a Notice of Intent (NOI), this is submitted to the Federal Register for the purpose of informing the public. This is the public's chance to engage in the EIS's preparation. Next, a draft EIS is submitted and again, this is another chance for the public engagement. According to the EPA, the public review and comment should last for a minimum of 45 days and once the comment period is closed, the agency considers comments and determines if further analysis is necessary (United States Environmental Protection Agency 2017a). Submitting a final EIS in which the agency provides "responses to substantive comments" happens after the analysis and after a required 30 day wait period, and then the EIS commences with a release of a Record of Decision (ROD) (United States Environmental Protection Agency 2017a). According to the EPA, the ROD:

- Explains the agency's decision;
 - Describes the alternatives the agency considered; and
 - Discusses the agency's plans for mitigation and monitoring, if necessary
- (United States Environmental Protection Agency 2017a).

Figure 2 outlines the step-by-step flow of the NEPA process. However, modification of the flow chart shows where tribal entities can be engaged during the EA process, see the star added to the chart. Concerned tribal members and citizens should assert their right to comment as citizens when a project calls for a Notice of Intent (NOI).

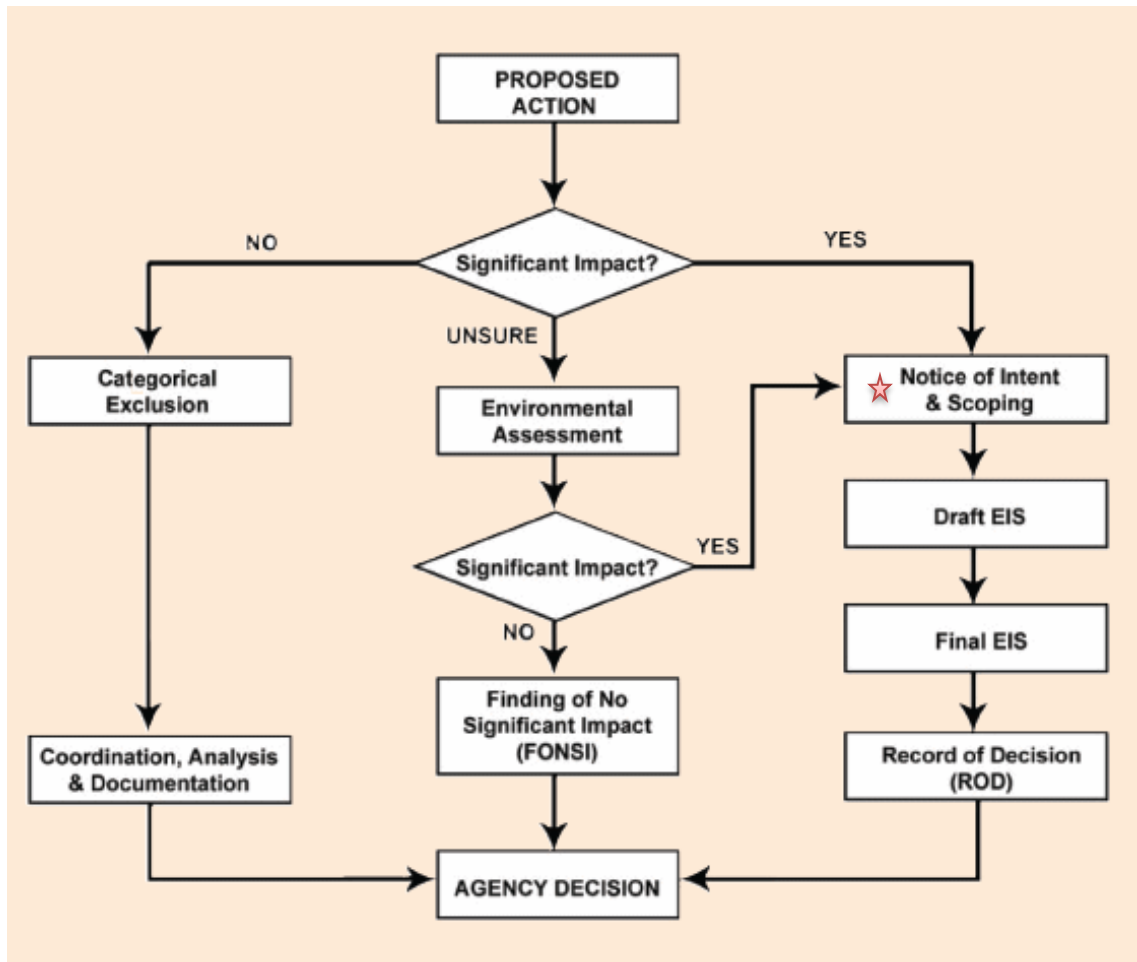


Figure 2. The NEPA process (United States Department of Agriculture n.d.).

Native American Graves Protection and Repatriation Act

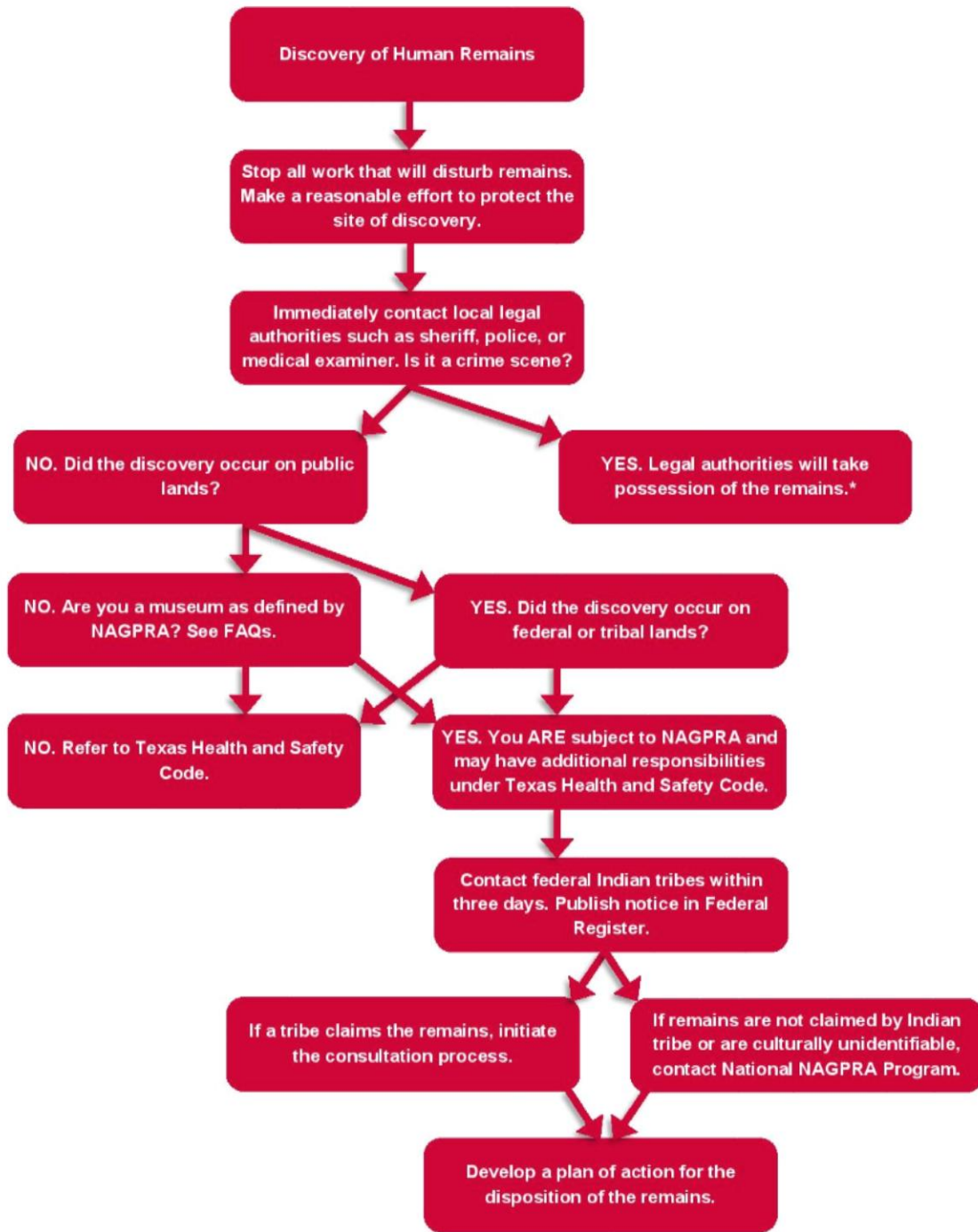
Another CRM law often paired with the NHPA 106 process is the Native American Graves Protection and Repatriation Act (NAGPRA). According to Thomas King, “tribes and intertribal groups became major players in NEPA and section 106 litigation, and they began agitating for the return of ancestral remains and cultural items” (2013: 28); hence the birth of NAGPRA in 1990. Francis McManamon, for the National Park Service (NPS), outlines NAGPRA as follows:

NAGPRA describes the rights of Native American lineal descendants, Indian tribes, and Native Hawaiian organizations with

respect to the treatment, repatriations, and disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony, referred to collectively in the statute as cultural items, with which they can show a relationship of lineal descent or cultural affiliation (2000c).

NAGPRA serves two major purposes. First, it requires facilities receiving federal funds to compose a written summary of remains and items they have in their possession, establish cultural affiliation, and allow for that tribe and/or descendant to make a determination on its long-term care. The second, which I believe a stronger legal opportunity for tribes, is “to provide greater protection for Native American burial sites and more careful control over the removal of Native American remains, funerary objects, sacred objects, and items of cultural patrimony on Federal and tribal lands” (McManamon 2000c). NAGPRA specifically requires consultation if/when remains and cultural items are inadvertently discovered. In the event of an excavation, NAGPRA runs in conjunction with Archaeological Resources Protection Act (ARPA), which I elaborate on in a later section. Figure 3 depicts how the NAGPRA process should be conducted during a project/undertaking.

NAGPRA Flowchart



*If authorities take possession of human remains and later it is determined that they are not part of a crime scene, then NAGPRA may still apply.

May 2011

Figure 3 NAGPRA Flowchart (Texas Historical Commission 2011)

Other players in the CRM game

CRM laws can often coincide with one another. Other times they are held in conjunction with other laws. This section gives a brief description of those laws and which major CRM law coincides.

- The Antiquities Act of 1906: states any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the U.S. Government, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which the infraction occurred, shall be fined upon conviction (National Park Service 2017)
- Archaeological and Historic Preservation Act (AHPA): established in 1974, requires agencies preserve archaeological data that may be affected by any federal undertaking/project, also does not require the archaeological data to be shown of “national” significance (McManamon 2000a).
- Archaeological Resources Protection Act (ARPA): established in 1979, enacted to protect archaeological sites and resources on public and tribal lands as well as to promote relations between government authorities, professional archaeologists, and private individuals (McManamon 2000b).

- Abandoned Shipwrecks Act (ASA): established 1987, evokes government ownership of shipwrecks in U.S. waters; also, state governments have title to shipwrecks on state land, the US Government has title to shipwrecks on Federal lands, and Indian tribes have title to shipwrecks on Indian land (Aubry 1997).
- Federal Records Act (FRA): established in 1950, creates the framework for federal agencies' records management; the National Archives and Records Administration (NARA) is in charge of assisting agencies in maintaining adequate and accurate documentation of policies and transactions (U.S. Department of Education 2016).
- Religious Freedom Restoration Act (RFRA): established in 1993, determines that the Government shall not substantially burden anyone's right to exercise their religion (Library of Congress 1993).

Executive Orders

Executive Orders (EO) are issued from the President. They often reinforce ideas or help emphasize areas that need attention. This section looks at the following EOs: 12898- Environmental Justice; 13007 – Indian Sacred Sites; and 13175 – Consultation and Coordination with Indian Tribes. I also explain the following memorandums: Government-to-Government Relations with Native

American Tribal Government; Protection of Indian Sacred Sites; and Tribal Consultation.

EO 12898: Environmental Justice

President William J. Clinton enacted EO 12898 – the Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations in 1994 in an effort to achieve environmental protection for all communities (United States Environmental Protection Agency 2016). According to the EPA, this EO not only directs federal agencies to address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent permitted by law, and it also instructs agencies to develop a strategy for implementing environmental justice (2016). This EO is also a means to promote public information and participation in minority and low-income communities, and agencies should therefore seek out media outlets in these areas to ensure their outreach efforts are effective and to uphold the spirit of the EO. Many tribes have their own newspapers or newsletters that circulate on a regular basis.

EO 13007: Indian Sacred Sites

A few years after EO 12898, on May 24, 1996, President William J. Clinton signed EO 13007: Indian Sacred Sites where agencies accommodate access to and ceremonial use of Indian sacred sites and avoid adversely affecting the physical integrity of such sites (Clinton 1996). Clinton defines sacred

site as, “any specific, discrete, narrowly delineated location on Federal land that is identified by any Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site” (1996). Key to the protection of the sacred site is to notify the agency that this site exists. The tribe does not necessarily have to disclose the ceremony or nature of the site’s significance; acknowledgment of its mere existence is sufficient.

EO 13175: Consultation and Coordination

President William J. Clinton was on a roll with EO’s benefiting tribal communities. On November 6, 2000, Clinton signed EO 13175-Consultation and Coordination with Indian Tribal Governments and also established regular meaningful consultation and collaboration with tribal officials during the development of federal policies that have tribal implications, ideally, strengthening government-to-government relationships (Clinton 2000: 2806). An important point is outlined in Section 3 in the event of undertaking the formulation and implementation of policies with tribal significance. This seems to piggy back off the two previous EOs President Clinton established because it calls for tribes to establish their own polices. Essentially, this EO can be used to help a tribe mold their own protocols when dealing with agencies regarding environmental justice and sacred sites. EO 13175’s stated goals are as follows:

1. Encouraging Indian tribes to develop their own policies to achieve program objectives;
2. Where possible, deferring to Indian tribes to establish standards; and
3. In determining whether to establish officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes (Clinton 2000: 2807).

Tribal Sovereignty Evolution

The final section of this chapter reviews the following acts: the Indian Citizenship Act; Indian Reorganization Act; Indian Self-Determination and Education Assistance Act of 1975; and American Indian Religious Freedom Act in order to give context to the novelty of tribal sovereignty and the importance of fostering government-to-government relationships between tribes and federal agencies. In the 1800s, the U.S. Government established their plenary power over tribes through a series of acts, laws, treaties, and Supreme Court decisions (Encyclopedia Britannica 2018a; Encyclopedia Britannica 2018b; Goetting 2010). Tribes were pushed from their aboriginal territories on to designated reservations. Some land parcels were vast at first but reduced to reservation boundaries seen today. To illustrate how policies shifted from anti-Indian to pro-Indian in the 1900s, a few acts are outlined in this section.

Indian Citizenship Act

The women's suffrage movement granting (white) women the right to vote occurred before American Indians were considered citizens on their indigenous homelands. State laws mandated voting regulations, and so even at the point of reaching federally recognized citizenship, American Indians still could not vote in every state. The Indian Citizenship Act was signed into law by President Calvin Coolidge on June 2, 1924 (NCC Staff 2017). During the time of the Act's signing, the NCC Staff reports that 125,000 of an estimated population of 300,000 American Indians were not citizens (2017), which was nearly half of the entire reported population.

Indian Reorganization Act

Ten years after gaining citizenship, the Wheeler-Howard Act or otherwise known as the Indian Reorganization Act was passed on June 18, 1934 (Wilma 2000). This Act granted tribes the right to form their own government systems, with limited powers, the ability to form corporations to manage their resources and to manage funds for educational assistance and tribal land buy-back (Wilma 2000). Although not every tribe was on board, the Act was widely accepted, and most tribes today have their own executive/business/tribal boards overseeing their governmental responsibilities.

Indian Self-Determination and Educational Reform Act of 1975

This Act is also known as Public Law 93-638 and allows government agencies to enter into contracts with, and make grants directly to, federally

recognized Indian tribes (Govtrack 2017). Notably, this Act prevented a 30-year effort by the federal government to sever treaty relationships and obligations to Indian tribes (Govtrack 2017). This Act allowed for a more cooperative relationship between tribes and the federal government to grow.

American Indian Religious Freedom Act

Although it took some time for American Indians to experience the full freedom of U.S. citizenship, it was not until the late 1900s that they were granted full religious freedom. When the American Indian Religious Freedom Act (AIRFA) first passed, it did not include the tribes, or specifically the Native American Church's (NAC) right to use peyote as part of their religious ceremonies.

"Congress amended AIRFA in 1993 to codify protections for its [peyote] use by Native American Church members," (Harjo 2003). Representing, yet another boost to tribal sovereignty from the Clinton administration. The amended AIRFA includes the religious freedom to utilize peyote and reinforces the following:

- The inherent rights of any Indian tribe;
- The rights, express or implicit, of any Indian tribe which exist under treaties, Executive orders, and laws of the United States;
- The inherent right of the Indians to practice their religions; and
The right of Indians to practice their religions under any Federal or State law (United States Congress 1994).

Cultural Resources Laws Concluding Comments

As these laws, EOs, and Acts should reinforce, American Indians not only have rights as tribal citizens, they have rights as private citizens as well. The legal obligation for federal agencies to establish and foster a government-to-government relationship have been reinforced through legislation discussed in this chapter. It is important for agencies to continue to engage tribes not only with meaningful, but transparent consultation efforts. The safeguarding of tribal sacred sites, natural, and cultural resources is vital to the practice of tribal religion, ceremony, and traditional ways of life.

Chapter 3: Keystone XL Project Case Study

With a changing presidential administration there come many adjustments. On January 24, 2017, newly elected President Donald Trump issued an executive memorandum inviting TransCanada Keystone Pipeline, L.P. (Trans Canada) to resubmit their permit to construct and operate the Keystone XL Pipeline (Trump 2017c). The pipeline was previously rejected by the Obama administration on November 6, 2015, citing that it did not serve public interest. The resurrection of the pipeline should have triggered an already established process of meaningful consultation with tribes (Office of the Press Secretary 2015). The objective of this chapter is to critically examine the revival of a pipeline that was deemed *not* to be in the public's interest and use this case study to address this thesis' goal to explore tribal consultation and legal obligations against the backdrop of the legal history presented in Chapter 2.

In this chapter, I will review basic information about the Keystone XL Pipeline project and supporting documents such as the Final Supplemental Environmental Impact Statement (FSEIS), the Department of State Record of Decision and National Interest Determination, and the Presidential Permit for the Keystone XL Pipeline along with their implications. I will examine the differences between former President Obama and current President Trump's attitudes towards the project and actions taken during their presidencies. I will highlight and summarize TransCanada's Indigenous Relations Strategy as well as what tribes encountered during consultation and ongoing consultation. In conclusion, I will discuss the importance of meaningful consultation in major projects.

The Keystone Pipeline XL Project

The project's first application was submitted on September 19, 2008, with the Final EIS submitted on August 26, 2011 (U.S. Department of State 2008; U.S. Department of State 2011). The Keystone XL pipeline will consist of an 875-mile pipeline from Morgan, Montana, to Steele City, Nebraska, and deliver 830,000 barrels per day (bpd) of Western Canadian Sedimentary Basin (WCSB) and Bakken Shale Formation crude oil (U.S. Department of State 2014). Figure 4 illustrates the proposed pipeline route. The pipeline crosses three state boundaries: Montana, South Dakota, and Nebraska. The proposed route in Figure 4 is different from the route proposed in the 2011 Final Environmental Impact Statement (2011 Final EIS) because it avoids an environmentally sensitive area of the Sand Hills Region as identified by the Nebraska Department of Environmental Quality (NDEQ).

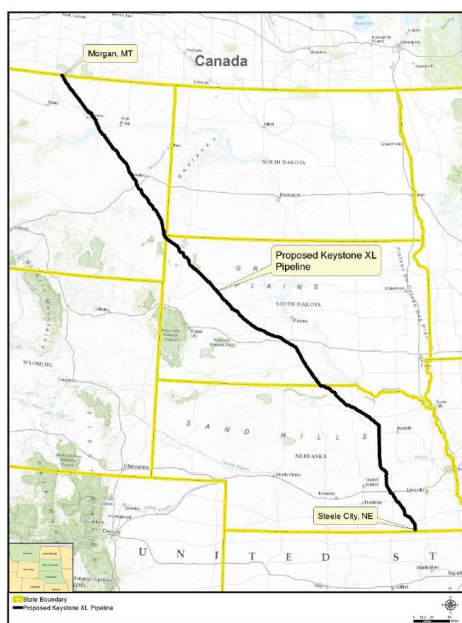


Figure 4. Proposed Keystone XL Project Route (U.S. Department of State 2014).

Project proponents are TransCanada and the United States Department of State. Cooperating Agencies are:

- U.S. Army Corps of Engineers (USACE)
- U.S. Department of Agriculture-Farm Service Agency (FSA)
- U.S. Department of Agriculture-Natural Resource Conservation Service (NRCS)
- U.S. Department of Agriculture-Rural Utilities Service (RUS)
- U. S. Department of Energy (DOE)
- U.S. Department of Interior-Bureau of Land Management (BLM)
- U.S. Department of Interior-National Park Service (NPS)
- U.S. Department of Interior-U.S. Fish and Wildlife Services (USFWS)
- U.S. Department of Transportation-Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (PHMSA)
- U.S. Environmental Protection Agency (USEPA).

Assisting agencies include:

- U.S. Department of Interior, Bureau of Reclamation (BOR)
- Nebraska Department of Environmental Quality (NDEQ)
- Various State and Local Agencies in Montana, South Dakota, Nebraska, and Kansas (U.S. Department of State 2014).

The project spans across the northern plains region and, naturally, it will encounter historic and cultural properties during its construction and evokes environmental concerns as it encounters bodies of waters and wildlife natural habitats.

Keystone XL Supporting Documents

In order to fully understand the project and what has been considered thus far, I will examine the supporting documents such as the Final Supplemental Environmental Impact Statement (U.S. Department of State 2014), the Department of State Record of Decision (U.S. Department of State 2017a) and National Interest Determination (Office of the Press Secretary 2015; Office of the Press Secretary 2017), and the Presidential Permit (U.S. Department of State 2017b) for the Keystone XL Pipeline are vital to understand the implications and steps taken to ensure preservation measures have been performed.

Final Supplemental Environmental Impact Statement

The Final Supplemental Environmental Impact Statement (FSEIS) Executive Summary for the pipeline project provides information reviewing public comments, an overview, market analysis, environmental analysis, and consideration of alternatives. According to the 2014 FSEIS, the study expanded its analysis on: potential oil releases, climate change analysis, oil market analysis, and rail transport as part of the No Action Alternatives scenarios (no construction of the pipeline and transport through other means). For the purpose of this paper, I will focus on the public comments, environmental analysis, and consideration of alternatives and their implications.

According to the FSEIS, public comment was open after the publication of the 2013 Draft Supplemental EIS. Hard and electronic copies were sent out to

the following: interested Indian tribes, agencies, elected and appointed officials, non-governmental organizations (NGOs), etc. The FSEIS states 1,496,396 submissions (99 percent of the total) were from letters sponsored by NGOs and remaining 16,853 were identified as unique submissions (2014). Of the concerns listed in the FSEIS, two address environmental fears: greenhouse gas (GHG) and climate change effects of crude oil extraction, processing, and use, as well as potential spills that would pollute underground water sources like the Ogallala Aquifer.

The environmental analysis included in the FSEIS addresses climate change, potential releases, socioeconomics, environmental justice, water resources, wetlands, threatened and endangered species, geology and soils, terrestrial vegetation, wildlife, fisheries, land use, air quality and noise, cultural resources, cumulative effects, and environmental impacts in Canada. Even though there is a political debate on the existence of climate change, the FSEIS actually acknowledges it by discussing rise in global temperature. The FSEIS goes on to state that the projected greenhouse gas emitted by Keystone XL would be about 0.24 million metric tons of carbon dioxide (MMTCO₂O) per year during construction and 1.44 MMTCO₂O per year during operation which is equivalent to approximately 300,000 passenger vehicles operating for 1 year, or 71,928 homes using electricity for 1 year (US Department of State 2014). Regarding climate change effects, the FSEIS basically states that climate change will happen regardless of the project's construction. Figure 5 outlines greenhouse gas emission for each option associated with the Keystone XL Project. The

proposed route is on the lower end of the figures and the no action options are on the higher end. The figures are suggesting that the pipeline emits the least greenhouse gas emission and has safest option in terms of environmental impacts.

	Overall Proposed Project Route ^a	Overall 2011 Steele City Segment Alternative Route ^b	Overall I-90 Corridor Alternative Route ^c	No Action Rail/Pipeline Scenario	No Action Rail/Tanker Scenario	No Action Rail Direct to the Gulf Coast Scenario
Operation (direct and indirect)—Transportation, Not Extraction						
MTCO ₂ e/Year per 830,000 bpd	3,123,859	3,123,844	3,211,946	4,428,902	4,364,611	3,991,472
MTCO ₂ e/Year per 100,000 bpd	376,369	376,367	386,981	533,603	525,857	480,900
% Difference from Proposed Project	NA	0.0%	2.8%	41.8%	39.7%	27.8%

^a Canadian, Proposed Project, and Gulf Coast

^b Canadian, Steele City Segment, and Gulf Coast

^c Canadian, I-90, and Gulf Coast

Notes: The emissions shown for the overall proposed Project differ from those shown for the proposed Project in Section ES.4.1.1, Greenhouse Gas Emissions from the Proposed Project, in order to present a full comparison of the overall proposed Project route to the other alternatives. All data include train emissions for return trips as well.

MTCO₂e = metric tons of CO₂ equivalents

NA = not applicable

bpd = barrels per day

Figure 5. Annual Greenhouse Gas Emissions from Crude Transport (from Hardisty/Lloydminster, Alberta, to the Gulf Coast Area) Associated with the Proposed Project and Alternatives (per 100,000 bpd) (US Department of State 2014).

In regards to potential releases (spills) the FSEIS uses non-committing language such as “typically be confined” and “generally be detected” when addressing potential impacts of small and medium spill. Figure 6 displays information about incidents (spill or accident). The highest frequency of incidents are equipment incidents that are not the main pipeline while valves on the crude oil pipeline, not on the main line, have the lowest. Figure 7 shows releases (spills) reported in the PHMSA database from January 2002 to July 2012 and shows the likeliness of a large spill is less than a small spill. These tables allow

for the proponents to show the interested concerned parties that if the likelihood of an incident or spill is very low, the pipeline is safe.

Incident Category	Incidents	Incident Sub-Category	Incidents
Crude oil pipeline	1,692	Crude oil mainline pipe incidents	321
		Crude oil pipeline, equipment incidents (not mainline pipe)	1,027
		Crude oil pipeline system, unspecified elements	344
Crude oil mainline pipe	321	16-inch or greater diameter	71
		8-inch or 15-inch diameter	154
		Less than 8-inch diameter	52
		Diameter not provided	44
Crude oil pipeline, equipment (not mainline pipe)	1,027	Tanks	93
		Valves	25
		Other discrete elements (pumps, fittings, etc.)	909

^a Incident as used in the Final Supplemental EIS is in reference to a PHMSA and/or a National Response Center record of a reportable spill or accident found within their respective databases.

Figure 6. Summary of PHMSA Database Incidents (January 2002 to July 2012) (US Department of State 2014).

Spill Volume Scenario	Frequency^a
Small: Less than 50 bbl (2,100 gallons)	79%
Medium: 50–1,000 bbl (2,100–42,000 gallons)	17%
Large: >1,000 bbl (>42,000 gallons)	4%

^a Indicates the share of all releases reported in the PHMSA database that fit each spill volume scenario.

Figure 7. Spill Scenarios Evaluated in Supplemental EIS (US Department of State 2014).

Also included in the environmental analysis section were cultural resources and tribal consultation. Figure 8 shows a map of tribes who were said to be consulted. Cultural resources are said to be identified through literature searches and field studies conducted between 2008 and 2013. The FSEIS goes on to state that the APE is 39,500 acres; of those, 1,038 acres have not been surveyed and are in the process of being studied. It does not specify what areas have and have not been studied, just the acreage.

Indian tribes that participated in consultation were asked in 2013 to sign as Concurring Parties, consistent with 36 Code of Federal Regulations 800.2(c)(2) and 800.6(c)(3) (US Department of State 2014). Of the 84 tribes that had potential interest, 67 tribes notified the Department they wanted to consult,

and those who consulted were asked to sign the PA in 2013. The means of communication included: group and individual meetings, letter, phone, and email. Meeting dates with tribes were three in October 2012 and one in May 2013 located in: Billings, Montana; Pierre, South Dakota; Rapid City, South Dakota; and Lincoln, Nebraska. The FSEIS says that Tribal Historic Preservation Officers were engaged on cultural resource and TCP surveys, effects of cultural resources, and mitigation. The TCP surveys were presented with the opportunity to be funded by Keystone. The FSEIS seems to have done a thorough job with their consultation efforts with tribes; therefore, tribes should be satisfied with the outcome of the project because meaningful consultation was utilized, yet it did not work out this way. I will come back to this when I discuss TransCanada and tribes.

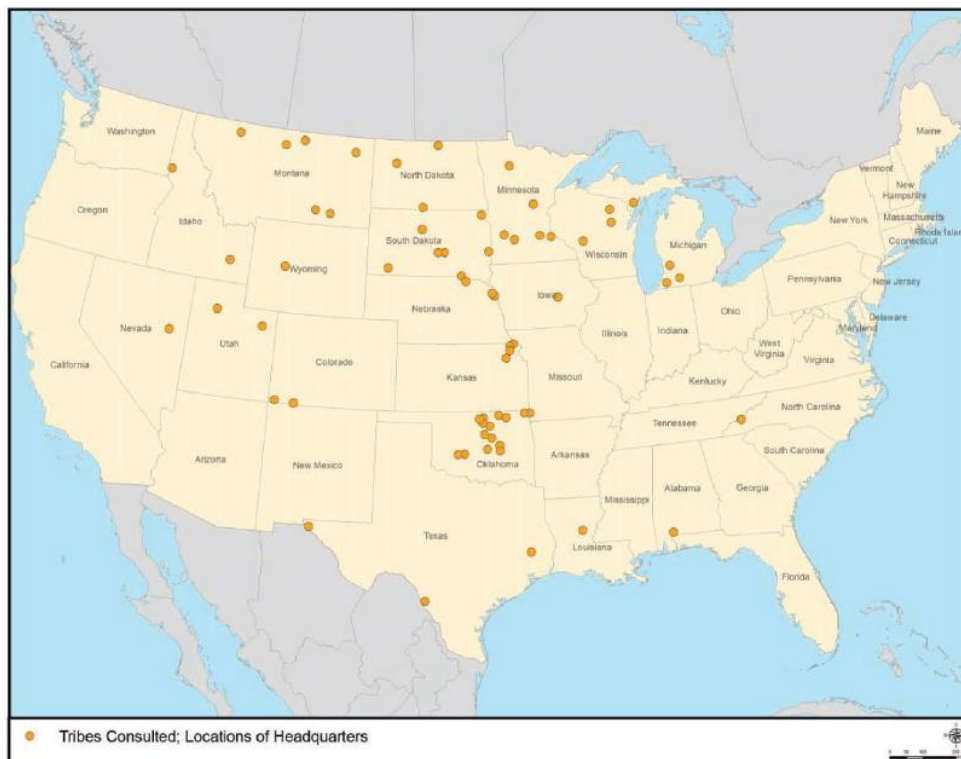


Figure 8. Map of tribes said to be included in consultation (US Department of State 2014).

Department of State Record of Decision (ROD) and National Interest

Determination

Acting on behalf of the President under delegated authorities in accordance with Executive Order 13337 and the Presidential Memorandum, the Under Secretary of State for Political Affairs has determined that issuing a Presidential permit to Keystone to construct, connect, operate, and maintain at the border of the United States pipeline facilities for the import of crude oil from Canada to the United States as described in the Presidential permit application for the proposed Project would serve the national interest. Accordingly, the request for a Presidential permit is approved (US Department of State 2017a: 3).

When a ROD is issued, this means the Department has decided on how the project is to be carried out as well as mitigation plans and implementations. It also means all the steps necessary for NEPA and NHPA have been met and the next step is implementation of the project. The ROD was signed on March 23, 2017, only two months after the Presidential Memorandum was issued inviting the project to reapply for the presidential permit. For the purpose of this paper, I will review the agency and tribal involvement and public comment section, which include information on public comment periods, tribal consultation, and the cultural resources information in the physical disturbance impacts section.

The Department describes its public outreach and consultation as extensive. It gives specific dates that public comments were solicited and

received, with over 400,000 comments received during the scoping period and another 1.5 million during the comment period for the Draft Supplemental EIS. As previously mentioned, digital and hard copies were distributed to interested parties which include tribes. The Department summarizes the comments into six categories: environmental impacts/climate change, cultural resources, socioeconomics, energy security, foreign policy, and compliance. The tribal consultation section repeats the information given in the FSEIS. Cultural resources were included in the physical disturbance impacts section and were noted to be key concern for tribes. The ROD refers to the Programmatic Agreement for carrying out avoidance, mitigation, and Unanticipated Discovery Plans.

With everything set into place through the PA and ROD concerning cultural resources, all parties should be satisfied with the determination. Largely, since the project serves the interest of the nation, the nation should be satisfied with the determination as well as interested parties. Yet, the astounding mass of protest indicate otherwise (Pauli 2017; Puckett 2017). The project was once rejected yet has is now revived as the Presidential Permit was granted. The shift in public interest came with the shift in Presidential administrations.

Presidential Permit

The Presidential Permit was signed on the same date as the ROD, March 23, 2017. The permit allows for TransCanada “to construct, connect, operate, and maintain pipeline facilities at the international border of the United State and Canada at Morgan, Montana, for the import of crude oil from Canada to the

United States” (US Department of State 2017b). Article 9 of the permit makes the permittee responsible to make all necessary steps to avoid and mitigate adverse impacts on the human environment. This particular article could be the most referenced should there be any incidents, spills, or adversely affected areas that were not previously identified or discovered. Article 13 of the permit says the permit expires in five years from the date it was issued. Reflecting on the lifespan of the project, it is very possible the permit may expire on March 23, 2022 if construction has not started.

Obama and Trump’s Presidential Stance on the Keystone XL Pipeline

A project that was deemed not in the public’s interest by the Obama administration now serves the public’s interest with the new Trump administration. This section focuses on the statements made by former President Obama and current President Trump towards the Keystone XL project and the actions during their presidencies. It is important to understand the stance of these Presidents towards the pipeline because it signifies the shift in national interest.

President Obama

On November 6, 2015, then-President Obama addressed the nation to discuss the Keystone XL Pipeline, observation citing the project would not serve the national interest of the United States. Obama stated in his first point, “The pipeline would not make a meaningful long-term contribution to our economy” (Office of the Press Secretary 2015). Obama further urged Congress to find more

bipartisan infrastructure to create long-term jobs that would benefit the economy. His second point highlights the fact that the project would not lower gas prices and the third point emphasizes how transporting dirty crude oil through our country will do nothing for its energy security. Obama's focus is emphasized clean energy efforts and urged America to help the nation represent itself as a global leader in planet-wide efforts to understand and adapt to climate changes.

Actions during Obama Administration

Omaha World-Herald (2017) listed a timeline information for action during the Obama presidency as follows:

- April 2010: State Department draft report cites "limited adverse environmental impacts" from Keystone XL
- July 26, 2011: House sets deadline for approval
- August 2011: State Department report and Governor Dave Heineman sends letter to Obama to request a route to avoid the Sand Hills and the Ogallala Aquifer
- November 2011: Special legislative session to address environmental concerns over route and new law requiring companies to apply through Nebraska Public Service Commission and Obama delays pipeline action until 2012
- April 2012: Nebraska amends state pipeline law allowing governor to approve through the state
- May 4 2012: TransCanada applies for presidential permit and to State Department for new route through Nebraska

- January 22, 2013: Gov. Heineman approves new proposed route
- January 31, 2014: Another State Department report citing the pipeline will have no significant impact on climate
- February 19, 2014: 2012 law that gave the governor the authority to approve the pipeline route is struck down
- November 19, 2014: Senate votes down the project
- January 6, 2015: President Obama promises to veto the project
- January 29, 2015: Senate votes to approve project
- March 4, 2015: Senate fails to override the veto
- November 6, 2015: Obama rejects the pipeline

President Trump

March 24, 2017 President Trump gave remarks about the approval of the Keystone XL Pipeline. He said the approval was overdue and final details were being worked out, stating, “It’s going to be an incredible pipeline, greatest technology known to man or woman” (Office of the Press Secretary 2017).

President Trump then went on to tell Russ Girling, the President of TransCanada, he should compensate his consultants and “should ask for the hundreds of millions of dollars back that you paid them because they didn’t do a damn thing except get a no vote, right?” (Office of the Press Secretary 2017). President Trump claimed that the pipeline will reduce dependence on foreign oil and create thousands of jobs. When President Trump asked Girling when construction would start, Girling alluded to still-needed permits in Nebraska before construction could start.

Actions during Trump Administration

Omaha World-Herald (2017) listed timeline information for action during the Trump presidency as follows:

- January 24, 2017: Executive order revives pipeline project

The timeline is short because it brings us up to date with the ROD being issued and the recent remarks made by President Trump and the approval of the Keystone XL Pipeline. The pipeline approval means TransCanada will be starting construction in the near future.

TransCanada and Tribes

Two main parties determine how smoothly this project will be carried out, TransCanada and the Tribes. TransCanada has specific guidelines on their website as well as on Keystone XL's website outlining the importance of engaging in with the Indigenous and Native communities. This section highlights and summarizes TransCanada's Indigenous Relations Strategy, as well as what tribes encountered during consultation and ongoing engagement.

According to TransCanada

The Keystone XL states it is "a safe, reliable and environmentally sound way to transport needed energy to Americans" (TransCanada 2017a). This 36-inch-diameter crude pipeline will begin in Hardisty, Alberta to Steel City, Nebraska and will reportedly produce thousands of well-paying jobs. However, the duration of the well-paying jobs is not mentioned.

In respect to engaging with tribes, TransCanada has a specific area of their website that addresses Aboriginal and Native American relations. TransCanada says their community dialogue is driven by three major components: communication, engagement, and commitment; guided by trust, respect, and responsibility (TransCanada 2017b). Figure 9 displays TransCanada's Indigenous Relations Strategy found on TransCanada's Keystone XL website. They ensure employees and contractors possess "the knowledge required to engage meaningfully with Indigenous communities" (TransCanada 2017c). The website is peppered with positive language towards their commitment to engage with Indigenous communities through project planning and mitigation.

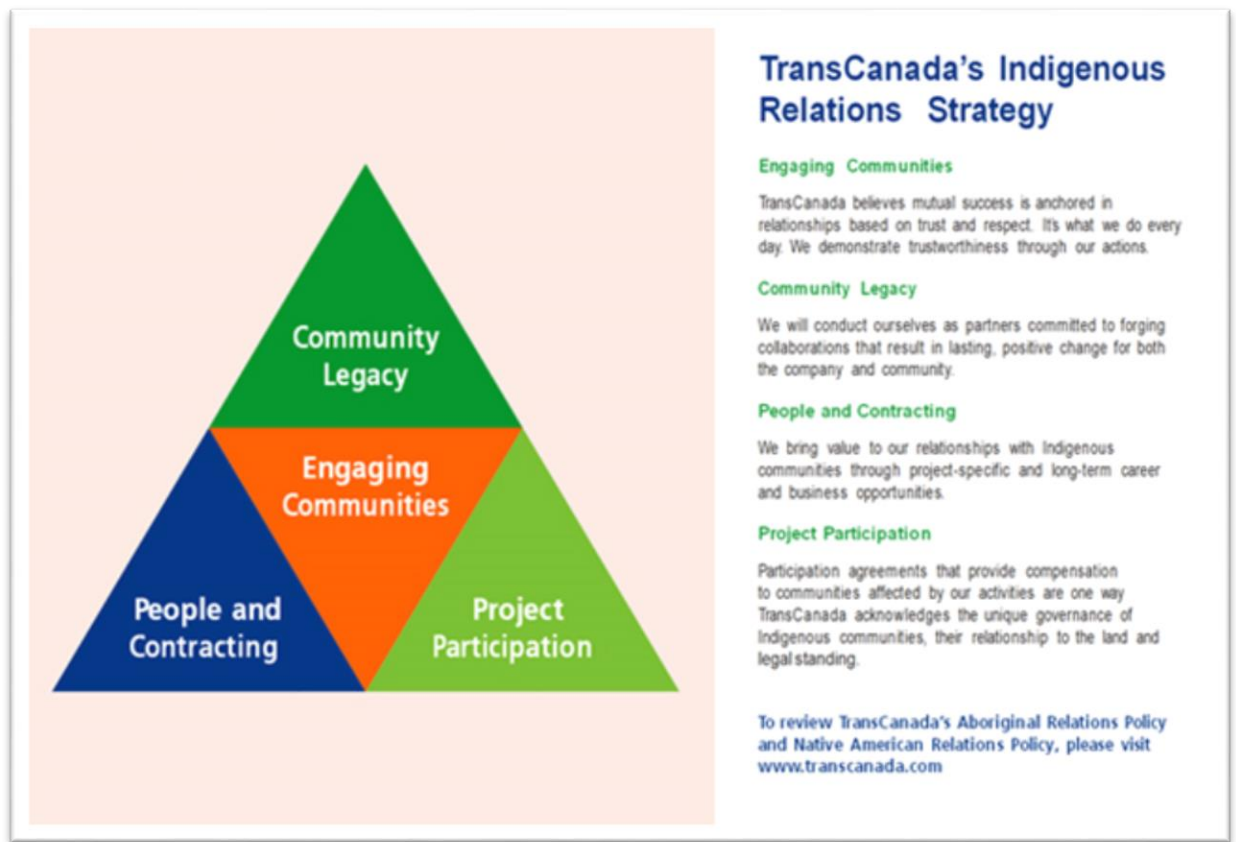


Figure 9. TransCanada's Indigenous Relations Strategy (TransCanada 2017c).

According to Tribes

Since it was difficult to find details on how meetings were carried out and what parties were present during the meetings mentioned in the supporting documents, there needed to be investigation on how tribes were engaged. This section will first focus on the tribal positions on Keystone XL. Secondly, this section will take a look at the first tribe TransCanada will encounter in the United States and their desire to stop or reroute the pipeline.

The supporting documents cite meeting with tribes in four different locations. At the meeting in Rapid City, South Dakota on May 16, 2013 ten Indigenous nations considered Keystone XL to be “detrimental not only to the collected sovereigns but all future generations” (*Indian Country Today* 2013). A day later the Sacred Pipe Bundle of the Oceti Sakowin (Seven Council Fires People: Rosebud Sioux Tribe, Oglala Sioux Tribe, Standing Rock Tribe, Lower Brule Sioux Tribe, Cheyenne River Sioux Tribe, and Crow Creek Sioux Tribe) was brought out to lead a united prayer to stop the pipeline. From that meeting in Rapid City, the tribes gave a collaborative statement that concluded, “If the Keystone XL pipeline is allowed to be built, TransCanada, a Canadian corporation, would be occupying sacred treaty lands as reserved in the 1851 and 1868 Fort Laramie Treaties. It will be stopped by unified resistance” (*Indian Country Today* 2013). Such responses indicate that the meeting with TransCanada did not successfully convince tribes that they will feel little impact of the pipeline’s construction. The 2015 rejection seemed to have the potential for a victorious effort to stop the pipeline.

However, the victory was short lived, because as soon as President Trump took office, and his administration revived the rejected project. Capriccioso (2017) for *Indian Country Today* writes, “The federal government failed to consult with tribes before making a decision that could have devastating impact for tribal citizens.” In response to the recent approval of the project, Robert Flying Hawk, who serves as Yankton tribal chairman, wrote a letter to President Trump days after the approval saying, “In light of your decision not to relinquish your business interests prior to taking the oath of office, our Nation has grave concerns that these memoranda serve to fulfill commitments to your personal business interests rather than adherence to the United States’ long-standing trust responsibility to Indian tribes” (Capriccioso 2017). The Yankton tribe is not the only tribe taking issue with the recent approval.

The Fort Peck Tribe located in northeast Montana is the first tribe TransCanada will encounter during their construction. The tribe received a letter from TransCanada seeking a meeting. In response to the renewed pipeline; the tribe once had a resolution opposed to the pipeline and has now prepared three alternative routes for the pipeline to avoid the tribe’s water intake (Goare 2017). The tribe operates a \$193 million, 3,200 mile-long water pipeline located within the 100 mile-long by 40 mile-wide reservation (Puckett 2017). Even though the Keystone XL Pipeline does not cross the reservation boundaries, it will cross the Missouri River, which is upstream from the tribe’s water intake. The Fort Peck Tribe wishes to resolve the concerns with TransCanada to avoid an incident similar to Standing Rock and the Dakota Access Pipeline. Peaceful

demonstrations have already begun by tribal members and others who identify as Water Protectors. Concerns about water should be expected because Murphy Oil Corporation drilled in the East Poplar Oil Field in the 1950s and 1980s, dumping 42 million gallons of wastewater brine into unlined pits causing tribal members to drink bottled water for decades (Pauli 2017). Houses in Poplar, Montana are stained from the water and the water has a very distinct smell.

Keystone XL Project Case Study: Concluding Comments

Is the Keystone XL legitimate? That would be depending on whose perspective the project is seen from. The interesting shift in national interest with the change in Presidential power could be a precursor to how future projects will be handled with the current administration. This is further driving a wedge in the budding relationship of cooperation between tribes and governing agencies over future projects by undermining a lot of trust previous laws and EOs set out to foster. It is vital to foster these relations because tribal involvement could redirect preservation laws to have larger teeth enforcing more consideration of their cultural and natural resources.

The first best step for the project proponents and assisting agencies is to meet and consult with the Fort Peck Tribe because they are the first tribe to be encountered on the Keystone XL construction route. The tribe's water treatment facility was not part of the original consideration during the route planning, and according to the claims on TransCanada's Indigenous and Native American Relations, the concerns of this and other tribes should be heard on their

proposed route to avoid the treatment facility's main water intake area. Also, the FSEIS states of the land the pipeline route crosses, "17 percent intersects areas with low-income or minority populations, including Indian tribes. Such populations could potentially be disproportionately affected by the propose Project" (US Department of State 2014). Considering the fact that Indian tribes are one of the smallest populations, this is alarming and should be addressed rather than deemed worthy of national interest.

In conclusion, this chapter also serves as a general information on actions taken in the Keystone XL project so far. The project's actions have been the subject of political debate for almost ten years and leaves an unsure understanding of the project's benefits.

Chapter 4: Dakota Access Pipeline Case Study

The Dakota Access Pipeline (DAPL) is perhaps one of the most prominent projects displaying why meaningful consultation is vital for a project's acceptance and success. Recently, the Dakota Access Pipeline garnered nation-wide attention to the Cannonball, North Dakota area because of the camps erected in a staunch resistance to the pipeline's construction. Sacred Stone Camp became headquarters to those who referred to themselves as "Water Protectors." The Standing Rock Sioux Tribe is the closest tribe to where the pipeline crosses under the Missouri River. Members of the tribe, along with members of other tribes, Indigenous people from around the world, celebrities and political leaders like Jill Stein came to the construction site in protest of the pipeline. Their fear is the pipeline may contaminate the water source for 17 million people (AWAKE, A Dream from Standing Rock 2017).

DAPL is an interesting project because the environmental assessment categorized it as a finding of no significant impact (FONSI). In sum, it means all the resources have been considered and all parties have engaged in meaningful consultation because as a federal undertaking, such consultation is required by law. However, construction of the pipeline commenced before a full Environmental Impact Statement was ordered on the project.

This chapter focuses on general information of the DAPL project and including a review of the Draft Environmental Assessment (Draft EA) and the Environmental Assessment (EA), include a discussion about the Obama and Trump Presidential administrations influenced the project and legal findings

stemming from this project. To close the chapter, I emphasize how this project displays a contrast between procedural and meaningful consultation.

The Dakota Access Pipeline

The DAPL project is estimated to be 1,100-mile-long crude oil pipeline stretching from Stanley, North Dakota to Patoka, Illinois that carries 570,000 bpd from the Bakken and Three Forks production areas (U.S. Army Corps of Engineer 2015: 2). Figure 10 displays the pipeline's route, which originates in North Dakota and crosses the state boundaries of South Dakota, Iowa, and Illinois. The project proponents are the U.S. Army Corps of Engineers (USACE) and Dakota Access, LLC.; the project operator is DAPL-ETCO Operations Management, LLC. (U.S. Army Corps of Engineer 2015: 2).

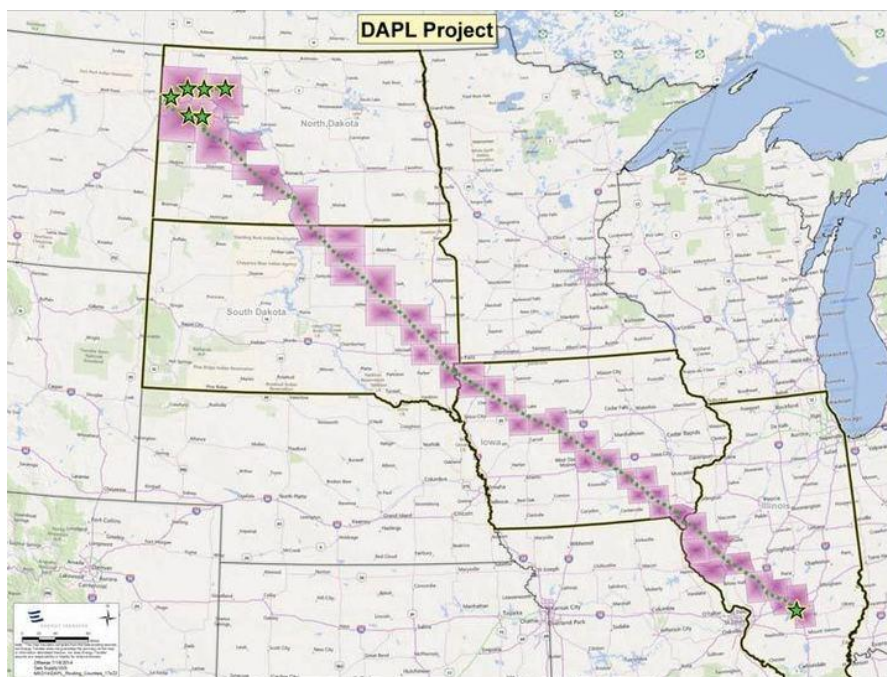


Figure 40 Dakota Access Pipeline Map (Sack 2016)

DAPL Supporting Documents

To give understanding of the project's construction history, I review the Draft EA and EA as the project's supporting documents (U.S. Army Corps of Engineer 2015; U.S. Army Corps of Engineer 2016). These are currently the only documents available as a full Environmental Impact Statement (EIS) has been ordered but has yet to be completed and released.

Draft Environmental Assessment

In the Draft EA, the following sections will be reviewed: alternatives; the affected environment and potential environmental impacts of the proposed action and no action alternative, specifically the cultural and historic resources and Native American consultation; cumulative impacts, again reviewing the cultural and historic resources and Native American consultation; and the federal, tribal, state, and local agency consultation and coordination. The Draft EA for DAPL was prepared by Dakota Access, LLC (Dakota Access) for the Omaha District of the USACE and presented November 2015.

There were four alternatives considered and eliminated by the project proponents. Those alternatives included transporting the crude oil by trucking, rail, route, and major waterbody crossing. Transporting via truck was eliminated based on considerations of infrastructure, economic concerns, and reliability. According to the Draft EA, if a truck could carry 220 barrels of oil, transporting 450,000 bpd would take 2,045 full trucks to depart the processed tank terminals daily at 85 trucks filled per hour operating 24 hours/day (U.S. Army Corps of

Engineer 2015:4). The large volume of moving trucks on the road, the construction of the loading and offloading sites, and sheer man power rendered truck transportation as an unfeasible. Transporting crude oil with rail operations is ideal for short-hauls but not so much for the distance and volume for this project. An estimated total of 750 rail cars would be needed at the rate of a total of 125 rail cars per train requiring six trains to depart daily, in addition to the 10 to 12 trains that currently transport Bakken crude (U.S. Army Corps of Engineer 2015: 5). Figure 11 depicts the alternative route and the preferred route. The alternative route would have had the pipeline's route cross the body of water just north of Bismarck, North Dakota and the preferred route is further south, near the Standing Rock Sioux Tribe's reservation. Although Figure 11 shows the routes of the alternatives, the reservation boundary or ancestral territory is noticeably missing. Regarding the alternative route, the Draft EA states:

The route alternative was in proximity to and/or crossing multiple conservation easements, habitat management areas, National Wildlife Refuges, state trust lands, waterfowl production areas, and private tribal lands. Since the route alternative crossed north of Bismarck, wellhead sourcewater protection areas were prevalent due to the proximity of the city. The route alternative also crossed an area of the state that is characterized by a more wet landscape when compared to some of the other regions of the state (2015: 6).

The route alternatives play a role in the plight of the water protectors; I will elaborate more on this in a later section of this chapter. Finally, the major

waterbody crossing alternative discusses three methods of constructing pipelines that cross bodies of water. Dam and Pump, Open-Cut, and Horizontal Directional Drill (HDD) are some methods utilized for crossing a body of water. Dam and Pump and Open-Cut methods were ruled out because of the large volume of water within the Missouri River system and it is not feasible to temporarily divert the water by pump or flume as these methods would require (U.S. Army Corps of Engineer 2015: 7). HDD is a trenchless method and said to be chosen because construction involves far less impacts on resources.

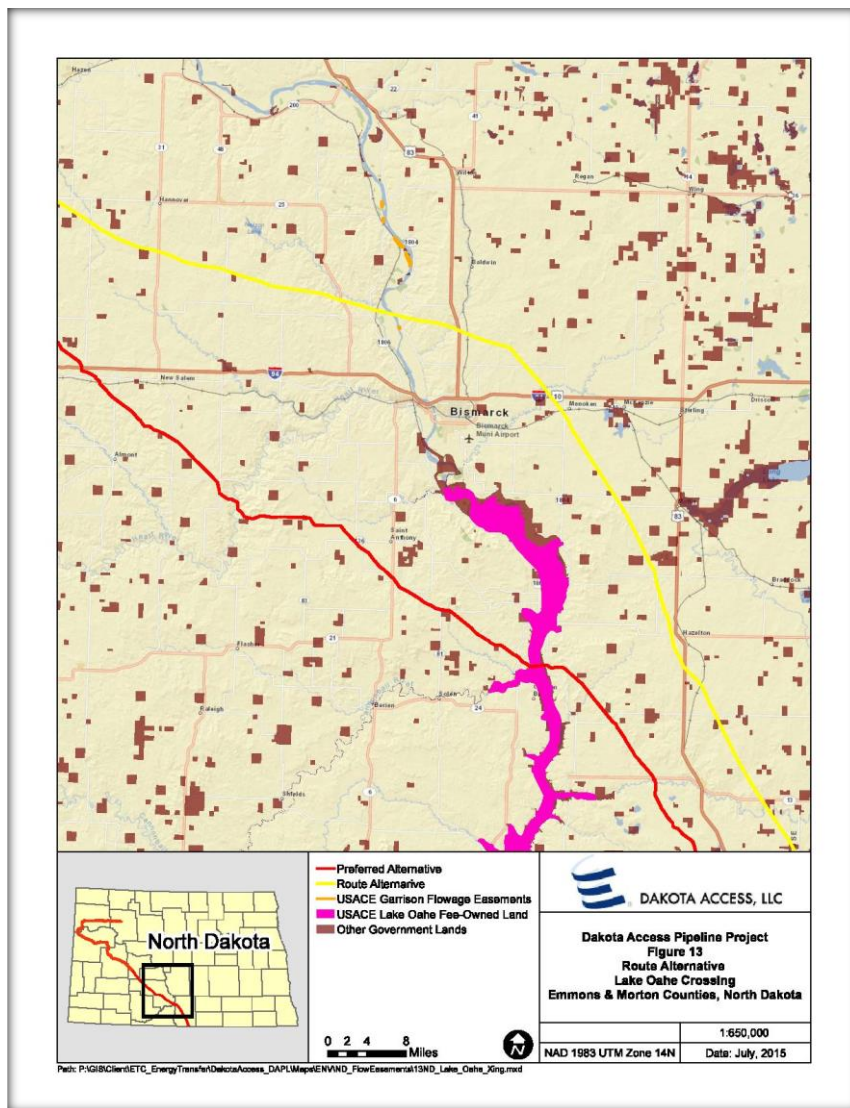


Figure 51. Alternative and Preferred Route (U.S. Army Corps of Engineer 2015: Figure 13).

The no action alternative means there would be no construction of a pipeline and no impacts as a result. The Draft EA says the “no action” alternative would not provide the infrastructure necessary to transport light sweet crude oil to refining facilities (2015: 8). The no action alternative was kept for the EA as a basis of comparison for implementing the preferred alternative route of the DAPL project.

The proposed action [otherwise known as the preferred alternative route] justifies the construction location of the pipeline by saying it has exhausted all possibilities of transportation, routes, and locations for the inevitable and unavoidable waterbody crossing. “Based on location of the collection points, crossing the Missouri River (Lake Sakakawea) was unavoidable” (U.S. Army Corps of Engineer 2015: 8). The pipeline that will be drilled under Lake Oahe is 30 inches in diameter; Figure 12 shows the path of the HDD constructed pipeline.

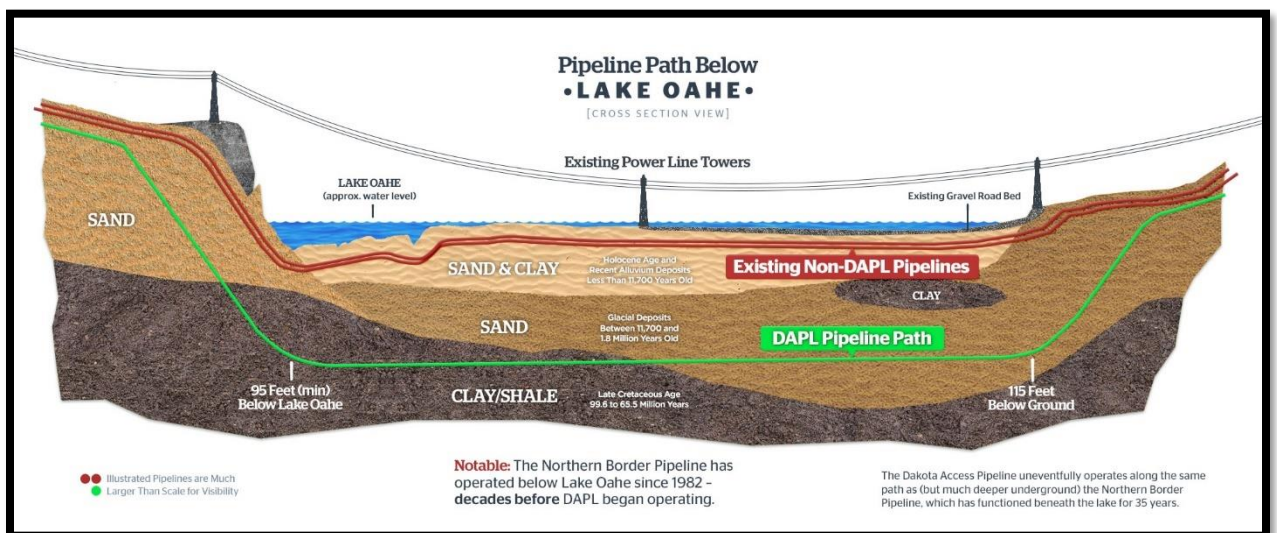


Figure 12. Pipeline Path under Lake Oahe (DAPLPipelineFacts.com 2017).

Section 3 of the Draft EA reviews the affected environment and potential environmental impacts of the proposed action and no action alternative. This section accounts for the possible resources affected such as geology and soil, water resources, vegetation, agriculture, and range resources, wildlife and aquatic resources to name a few. My focus will be the cultural and historic resources and Native American consultation. This section specifically references Section 106 and the obligations to consider possible impacts on historical and prehistoric properties. According to the Draft EA, Class III surveys were conducted on private property where land access was voluntarily given by landowners; cultural surveys were conducted in 2014 and completed in 2015 (U.S. Army Corps of Engineer 2015: 56). There are eight referenced cultural resources and a newly discovered one, a lithic flake, as well as an Unanticipated Discoveries Plan (UDP) for cultural resources, human remains, and paleontological resources. The Draft EA asserts, "In accordance with Section 106 of the NHPA, Dakota Access made a good effort to identify significant historic properties within the Project area" (U.S. Army Corps of Engineer 2015: 58). The 3.7.2 Native American Consultation section states the following, "Consultation with federally-recognized tribal entities for those portions of the Project area defined for this EA has been initiated but has not been concluded, per Section 106 of the National Historic Preservation Act" (U.S. Army Corps of Engineer 2015: 58). It goes on to say consultation was initiated in November 2014, concluded in January 2015 and initiated again in July 2015. Formal consultation was requested by tribes for an on-site meeting at Lake Oahe for a "government

to government meeting” but it had yet to occur as of the submission of the Draft EA (U.S. Army Corps of Engineer 2015: 59). The Standing Rock Sioux Tribe Tribal Historic Preservation Officer is explicitly mentioned in the additional information segment of the Native American Consultation. At a meeting in October 2014, the route was presented and the THPO indicated that the Lake Oahe HDD appeared to avoid impacts to known sites of tribal significance (U.S. Army Corps of Engineer 2015: 59). This seems to be a foreshadowing of future encounters with the SRST and public protests of the pipeline construction.

Section 4 of the Draft EA reviews cumulative impacts, reviewing the same components as the affected environment and potential environmental impacts of the proposed action and no action alternative. Again, my focus is on the cultural and historic resources and Native American consultation segment. This segment states Dakota Access would implement measures to avoid or mitigate adverse effects to cultural resources that have been determined, in consultation with federal land managing agencies, North Dakota State Historic Preservation Officer, and Native American tribes, to be eligible for listing in the National Register of Historic Places (U.S. Army Corps of Engineer 2015: 75). This segment asserts an UDP for any unanticipated discovery, however, it clearly states, “the Project is not anticipated to impact cultural resources; therefore, cumulative impacts associated with the Project would not occur” (U.S. Army Corps of Engineer 2015: 75).

Federal, tribal, state, and local agency consultation and coordination is presented in Section 7 of the Draft EA. It states letters of interest were sent on

March 30, 2015; the appendix that contains the Notice of Availability of the Draft EA for comment had not been completed by the submittal. Native American entities listed as a recipient of the letter are the Bureau of Indian Affairs in Fort Berthold and Standing Rock (U.S. Army Corps of Engineer 2015: 81). There are not tribal entities like tribal governments, councils, culture committees, or specific THPO offices listed in this appendix.

Environmental Assessment

The EA begins with a summary titled Mitigated Finding of No Significant Impact (FONSI), signed by John W. Henderson, Colonel, Army Corps of Engineer dated July 25, 2016. The main concept behind examining at the EA is to see if there are comparative differences, especially when dealing with or mentioning tribes/tribal entities. After reviewing the EA references of the Standing Rock Sioux Tribe (SRST) are more prominent for example, the tribe is mentioned in the opening summary; the SRST reservation boundaries are included in mapping; the tribe was added as a segment to the special interest section, Section 3, regarding Native American Consultation grew significantly; and SRST was added to the Environmental Justice section. Lastly, I want to examine Appendix K which contains the Notice of Availability of the Draft EA for comment.

Mention of tribes, specifically SRST gets attention within the first couple pages of the EA rather than tucked into a later section, characteristic of the Draft EA. On page 2 in the Summary of Environmental Impact, reads as follows:

The Standing Rock Sioux Tribe (SRST) and other tribal governments object to the pipeline and its alignment because the proposed route crosses under Lake Oahe a few miles upstream of the SRST water intakes. The tribes argue that District did not adequately consult on the DAPL pipeline alignment. The EA establishes that the District made a good faith effort to consult with the tribes and that it considered all tribal comments. In addition, the pipeline will be located under Lake Oahe, and Dakota Access has developed response and action plans, and will include several monitoring systems, shut-off valves and other safety features to minimize the risk of spills and reduce or remediate any potential damages (U.S. Army Corps of Engineer 2016).

USACE may report that consultation requirements have been procedurally met, however SRST tribal members do not feel as though their consultation was neither adequate nor meaningful. I will elaborate more on tribal point of view in a later section of this chapter.

When discussing the Project alternatives, Figure 13 is referenced in both the Draft EA and EA as showing the route alternatives. The alternative's route runs north of Bismarck, ND and the preferred route runs south of Bismarck just adjacent to the SRST reservation boundary. SRST reservation boundary is included in EA's Figure 13. For comparative purposes, this map is depicted in Figure 13. The SRST reservation boundary, along with ancestral territory, if available, should have been included in the original draft of the map.

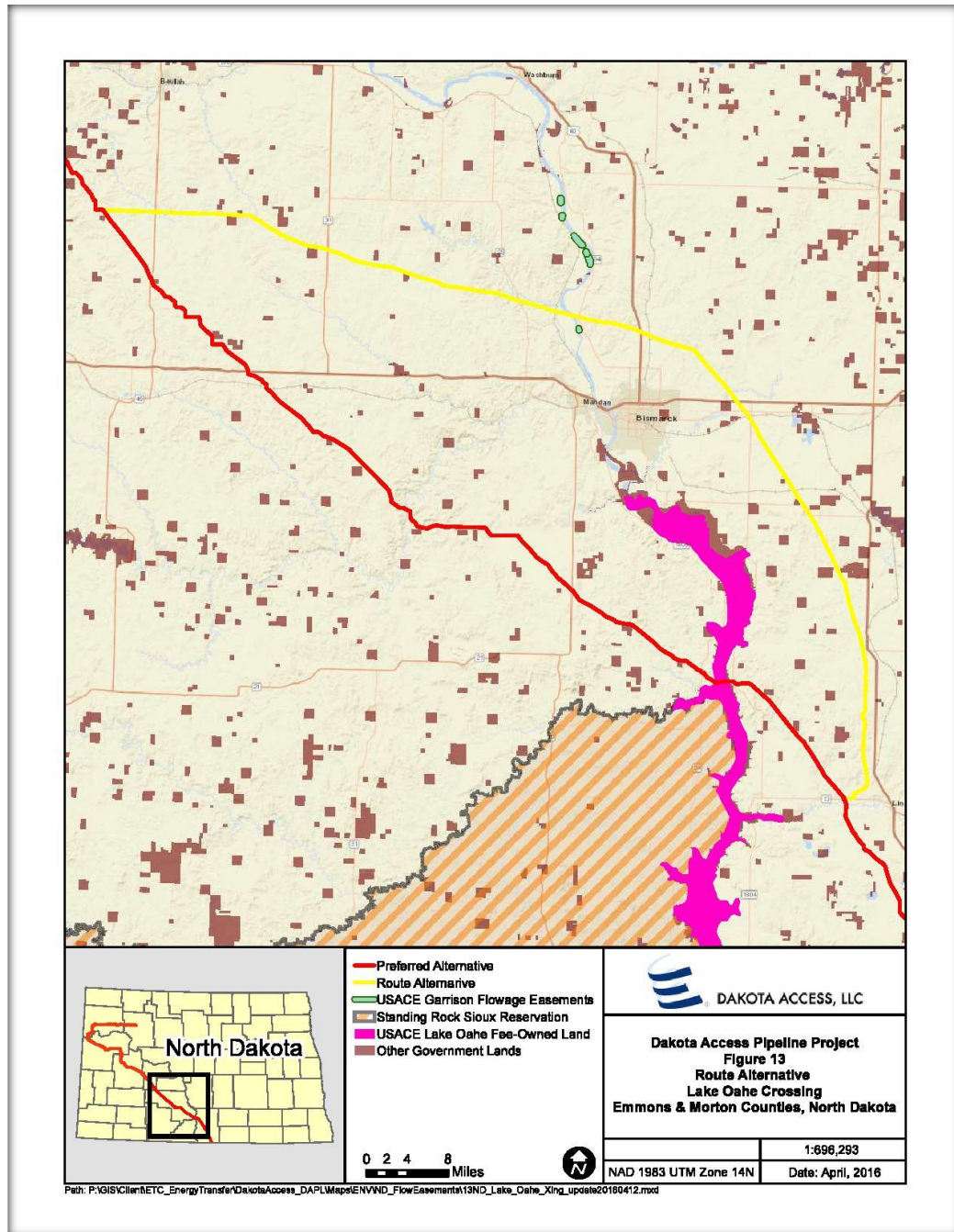


Figure 13. Alternatives and SRST reservation boundary (U.S. Army Corps of Engineer 2016: Figure 13).

Section 3 of the EA is *The Affected Environment and Potential Environmental Impacts of the Proposed Action and No Action Alternative*. It takes into consideration the Project’s impacts on areas like geology and soils, water

resources, vegetation, agriculture, and range resources, wildlife, and aquatic resources as well as other important resources. The Standing Rock Sioux Reservation was added to segment 3.6.3 titled Recreation and Special Interest Areas in the Land Use and Recreation section. It starts off with, “The Standing Rock Sioux Reservation is situated at the border of South Dakota and North Dakota, approximately 0.55 miles south of the Lake Oahe Project Area” (U.S. Army Corps of Engineer 2016: 75). It basically outlines the demographics, attractions within the reservation boundaries, terrain, and wild game for Standing Rock Sioux Reservation. What’s interesting is the use of the word ‘attraction’ to describe Sitting Bull’s grave site, Standing Rock Monument, Fort Manuel, and the Lewis and Clark Legacy Trail. Would calling them historic sites call for more consideration on cumulative impacts?

Additionally, in section 3, segment 3.7 is for Cultural and Historic Resources and Native American Consultation; cultural resource studies and Native American consultations are included in this segment. Significant differences of this section between the Draft EA and EA are that the Native American Consultation (3.7.2) grew from a one paragraph section, and the October 2014 meeting with SRST THPO is not mentioned. This more robust segment reaches as far back as 2004 for a Programmatic Agreement (PA) for the Operation and Management of the Missouri River Main Stem System for Compliance with the National Historic Preservation Act; this PA apparently outlines the processes though with affected tribes, agencies, and interested parties are consulted by the corps (U.S. Army Corps of Engineer 2016: 79). It

also references EO 13175 extensively but lacks the details on its implementation. The Draft EA referenced a letter written to SRST THPO but, it is not mentioned in the EA. Rather it states “coordination/consultation was initiated for the Proposed Action beginning in October 2014, with an information letter regarding a preliminary geo-testing of the proposed Oahe crossing alignment” (U.S. Army Corps of Engineer 2016: 80). This letter was sent to tribes, THPOs, SHPOs, agencies and interested parties to solicit information relevant to the proposed action. There is no appendix or table associated or mentioned in this segment listing tribes or tribal entities contacted. Another letter was sent in July 2015 to solicit information about the Lake Oahe crossing and states USACE and North Dakota SHPO concurred that “No Historic Properties Subject to Effect” (U.S. Army Corps of Engineer 2016: 80).

Lastly, segment 3.9 Environmental Justice in section 3, adds Standing Rock Sioux Reservation (3.9.2.1). Alarming, the first sentence states, “It is recognized that the Standing Rock Sioux Tribe is downstream of the Lake Oahe Crossing, which has a high population of minorities and low-income residents” (U.S. Army Corps of Engineer 2016: 85). It asserts Dakota Access sought out tribal engagement, especially SRST, starting in October 2014. The pipeline is deemed a non-Environmental Justice issue because it does not cross the SRST reservation boundaries and maintains a boundary of at least 0.5 miles away from the reservation boundaries at the Lake Oahe crossing. It goes on to emphasize, that even if effects of the Proposed Action were to impact any one, it would impact private-lands, non-low-income populations, and non-minority populations

(U.S. Army Corps of Engineer 2016: 86). This segment rules out the tribe as an environmental justice issue by emphasizing its location of the crossing, asserting their effort to consult, and maintaining SRST is not disproportionately impacted.

Although tribal consultation is mentioned, there is very little detail as to the tribal entities that were contacted. Appendix K contains those contacted to submit comments, but none of them are tribal governments or THPO offices, just BIA offices. Procedurally, Dakota Access has fulfilled its obligation of consultation, but the meaningfulness behind it is very questionable. The Draft EA barely has tribes on its radar and the EA seems to be taking a defensive strategy in covering its tracks with SRST.

Presidential Influence and Legal Findings

DAPL has been addressed by both the Obama and Trump administration. Additionally, SRST has taken legal action towards the Project. SRST dealt with the success and setbacks with presidential administrations and legal cases. I will discuss how each President impacted the DAPL project. Although SRST did not have major legal success, I will emphasize one small legal victory.

Presidential Impacts

In the heat of the battle between tribes, water protectors, and their allies with DAPL, USACE, and seemingly Morton County Sheriff's Department, the Project has been weighed in on by two presidential administrations. Like KXL, the timing of the project fell at the cusp of a changing administration. Obama's

administration required a deeper analysis of DAPL and ordered a full Environmental Impact Statement (EIS) and pushed for a robust consideration and discussion of alternative locations, tribe water intakes, and treaty rights. Falling at the change of administration, as soon as Trump took his place, the Project was pushed forward with a stroke of a memo and executive order citing its service as national interest.

An attempt to halt the Project for further analysis came in a joint statement from the Department of Justice, the Department of the Army, and the Department of the Interior about the case of Standing Rock Sioux Tribe v. U.S. Army Corps of Engineer on September 9, 2016. Even though the Draft EA and EA assert their consultation efforts, the statement pushes for formal consultation. Regarding construction it states, “construction of the pipeline on Army Corps land bordering or under Lake Oahe will not go forward at this time” (U.S. Department of Justice 2015). It goes on to request government-to-government consultation to address “(1) within the existing statutory framework, what should the federal government do to better ensure meaningful tribal input into infrastructure-related review and decision and the protection of tribal lands, resource, and treaty rights; and (2) should new legislation be proposed to Congress to alter that statutory framework and promote those goals” (U.S. Department of Justice 2015). These statements hint to the fact that SRST’s treaty rights may not have been fully considered and consultation may not have been meaningful.

Later a memo came from Jo-Ellen Darcy, Assistant Secretary of the Army, that denied the permit to cross at Lake Oahe. In paragraph 3, it states the tribe

relies on Lake Oahe for drinking water and irrigation, and portions of the lake are downstream on reservation land. SRST tribal members utilize this area and retain water, hunting, and fishing rights. The memo picks apart the EA because parts were marked as confidential and said to have been, “withheld from the public or representatives and experts of the Standing Rock Sioux Tribe” (Department of the Army 2016: 1). The memo even cites the joint statement I previously discussed. According to the memo:

“On December 2, 2016, the Omaha District Commander convened representatives of the Standing Rock Sioux Tribe, the applicant, and Omaha District staff. The express purpose of the meeting was to review the Tribe’s concerns that were expressed in its October 29, 2016 letter. The group also discussed over 30 additional terms and conditions that could further reduce the risk of a spill or pipeline rupture” (Department of the Army 2016: 2).

This is the type of engagement that should have happened during the Draft EA and EA consultation. If the concerns of the SRST had been addressed properly, perhaps there would not have been such a display of resistance of the Project.

This memo calls for three major factors:

- (1) A robust consideration and discussion of alternative locations for the pipeline crossing the Missouri River, including, but not limited to, more detailed information on the alternative crossing that was considered roughly ten miles north of Bismarck;

- (2) Detailed discussion of potential risk of an oil spill, and potential impacts to Lake Oahe, the Standing Rock Sioux Tribe's water intakes, and the Tribe's water rights as well as treaty fishing and hunting rights; and
- (3) Additional information on the extent and location of the Tribe's treaty rights in Lake Oahe (Department of Army 2016: 3).

The memo is calling for meaningful consultation and sees through the Project's procedural method of tribal consultation and dismissal of possible spill impacts on tribal resources.

Once Donald Trump took office, there was a huge political shift. Projects that were considered not to serve public interest gained approval, namely KXL and DAPL. In one day, President Trump signed an official memo and executive order pushing DAPL forward. In the two-page memo for the Secretary of Army regarding the construction of the Dakota Access Pipeline, President Trump states, "I believe that construction and operation of lawfully permitted pipeline infrastructure serve the national interest" (Trump 2017b: 1). This memo is satisfied with the 2016 EA's findings and would like to move forward and urges USACE to "review and approve in an expedited manner" (Trump 2017b:1). To back up the memo, Trump issued an executive order the same day.

In a two-page four-part executive order, Trump addresses expediting environmental reviews and approvals for high priority infrastructure projects. In the purpose section of the EO, it goes as follows:

Too often, infrastructure projects in the United States have been routinely and excessively delayed by agency processes and

procedures. These delays have increased project costs and blocked the American people from the full benefits of increased infrastructure investments, which are important to allowing Americans to compete and win on the world economic stage. Federal infrastructure decisions should be accomplished with maximum efficiency and effectiveness, while also respecting property rights and protecting public safety and environment (Trump 2017a:1).

It is counterproductive to want infrastructure projects expedited yet try to respect property rights, protect public safety, and the environment. Just like the DAPL project is showing, much can be missed a lot in haste invoking an amount of public backlash. This EO makes Americans into worker bees that need to thrive off the world economic stage. Adding to the urgency of project approval, in the Deadline section, Trump writes, “All agencies shall give highest priority to completing such reviews and approvals by the established deadlines using all necessary and appropriate means” (Trump 2017a: 2). The wording is tricky, it feels like an open invitation to creative interpretation of this EO. “Necessary and appropriate” don’t necessarily mean ethical and just.

Legal Glimmer of Hope

Despite an override of an EO, tribes proved a point in their legal actions towards the Project. *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineer*, Civil Action No. 16-1534 (JEB), Judge James E. Boasberg released a 91-page

finding on June 14, 2017. Even though there has not been a major legal success for SRST, this case points out that not everything was considered when issuing a FONSI. Exact wording from Boasberg suggests, “Although the Corps substantially complied with NEPA in many areas, the Court agrees that 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” (Standing Rock Sioux Tribe v. U.S. Army Corps of Engineer, Civil Action No. 16-1543(JEB) [2017]). So they may have fulfilled their NHPA requirements, but failed to fully consider environmental impacts of an oil spill.

The court found:

The Corps’ decision on July 2016, and February 3, 2017, not to issue an EIS largely complied with NEPA. Yet there are substantial exceptions: the agency failed to adequately consider the impacts of an oil spill on Standing Rock’s fishing and hunting rights and on environmental justice, and in February 2017, it did not sufficiently weight the degree to which the project’s effects are likely to be highly controversial in light of critiques of its scientific methods and data (Standing Rock Sioux Tribe v. U.S. Army Corps of Engineer, Civil Action No. 16-1543(JEB) [2017]).

An oil spill was and still is a main concern for SRST members. Even though SRST was added to a segment of the environmental justice segment, the court points out there is a clear failure to consider impacts of an oil spill, should one occur, and tribal natural and cultural resources would be adversely affected. This

point should have been a major consideration as SRST would be disproportionately impacted.

Procedural or Meaningful

Doing homework does not necessarily mean the homework is done well. Ideally, consultation was sought out in the DAPL Project but if the consultation has been meaningful, an entity such as the Department of Justice would not be able to poke holes into the findings of the EA and call for meaningful tribal input. From the many displays of resistance to the project, it is obvious that the tribes felt as though their input and concerns were not addressed. The Project went from a FONSI, to having to prepare a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS). Indicating, more aspects of the Project's impacts need to be considered. I will discuss input desires of the NOI and follow up with input from a member of SRST on the tribe's consultation.

The NOI was published in the Federal Register Notices on January 18, 2017. The supplementary information states, "The Tribe protests the crossing primarily because it relies on Lake Oahe for water for a variety of purpose, the Tribe's reservation boundaries encompass portions of Lake Oahe downstream from the proposed crossing, and the Tribe retains water, treaty fishing, and hunting rights in the Lake" (Department of the Army 2017: 5544). This is a stark contrast from the EA. The EA makes it seem like since the pipeline has a buffer of more than a 0.5-mile radius, that it is not even close to the SRST reservation

boundary, nor does it consider impacts of tribal cultural resources downstream in the event of a spill.

The desires of the NOI are summarized in three main areas to analyze:

- 1) Alternative locations for the pipeline crossing the Missouri River;
- 2) Potential risks and impacts of an oil spill, and potential impacts to Lake Oahe, the Standing Rock Sioux Tribe's water intakes, and the Tribe's water, treaty fishing, and hunting rights; and
- 3) Information of the Tribe's treaty rights in Lake Oahe (Department of the Army 2017: 5544).

The Army almost admits it did not have meaningful consultation with tribes. The NOI states, "On December 4, 2016, the Army determined that a decision on whether to authorize the pipeline to cross Lake Oahe at the proposed location merits additional analysis, more rigorous exploration and evaluation of reasonable siting alternatives, and greater public and tribal participation and comments as contemplated in the Council on Environmental Quality's (CEQ's) NEPA implementing regulations" (Department of the Army 2017: 5544). At the time of the NOI, the greater public and tribal nations across the country were aware of the project, and those on either side of the Project's development had a strong opinion about its construction.

Ladonna Allard is a tribal member of SRST and has land adjacent to the pipeline. In fact, the Sacred Stone Camp was erected on her land on the SRST reservation. Ladonna has been instrumental in continuing awareness of the Project's violation of their obligation to consider the impacts on tribal resources

and rights. Ladonna Allard visited the University of Montana on November 2, 2017 as the keynote speaker for the 12th Annual DiverseU symposium. Ladonna spoke from her heart as she did not have a prepared written speech for the night's address. Ladonna spoke about the unplanned erection of the Sacred Stone Camp that was built in resistance to the Project. She discussed the Project's destruction of sacred sites and recalled how Water Protectors were assaulted with guard dogs, water cannons, tear gas, and percussion grenades during clashes with Morton County Sheriff's Department. As Ladonna wrapped up, she opened the floor for questions, so I took the opportunity to ask her about consultation. I explicitly asked her if she felt as though the tribe received adequate consultation. She delighted in the question, and responded as follows:

I love that question. No, we never received consultation. I will tell you that in 2014 when Dakota Access came to talk to the tribe, I was there. And in the meeting, because I remember Waste Win Young, Amazing Warrior Woman, Dakota Access showed us their video and told us what they wanted to do. And at that time, the Chairman of the tribe, Dave Archambault Jr., stood up and said, "We do not support this pipeline." And Waste Win from the Tribal Historic Preservation said, "We do not support this pipeline." And every tribal department stood up and said the same. And then 'Wash' (Waste Win Young) said, "Don't eat their food!" because they brought food, so we went out and got soup and frybread for everybody because we wouldn't eat their food, we wanted them to

know that we did not support them. So, in 2014, in 2015, we got excluded from the meetings. We started sending emails demanding to speak. And then we realized that they had to get a permit from the Army Corps of Engineers and the Army Corps has an obligation to consult with tribal nations and so we went to the Army Corps to try to get our voices heard, and that's how we started working with the Army Corps. Dakota Access put in the papers that we refused to talk to them, we wouldn't come to the meetings, but it was exactly opposite. We continued, and did I tell you I have compulsive obsessive issues? So, I saved every one of their emails, every one of their correspondence, every one of their documents, and I still have them. Is that bad? We will be filing in the next couple months here, human rights violations between the Governor of North Dakota, Morton County, Tiger Swan, the eleven militia companies, and the Army Corps of Engineers. And as you know Colonel Henderson was removed right after this because he started listening to us. We are still standing (LaDonna Allard, personal communication, November 2, 2017).

SRST seems to be a victim of what Thomas King refers to as the "triple-I" approach. According to King, the inform, seek input, and ignore process goes as follows, "set up a meeting in some local public facility, explain the project in great detail to the public, stonily absorb such comments as the (by now stunned and somnolent) attendees can launch, and then say good night" (King 2013: 75). If

King can put a name to this type of pattern, then there is something flawed with the procedural consultation; meaningful consultation would engage with a tribe for a more complete analysis of potential impacts.

In the case of fishing and water rights the SRST and other tribes are concerned with, King's thoughts from several years ago seem apropos, "What do you call those places? Are they historic properties? You can try to call them that, but the response is likely to be that the analyst's archeologist looked the place over and determined there was nothing there because, after all, the sandbars from which you fish move around all the time. Hence, there are no intact archaeological deposits, and so, you're told, there's nothing eligible for the National Register of Historic Places and hence no historic property" (King 2013: 75). The Draft EA mentions showing the area to SRST THPO and stating there were no known tribal sites at the Lake Oahe crossing; but the EA failed to mention discussion of sites along the pipeline path to Lake Oahe or the impacts of natural resources in the event of the pipeline rupturing. This action may have been detrimental to the consultation engagement. Since the EA is issued as a FONSI, Allard likely attended a meeting that was basically an informational meeting telling tribes what the plan is rather than engage and ruin the EA's FONSI status which could potentially delay or stop the project.

The call for the NOI brings up a very important point for the tribes: tribal treaty rights. The pipeline may not cross SRST reservation boundary but the pipeline does cross unceded tribal territory. Figure 14 illustrates Sioux territory under the 1851 Fort Laramie Treaty. The tribe has not ceded the land and

therefore USACE is utilizing its plenary power over this unceded Sioux territory. My hope is that the NOI recognized this aspect of the tribe's treaty rights. Just because the project gave the buffer of at least a half a mile away from the reservation boundary, the project itself was still infringing on territory that was rightfully given to them as Sioux nations and other tribes were being ushered into reservations. This project is subsequently violating tribal sovereignty by disrespecting the government-to-government engagement that should transpire from these types of major infrastructure projects. Moreover, such violations dishonor diplomatic relationships developed over the last decade.

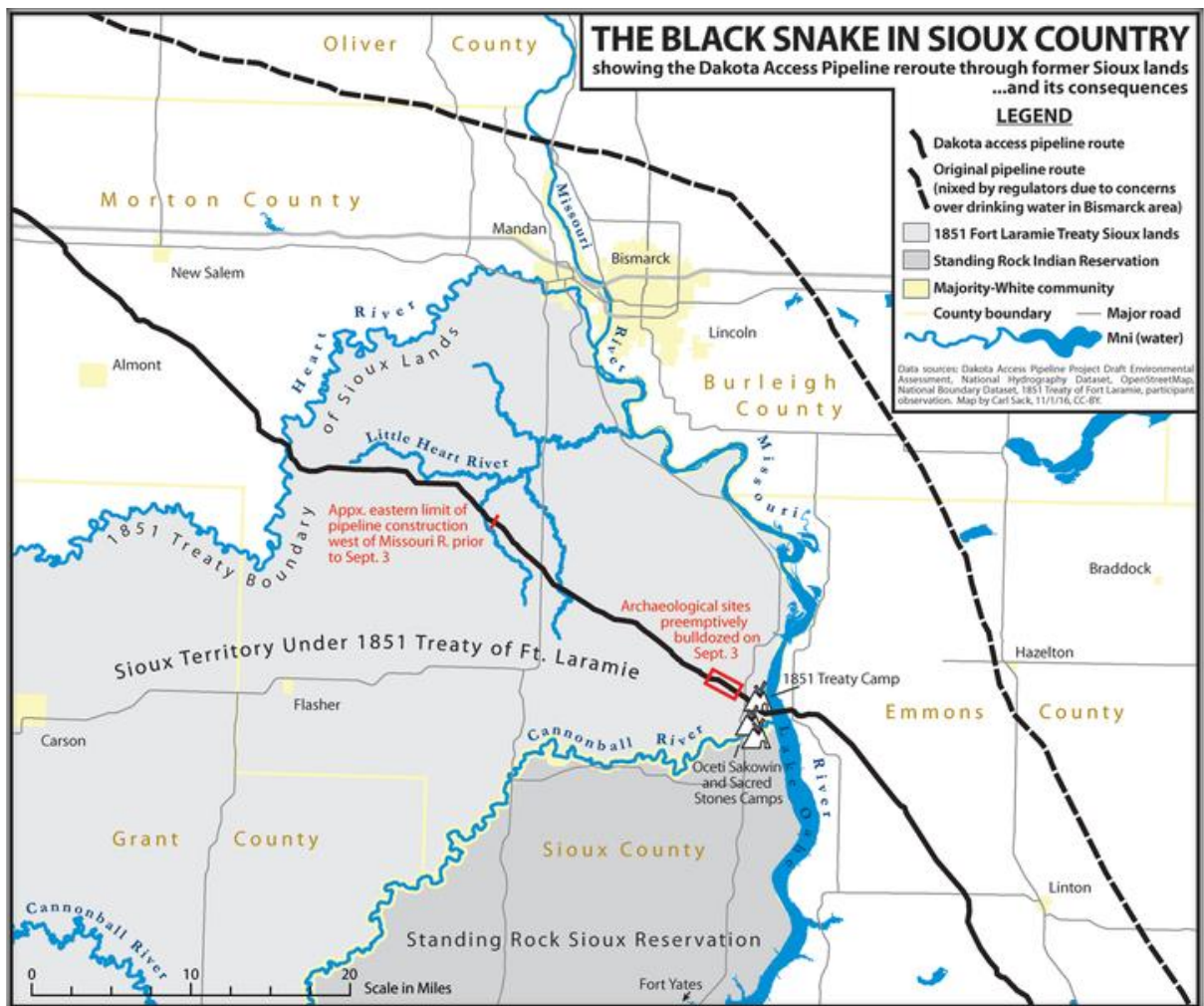


Figure 14. Unceded SRST Tribal Territory (Sack 2016).

Dakota Access Pipeline Project Case Study Conclusion

SRST's plight with the DAPL Project resonated with many other tribal nations nationally and globally. Many tribes signed letters of support to SRST and sent delegations to the resistance camp near Cannon Ball River to fly their tribal nation flags. The #NoDAPL movement was supported by celebrities and politicians alike. However, despite every effort to have full impacts assessed, the Project gained the support it needed as a new Presidential administration took office. According to a Politico article, "Trump has been an investor in Energy Transfer Partners, the project's developer, and his May financial disclosure said he has investments with Phillips 66, which owns a quarter of the pipe" (Wolff 2016). Trump's assertion about the Project serving national interest also serves his personal financial interest.

This project was flawed to begin with and continued despite every effort of the SRST to stop its construction. SRST did not support the project and pushed for mitigation of potential spill impacts. Instead they were discredited and served with procedural consultation, but as Allard stated, they still stand. According to Floris White Bull, pipelines have been prophesized for generations and it was said this black snake would bring death but the youth, followed by mothers, then the warriors would rise up and it is up to the seventh generation to defeat the snake (AWAKE, A Dream from Standing Rock 2017).

Chapter 5: De'ek Wadapush Case Study

Cave Rock, known as De'ek Wadapush to the Washoe Tribe of Nevada and California, has become a model for effective consultation in the world of cultural resource management (Advisory Council on Historic Preservation 2017). This robust landmark is located by Lake Tahoe, a vacation hot spot in the state of Nevada.

Since De'ek Wadapush is located in such a highly visited tourist destination, to accommodate the traffic, two road ways were blasted into the giant rock formation that houses Cave Rock. As the sport of rock climbing grew, the formation served as an exhilarating course for adventurous climbers. The Washoe saw their sacred site first desecrated through the destructive blasts that created tunnels for the highway, and after that, it was repeatedly defaced by climbing enthusiasts. This chapter focuses on the journey De'ek Wadapush took to earn its place on the National Register of Historic Places (NRHP) in January 2017 (Advisory Council on Historic Preservation 2017). I will discuss use of this place by the Washoe and the climbing community. Second, I will review the response taken by the Forest Service Lake Tahoe Basin Management Unit (FS). Finally, I will discuss the success of De'ek Wadapush as a legal case and for the National Historic Preservation Act's (NHPA) Section 106 process.

De'ek Wadapush (Cave Rock)

De'ek Wadapush is a large rock land formation holds a significant place for tribal and non-tribal visitors to the Lake Tahoe area. To the Washoe, it holds

spiritual power and has served as the center of their world for eons. As Lake Tahoe grew as an attraction for tourism, rock climbers flocked to De'ek Wadapush for the challenging ascent. Even through the debate between traditional climbers and rock climbers known as "rap-bolters", the climbing community fought to keep the site open for their recreational use.

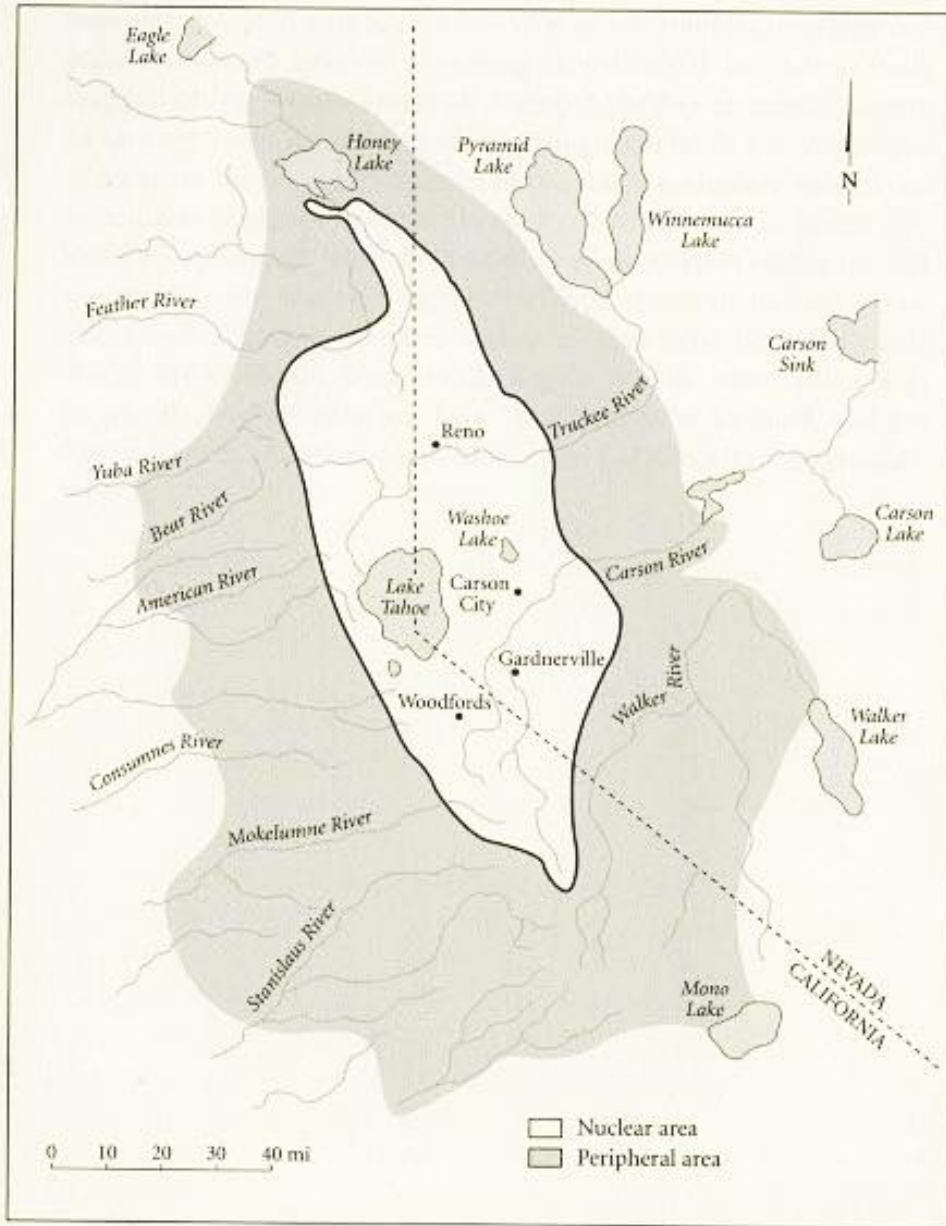
Tribal Significance

According to the Washoe, they are the original inhabitants of Da ow aga (Lake Tahoe) and all the lands surrounding it (U.S. Forest Service 2009). De'ek Wadapush means "rock standing grey" in the Washoe language and has been a highly spiritual place for the Washoe. Figure 15 depicts Washoe ancestral homeland territory and as the map shows, Da ow aga is clearly in the heart of their past permanent living sites.

The Washoe people believe that the waters of Lake Tahoe "breathe life into the land, plants, fish, birds, animals, and people around it." Historically, Cave Rock provided Washoe shamans, or doctors, with the most important source of power in the Tahoe basin. Tribal members continue to believe that proper use of Cave Rock is necessary to maintain the health and welfare of Washoes and non-Washoes alike (Makley and Makley 2010: 2).

The Washoe have been stewards of this territory long before the arrival of any others and have done so for the wellbeing of all creatures, humans, and future generations. "Since the beginning of history, De'ek Wadapush 'rock standing

grey' (Cave Rock), has been revered as a sacred place to be respected and *avoided* by all people except for Washoe healers seeking spiritual renewal" (U.S. Forest Service 2006).



Traditional Washoe homelands. The white "nuclear" area represents lands used on a regular basis where communities kept permanent village sites. Gray "peripheral" areas include extended hunting, gathering, and trading lands. Notice Lake Tahoe in the center. Versions of this map have been used since the boundaries were officially set during the Indian Claims Commission case in 1948.

Figure 15. Washoe Traditional Homeland (Makley and Makley 2010: xiv).

Because this is such a revered place, when the roads were blasted into the cave, the Washoe felt it was a direct threat to their place of religious practice. Out of respect for the place, some tribal members avoid the tunnels, choosing to drive around the lake rather than through the tunnels through the cave. Figure 16 shows the first tunnel that was blasted out in 1931. The second road was constructed in 1957; the Washoe were not consulted by road builders or officials in either instance (Makley and Makley 2010: 3).

No one consulted-or even notified-the Washoe tribe regarding the proposed tunnel. The tribe was still fragmented at that point and lacked a recognized government. In any case, the whites, as a rule, did not talk to the Washoes. In Minden [Nevada], for example, just outside the Lake Tahoe basin, Indians worked for whites, but those found within the town limits when the evening siren sounded were subject to arrest (Makley and Makley 2010: 19).

The Washoe faced a direct threat to their existence and identity with their sacred place in direct sight of expansion and tourism.



Figure 166. The first tunnel (Herz 1940s).

Climbing Aspirations

Recreational activities like hiking, picnicking, fishing, and stargazing have drawn non-Natives to Da ow aga for the past few decades; however the ideal year-round weather and climbing challenges attract increasing number of international sport climbers to the region (Sacred and Land Film Project 2017). In 1995, the Forest Service conducted a survey that revealed 7 million U.S. citizens participated in rock climbing from 1994-95 and roughly 100,000 try it for the first time every year (Makley and Makley 2010: 40). Free climbing was being over run by the mid-1980s as climbers began to secure bolts for sport climbing. This method of climbing is referred to as “rap bolting.” “Traditionalists viewed the new sport climbing as overly competitive and environmentally destructive” (Makley

and Makley 2010: 41). Traditionalists seemed to be foreshadowing what would become one of the major factors in deciding the site's future, which will be further discussed in next the section.

Rap bolting created forty-six different climbing routes that entailed hundreds of bolts and other affixed apparatuses crisscrossing De'ek Wadapush (Sacred Land Film Project 2017). One rap bolting climber, Dan Osman, catapulted his climbing career by creating and promoting his difficult climbing courses. Osman also took it upon himself to add "improvements" to the sacred cave. Spending:

three hundred hours paving the Cave Rock floor. He moved boulders with a come-along winch hooked to bolts in the cave walls. Hundreds of bags of cement and countless buckets of water were hauled along the narrow pathway up to the cave. He rearranged the gravel and rockfall and set flat stones, seamed with mortar, as flooring. After his efforts the cave had the look of an elegant lakefront terrace (Makley and Makley 2010: 44).

Osman fell when creating a climbing route, and the exhilaration of falling and being caught by his safety gear helped him delve into his passion for falling. He then used De'ek Wadapush to perfect his falling.

In 1997, climbing was halted when management of the area came into question between the FS, Nevada Department of Transportation, and Nevada State Parks. FS determined they had jurisdictional management of the property and found it could be nominated for the NRHP (Makley and Makley 2010: 46).

This threw a wrench in traditional climbing and rap bolter climbing freedom at De'ek Wadapush. Between the two major interests in the site, with the intervention of the FS, "a site whose significance was nearly drowned in the roar of traffic has been given its own chance to speak" (McHugh 2003).

The Role of the Forest Service and Final Record of Decision

The Washoe officially alerted land management and regulatory agencies of De'ek Wadapush's sacredness and significance in 1993 when the tribe learned of a project aiming to improve and extend the boat ramp at Cave Rock Lake Tahoe State Park.

The tribe also shared its concerns regarding threats to Cave Rock's traditional religious and cultural significance by rock climbing and that the Tribe considered such activity to be desecration of and damage to a most sacred site. During the FS's development of the Forest Plan, Cave Rock was mistakenly identified as private land therefore not assigned a management prescription. A title search revealed that Cave Rock is in fact located on FS land. When the FS understood it had management responsibilities, it initiated an amendment to its management plan, which was also a requirement of the TRPA's [Tahoe Regional Planning Agency] 1993 permit to allow improvements to the state park boat launch. The purpose of the amendment was to protect the Cave Rock heritage resource and regulate uses to preserve the historic and cultural

characteristics that made the property eligible for listing in the NRHP (Advisory Council on Historic Preservation 2017).

Between notification in 1993 and the issuance of the Record of Decision (ROD), the FS had changed supervisor three times. The torch of responsibility was passed from Robert Harris, who received the initial notification, to Juan Palma, who issued a Draft Environmental Impact Statement (DEIS), and finally, to Maribeth Gustafson, who issued the Final Environmental Impact Statement (FEIS) and ROD. Through each supervisor, different actions were taken. Harris put a temporary ban on climbing, Palma lifted the ban that only lasted a few months, and Gustafson put an end to climbing at the sacred site. Even though supervisors changed, the FS was able to gain their bearings in the situation to properly assess the needs and impacts of each stakeholder.

The FS initiated consultation with the Washoe, the climbing community, and other interested parties in 1998 and in 1999, the ACHP joined consultation (Gleichman 2003). Through this collaborative approach, along with careful assessment on behalf of Gustafson, an effective FEIS and ROD was eventually issued by the FS.

FEIS

The section *Significance of Cave Rock* in the FEIS lays out the significance for the Washoe as well as the climbers. Other significance discussed in this section revolves around the site's eligibility for the NRHP because of Washoe traditions tied to the landscape as well as being considered a Historic

Transportation District. More importantly for the Washoe, “In addition, it was found eligible for listing as a TCP (Traditional Cultural Place) because of its association with at least two acknowledged Washoe practitioners, and for its ability to evoke ethnographic significance” (U.S. Forest Service 2002: 1-2).

A noteworthy addition to the FEIS is Alternative 6. This is ultimately the preferred alternative of FS. The U.S. Forest Service (2002) states how the goal of this alternative is maximum immediate protection of heritage resources outlining the following requirements:

- Allow only nonmotorized recreation activities outside the highway easement;
- Allow installation of improvements (e.g., parking, sanitation, or access facilities) for resource protection purposes only, not for user comfort and convenience. Please note no such facilities are needed or proposed for development on the FS land in the Cave Rock area at this time;
- Remove all climbing hardware, concrete and rock improvements from the Cave’s floor and entrance, and non-historic graffiti to the extent feasible. Forbid the installation of climbing hardware or other improvements at Cave Rock;
- Restrict activities that are not consistent with the historic period (through 1965, the year of Henry Rupert’s death) at Cave Rock;

- Prohibit physical damage or defacement of Cave Rock, including the installation of rock climbing bolts (U.S. Forest Service 2-16 – 2-17).

Rupert was a revered Washoe medicine man and his use of De’ek Wadapush during the mid to late 20th century is the reason to use 1965 as a perimeter. That was the year of Rupert’s passing and his association was a significant contribution to the area’s NRHP eligibility because of his understanding and medicinal use of the site and his cross cultural and ethnic influence (Makley and Makley 2010: 82). FS takes the time to lay out all 6 alternatives. Figure 17 gives a summarized comparison that clearly lays out how each activity can be managed in each alternative.

Activity	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5	Alternative 6
Climbing	Allowed without restriction. New bolting and route installation permitted. Existing routes can be maintained without any specific permission from Forest Service.	Most existing routes may be climbed. No new bolt installation (except maintenance) or creation of new routes. Maintenance of existing routes by climbers only with prior permission of the Forest Service. No climbing using artificial light.	Sport climbing prohibited following phase-out (6 years). Traditional rock climbing allowed. No preprotected routes; no bolting.	No climbing as soon as legally possible following the decision.	No climbing following phase-out period (3 years).	No climbing as soon as legally possible following the decision.
Disposition of Existing Climbing Bolts and Other Climbing Equipment Left at Cave Rock	All 47 distinct routes (60 if hybrids are counted) and 325 anchors may be used. Existing equipment and new equipment remaining not subject to regulation.	Approximately eight routes and 50 bolts to be removed. Carabiners, draws, and slings on remaining bolts to be camouflaged.	Remove all bolts and other climbing equipment, as is technically feasible, during a phase-out period of 6 years.	Remove all bolts and other climbing equipment, as is technically feasible, as soon as legally authorized to proceed under the decision.	Remove all bolts and other climbing equipment, as is technically feasible, within three years following the decision.	Remove all bolts and other climbing equipment, as is technically feasible, as soon as legally authorized to proceed under the decision.
Future Route Removal	No additional routes to be removed.	Additional routes to be removed if not camouflaged within 6 months following the decision.	Remove approximately 50 bolts per year for 6 years until all are removed.	No routes remaining to remove.	All routes to be removed within 3 years.	No routes remaining to remove.
Commercial Activities	People could apply for commercial special-use permits. No permits existing.	No special-use permits existing, and all requests for commercial operations would be rejected.	No special-use permits existing, and all requests for commercial operations would be rejected.	No special-use permits existing, and all requests for commercial operations would be rejected.	No special-use permits existing, and all requests for commercial operations would be rejected.	No special-use permits existing, and all requests for commercial operations would be rejected.

Figure 17. Alternative comparison in FEIS (U.S. Forest Service 2002).

ROD

The FS issued its Record of Decision on August 5, 2003 and state the entity's decision to implement Alternative 6. The U.S. Forest Service (2003) states De'ek Wadapush is eligible for listing on the NRHP as a TCP, historic transportation district, and archaeological site and management purpose as follows:

Protect the Cave Rock heritage resource and regulate uses there in a manner that, consistent with mandates and restrictions of law and regulation, preserves historic and cultural characteristics that make the property eligible for listing in the National Register, the Forest Service has a responsibility to access and manage for the appropriateness of activities occurring at Cave Rock (EIS, page 1-1) (1).

Although Alternative 6 relinquishes climbing, interests of those stakeholders were seriously considered. Ultimately, the banning of climbing is allowing for Washoe and non-Washoe to appreciate its presence for futures to come. To illustrate the consideration of all interested party's needs, Figure 18 summarizes major issues compiled through public comment and consultation.

Issue 1 – Impact of Climbing at Cave Rock. Is Cave Rock, as a sacred site to the Washoe Tribe, defaced and devalued by sport climbing and other activities that physically alter the rock formation? Is the Washoe Tribe excluded from its heritage in the Tahoe Basin area by activities such as sport climbing at Cave Rock?

Issue 2 – Privacy. Should Cave Rock be managed exclusively for use by Washoe spiritual leaders?

Issue 3 – Cultural and Historic Resources. Should the values that make Cave Rock eligible as a TCP, historic transportation district, and archaeological site be protected from activities that may adversely affect the integrity of these resources?

Issue 4 – Land Ownership. Should Cave Rock be returned to the Washoe Tribe to enable reconnection with its traditional lands?

Issue 5 – Climbing. Should climbers have the right to climb at Cave Rock without restriction?

Figure 18. Summary of significant issues (U.S. Forest Service 2003).

Success

Even though climbers lost one of their most challenging ascents in the region, this case proved to be a success for the Washoe's continuation and preservation of their cultural identity by gaining maximum immediate protection of heritage resources. This section focuses on De'ek Wadapush's success as a legal case and for Section 106. The case set legal precedent as the FS decision was challenged in court. As for Section 106, this can serve as a model for supervisory management positions and how effective and meaningful consultation can be implemented.

Legal Precedents

The climbing community reached out to the Access Fund, a climber's advocacy group founded in 1989 based out of Boulder, Colorado (Makley and

Makley 2010: 6). The Access Fund proved to be a staunch opponent for the tribe to face due to its financial resource backing. Upon hearing the ROD, the Access Fund filed a lawsuit in December 2003 challenging the climbing ban. "It was not until January 28, 2005, a year and a half after Gustafson announced her decision, that the case came before District Court Judge Howard McKibben in Reno (Makley and Makley 2010: 87). Judge McKibben did not have a predictable past in tribal cases, however he ruled in favor of the FS as Gustafson carefully outlined and followed her agency's regulations. Believing that other climbing areas were now in jeopardy, the Access fund decided to appeal to a higher court. The Ninth Circuit Court of Appeals announced it upheld McKibben's ruling on August 27, 2007, as Circuit Judge M. Margaret McKeown wrote the court's opinion, and Judge J. Clifford Wallace affirmed the ruling (Makley and Makley 2010: 92).

Section 106

The Section 106 consultation meeting provided all the parties with a greater understanding of the complexity and diversity of interests in Cave Rock. In the end, the FS chose a Management Direction with input from and listening to all of the consulting parties committed to the historic resources (Washoe Tribe of Nevada and California 2017: 4).

This particular excerpt is from the Tribe's newsletter and seems to concur that Section 106 was a successful implementation. The ACHP echoed its success as follows:

The amended Forest Plan ended incompatible uses, like rock climbing, while maintaining compatible public access and use, such as hiking and picnicking. As a final recognition of the importance of Cave Rock, the FS nominated De'ek Wadapush for listing on the NRHP in January 2017 (Advisory Council on Historic Preservation 2017).

Although climbing is not allowed anymore on the site, climbers still have access to its location through several rock climbing websites, however, these websites notify climbers of the site's historical significance and emphasize the climbing restriction.

Conclusion

Although it took time for the Washoe Tribe to gain their government-to-government status in order to be able to fully protect their most influential cultural space, the Washoe's persistence paid off. Ironically some of the area's historical events that deterred the Washoe from experiencing De'ek Wadapush helped boost its protection efforts. The blasts to create the roads in the mid-20th Century allowed for the area to be protected as a historic transportation district once the construction reached its 50-year anniversary of its road construction. That and the climbers' consideration of De'ek Wadapush as an attraction allowed for it to

be considered as an important place to preserve for future climbers to appreciate the history and evolution of their sport.

Most importantly, the careful consideration of all interested parties and attention to detail allowed FS supervisor Gustafson to reach a reasonable management strategy. The strategy was sound enough to pass through two court challenges as judges could not penetrate Gustafson's reason and adherence to FS regulations. This case shows how effective and meaningful consultation can be successfully utilized to help protect tribal landscapes, cultural places, and ancestral lands. With the support of the Forest Service, the Washoe can rightfully regain stewardship of De'ek Wadapush.

Chapter 6: Discussion and Conclusion

Each of the case studies went through the NEPA process, however their outcomes were very different. Each case had its own unique path with the NEPA process and various governmental influences, negative or positive. More importantly, they illustrate the importance of tribes asserting their rights to government-to-government relationships with agencies in order for project proponents to take more consideration for concerns discussed in consultation processes.

Meaningful or Procedural?

In the case of the KeystoneXL Project, project proponents have an actual map of tribes consulted. From the look of this map's representation, six of the seven reservations in Montana were contacted for consultation. The rest of the tribes consulted are located in central and mid-west areas of the United States. The FEIS lacks details of the actual interactions and roles tribes had during the consultation process. From the articles written by tribal newspapers in the Montana and Dakota areas, tribes widely disapproved of the KXL. The Fort Peck Tribes have a water plant serving more than tribal members. If the pipeline breaches at the designated Missouri River crossing site, the water source that supplies the tribal water treatment plant will be compromised.

Without a doubt, the type of consultation characterized in this project is merely procedural. The more reasonable Obama administration explicitly rejected the project. To the dismay of many tribes and environmental activists,

the ambitious Trump administration revived the project with a stroke of a pen and approved the final necessary permit.

The Draft EA and EA for the DAPL Project bring up some very enigmatic consulting techniques. The Draft EA mentions a meeting with the SRST THPO who stated there were not tribal archaeological resources at the crossing at Lake Oahe. The Draft EA did not go into any discussion of cultural spaces or natural resources that may be effected. The fact that the crossing is near a shore line can be problematic for any archaeological resource because water erosion can expose and wash away artifacts.

What's interesting is that the Obama administration pushed for further analysis but was quickly overridden because of timing regarding the change in Presidential administration. Not only was an EIS pushed by the Obama administration; an EIS was also called for by the United States District Court. From the way SRST member Ladonna Allard explains it, the tribe was very eager to consult on this project but was discredited and shut out. Sadly, despite a court decision substantiating the call for further analysis, the project was pushed forward anyway. This project is an example of procedural consultation.

For De'ek Wadapush, even though the timeline for protection of the site took several long and interesting turns, the tribe was able to preserve their cultural site. This took a big effort on behalf of the tribe and Forest Service. This case study serves as a positive example of how consultation was basically built from scratch for the Washoe and Forest Service. The case study differs from the

Keystone XL project in the sense that it heavily relies on the Section 106 process to come to an ultimate decision on the site's use and protection level designation.

Not only were the tribe's concerns considered in the site's use and protection level designation, but the recreational community expressed their concerns and presented compelling reasons as to why the site should be open for recreational uses. The site proved to be important to tribal and non-tribal communities alike, albeit for different reasons.

Although there are some cosmetic alterations and giant holes bored through the De'ek Wadapush, the perseverance and patience of the Washoe paid off when they were able to nominate the site to the NRHP. This is an exemplary case of meaningful consultation. Although the Forest Service leadership changed, three times, the agency still managed to engage with the Washoe meaningfully.

Contacting the THPO and SHPO Offices

As mentioned in the introduction, I contacted a few THPO offices and the Montana SHPO to see if I could get any documentation or substantiation to the consultation claims in either of the pipeline projects. Of the three THPO offices I contacted, only one gave an immediate clear response that they did not participate in any of the consultation processes. Another one of the offices had undergone a change in the THPO as well as change in the email server. Upon contacting the THPO office, I was directed by the office administrative assistant to send her my inquiries and she would run them by the previous acting THPO.

Although the THPO did not specify which pipeline consultation it was, it was indicated that they were minimally engaged in consultation; apparently, there was a protest happening at the meeting and the THPO delegates were asked to leave. As for the third THPO office contacted, I was informed the THPO did not come to the office regularly due to health restrictions and I was instead given his direct phone number. I was able to speak with him on two occasions and he gave me his email to send my inquiries to but he has yet to respond to my emails. I have since learned that this THPO has retired from his position.

When I contacted the Montana SHPO office, they were not sure about having any consultation records because they typically refer project proponents to tribes directly. However, I did receive the KXL Programmatic Agreement from the SHPO office as that was the only relevant document they had for either pipeline project.

I also contacted the Nevada SHPO office because I wanted to follow up with the nomination of De'ek Wadapush as a traditional cultural property (TCP). I thought by seeing how the site was nominated, it may serve as a model for future TCP nominations for tribally significant TCPs. However, I was unable to obtain the nomination which was somewhat of a relief. The relief is in the fact that the Washoe tribe is given full discretion on what is shared in the nomination. Since De'ek Wadapush is so revered by the tribe, they have the right to publicly share their nomination or not.

Suggestions

During my research studies, a fellow colleague shared a study on Traditional Cultural Landscapes (TCL). This study was conducted by Bureau of Ocean Energy Management's (BOEM) Pacific Outer Continental Shelf (POCS) Regional Office, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Protected Areas (MPA) Center and NOAA's Office of National Marine Sanctuaries (ONMS), two independent Tribal Facilitators, and representatives from the Tribal Historic Preservation Offices (THPO) of the Makah Tribe of Washington, the Confederated Tribes of Grand Ronde Community of Oregon, and the Yurok Tribe of California and submitted on November 30, 2015 (Ball et al.2015). This is a type of CRM model that can be run along with Section106 of NHPA and NEPA but focuses more on tribal input and values. The model allows for a fourth step that can circle back for modifications, see Figure 19.

The National Marine Sanctuaries website has an excellent summary on implementing the TCL model. It breaks down guidelines for tribal pre-consultation and engagement, project planning, *pre-consultation* and *collaboration*, and offers templates for Indigenous data collection, and process of applying TCL. The TCL model has key words and concepts that are positive steps towards effective tribal CRM methods. Words that I have not seen elsewhere and am relieved to see are pre-consultation and collaboration. The National Marine Sanctuaries breaks down some of the steps as follows:

Do your homework:

1. Research the tribe's culture;

2. Research the history of the tribe and its current and historical relationship to the Federal Government;
3. Understand what is and what is not appropriate within tribal culture;
4. Understand the tribal perceptions of time and allow enough time to form ongoing relationships;

Consultation and collaboration:

1. Understand tribal authority and representation;
2. Respect tribal sovereignty, self-determination, and protocols;
3. Respect tribal representation of tribal interests and practices;
4. Keep leadership (or funding organization) appraised of developments (if they are not actively involved in the process);
5. Adapt current information in light of new information from tribes (n.d.).

This work took the concept of meaningful consultation and gave it definable parameters. The guidelines are clearly outlined which helps avoid turning consultation into an obligatory checklist. Collaboration is also an effective verb that is hardly used in the major CRM laws but should be shared widely.

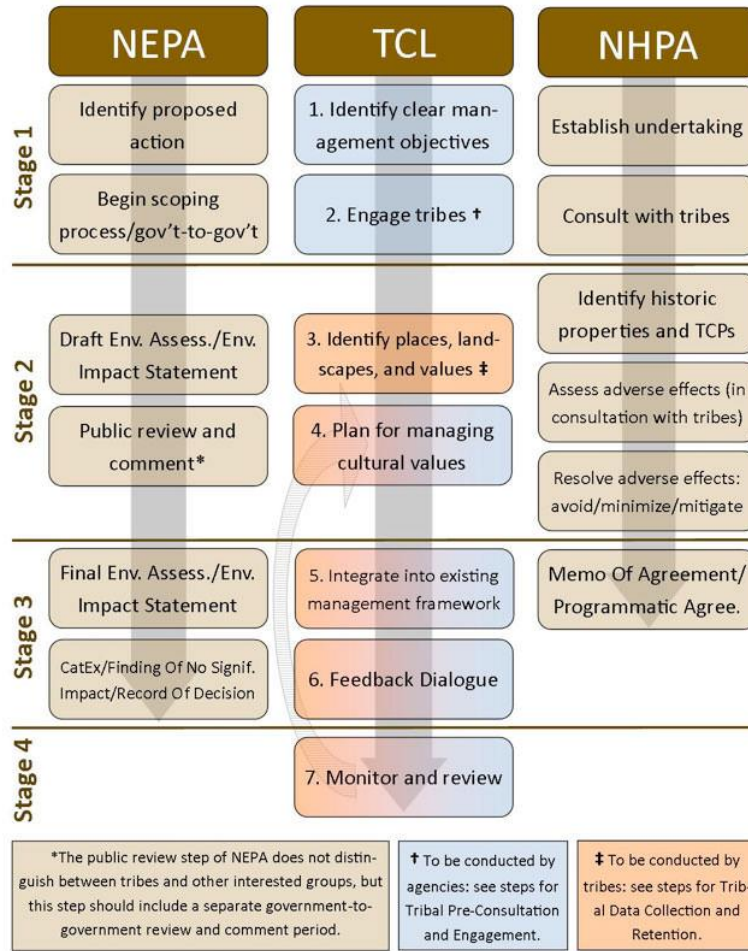


Figure 19. TCL Model (Ball Et Al. 2015: 18).

Collaboration can also happen in the THPO realm of the CRM world. From the contacts I have made with the THPO offices, I understand how returning a call or email from a pesky graduate student can be mundane compared to the major responsibilities they carry. However, they should utilize students as their own way to organize and promote their own local tribal culture programs.

Salish Kootenai College has the only Tribal Historic Preservation (THP) degree program in the nation; there students can earn an A.A. and/or B.A. in THP. Usually an Indigenous archaeology field school is offered, however, it is not

always a guarantee. This is where THP students, along with college and graduate students from other universities and colleges, UM Anthropology students for example, can be of service to THPO offices. The students can take on internships for credit if payment is not in the THPO budget. THPO offices can offer field school opportunities for projects that occur in the summer which students can help facilitate. THPO can also offer apprenticeships. Through collaborating with students, advancements in technology can boost effective communication efforts, preservation of artifacts, promote antiinvasive field techniques, and promote continuity of ongoing governmental engagement. Such apprenticeships and collaborative field schools can further improve consultation in the future.

Works Cited

Advisory Council on Historic Places

- 1966 National Historic Preservation Act of 1966, October 15.
<http://www.achp.gov/nhpa.pdf>, accessed January 31, 2018.
- 2013 Section 106 Regulations Summary.
<http://www.achp.gov/106summary.html>, accessed January 31, 2018.
- 2017 106 Success Story: Land Use Management Planning Protects Historic De'ek Wadapush (Cave Rock).
<http://www.achp.gov/docs/cave-rock.pdf>, accessed November 28, 2017.

Aubry, Michele

- 1997 Abandoned Shipwreck Act (ASA). National Park Service, U.S. Department of the Interior.
<https://www.nps.gov/archeology/tools/laws/ASA.htm>, accessed February 13, 2018.

AWAKE, A Dream from Standing Rock

- 2017 Myron Dewey, Josh Fox, and James Spione, dirs. 89 min. Digital Smoke Signals, International WOW Company, and Morninglight Films. United States.

Ball, David, Et Al.

- 2015 A Guidance Document for Characterizing Tribal Cultural Landscapes, November 30. BOEM.gov.
<https://www.boem.gov/2015-047/>, accessed February 13, 2018.

Capriccioso, Rob

- 2017 No Trump Consultation on Dakota Access & Keystone XL Pipelines. Indian Country Today, January 28.

Clinton, William J.

- 1996 Executive Order No. 13007: Indian Sacred Sites, May 24. Advisory Council on Historic Preservation.
<http://www.achp.gov/EO13007.html>, accessed February 2, 2018.
- 2000 Executive Order 13175-Consultation and Coordination with Indian Tribal Government, November 6: 2806-2809.
https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Req-EO13175tribgovt.pdf, accessed February 2, 2018.

DAPLPipelineFacts.com

2017 Dakota Access Pipeline Facts. <https://dapipelinefacts.com/>, accessed November 28, 2017.

Department of the Army

2016 MEMORANDUM FOR Commander, U.S. Army Corps of Engineers, SUBJECT: Proposed Dakota Access Pipeline Crossing at Lake Oahe, North Dakota, December 2. <https://www.army.mil/e2/c/downloads/459011.pdf>, accessed November 28, 2017,

Department of Transportation

n.d. Section 106 of the National Historic Preservation Act (NHPA). <https://www.dot.ny.gov/i81opportunities/section106>, accessed January 31, 2018.

Encyclopedia Britannica

2018a Dawes General Allotment Act. <https://www.britannica.com/topic/Dawes-General-Allotment-Act>, accessed May 26, 2018.

2018b Indian Removal Act. <https://www.britannica.com/topic/Indian-Removal-Act>, accessed May 26, 2018.

Gleichman, Carol

2003 Nevada: Preservation of Cave Rock, Lake Tahoe. Advisory Council on Historic Preservation website. <http://www.achp.gov/casearchive/caseswin03NV.html>, accessed November 17, 2017.

Goare, Aja

2017 Fort Peck tribe to meet with TransCanada about Keystone XL Pipeline concerns. KTVQ, February 21.

Goetting, Nathan

2010 The Marshall Trilogy and the Constitutional Dehumanization of American Indians. *Indigenous Policy Journal* XXI (3): 1-17. <http://www.indigenousspolicy.org/index.php/ipj/article/view/19/60>, accessed May 26, 2018.

Govtrack

2017 S. 1017 (93rd): Indian Self-Determination and Educational Reform Act. <https://www.govtrack.us/congress/bills/93/s1017/summary>, accessed May 26, 2018.

Hargo, Susan

- 2003 Harjo: American Indian Religious Freedom Act at 25, August 1. Indian Country Today.
<https://indiancountrymedianetwork.com/news/harjo-american-indian-religious-freedom-act-at-25/>, accessed May 26, 2017.
- Herz, James R.
 1940s Cave Rock tunnel. University of Nevada, University Libraries website. <http://unrspecoll.pastperfectonline.com/photo/646C6875-C3D4-4DE9-911B-677086393189>, accessed November 17, 2017.
- Hult, John
 2016 How did Dakota Access become world's largest protest?, November 21. USA Today.
<https://www.usatoday.com/story/news/nation-now/2016/11/21/94249100/>, accessed April 24, 2018.
- Indian Country Today
 2013 Full Test of the Great Plains Tribal Chairmen's Association Statement Against the Keystone XL Pipeline. Indian Country Today, May 17.
- Judge, Monique
 2016 #NoDAPL: Unarmed Water Protectors Met with Violent Militarized Police Response, November 22. The Root.
<https://www.theroot.com/nodapl-unarmed-water-protectors-met-with-violent-mili-1790857843>, accessed April 25, 2018.
- King, Thomas F.
 2002 Thinking about cultural resource management: essays from the edge. AltaMira Press, Walnut Creek, CA.
 2013 *Cultural Resource Laws and Practice*. AltaMira Press, Lanham, MD.
- Library of Congress
 1993 Religious Freedom Restoration Act of 1993, November 16.
<https://www.congress.gov/bill/103rd-congress/house-bill/1308>, accessed February 2, 2018.
- Lindsay, David
 2018 Government Affairs and International Government Affairs Update, January. Society for American Archaeology.
<http://campaign.r20.constantcontact.com/render?m=1117132954034&ca=ba67f2db-65e8-4343-a006-968a04746b9c#Top>, accessed February 3, 2018.

- Makley, Matthew, and Michael J. Makley
2010 Cave Rock: Climbers, Courts, and a Washoe Indian Sacred Place. Reno, Nevada: University of Nevada Press.
- McHugh, Paul
2003 The Battle over Cave Rock. SF Gate, September 25.
<http://www.sfgate.com/sports/article/The-battle-over-Cave-Rock-2586115.php>, accessed November 28, 2017
- McManamon, Francis P.
2000a Archaeological and Historical Preservation Act (ARPA). National Park Service, U.S. Department of the Interior.
<https://www.nps.gov/archeology/tools/laws/AHPA.htm>, accessed January 31, 2018.
2000b The Archaeological Resources and Protection Act of 1979 (ARPA). National Park Service, U.S. Department of the Interior.
<https://www.nps.gov/archeology/tools/laws/ARPA.htm>, accessed February 13, 2018.
2000c The Native American Graves Protection and Repatriation Act (NAGPRA). National Park Service, U.S. Department of the Interior.
<https://www.nps.gov/archeology/tools/laws/nagpra.htm>, accessed February 13, 2018.
- Miller, Ryan W.
2016 How the Dakota Access pipeline battle unfolded, December 4. USA Today.
<https://www.usatoday.com/story/news/nation/2016/12/02/timeline-dakota-access-pipeline-and-protests/94800796/>, accessed April 24, 2018.
- NCC Staff
2017 On this day, all Indians made United States citizens, June 2. National Constitution Center. <https://constitutioncenter.org/blog/on-this-day-in-1924-all-indians-made-united-states-citizens>, accessed February 13, 2018.
- National Marine Sanctuaries
n.d. Implementing a TCL Approach. National Ocean Service.
<https://sanctuaries.noaa.gov/tribal-landscapes/tcl-approach.html>, accessed February 13, 2018.
- National Park Service
2002 National Register Bulletin: How to Apply the National Register Criteria for Evaluation.

- https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_2.htm, accessed January 31, 2018.
- 2017 The Antiquities Act of 1906, February 14. U.S. Department of the Interior. <https://www.nps.gov/subjects/legal/the-antiquities-act-of-1906.htm>, accessed May 26, 2018.
- Omaha World-Herald
2017 Timeline: Keystone XL pipeline. Omaha World-Herald, January 24.
- Pauli, Hunter
2017 Montana Tribes Fight Keystone XL Pipeline, Revived by Trump. RollingStone, April 19.
- Petronzio, Matt
2016 How young Native Americans used social media to build up the #NoDAPL movement, December 7. Mashable. <https://mashable.com/2016/12/07/standing-rock-nodapl-youth/#eLwHS2DCzqqX>, accessed April 25, 2018.
- Puckett, Karl
2017 Montana tribes seek Keystone route change. USA Today, February 20.
- Reuters
2017 Regulators Approve Keystone XL Pipeline in a Big Win for President Trump, November 20. <http://fortune.com/2017/11/20/regulators-approve-keystone-xl-pipeline-in-a-big-win-for-president-trump/>, accessed April 25, 2018.
- Sack, Carl
2016 A #NoDAPL Map: This pipeline could endanger the drinking water of millions. HuffPost News, December 2. https://www.huffingtonpost.com/entry/a-nodapl-map_us_581a0623e4b014443087af35, accessed November 17, 2017.
- Sacred Land Film Project
2017 Cave Rock. <http://sacredland.org/cave-rock-united-states/>, accessed November 10, 2017.
- Sears Ore, Kathryn
2017 Form and Substance: The National Historic Preservation Act, Badger-Two Medicine, and Meaningful Consultation, September 24. Public Land and Resources Law Review: Vol. 38, Article 7.

<https://scholarship.law.umt.edu/plrlr/vol38/iss1/7/>, accessed November 15, 2017.

Stapp, Darby C., and Michael S. Burney

2002 Tribal Cultural Resource Management: The Full Circle to Stewardship. AltaMira Press, Walnut Creek, CA.

Texas Historical Commission

2011 Legal Reasons for Consultation, May.

<http://www.thc.texas.gov/project-review/tribal-consultation-guidelines/legal-reasons-consultation>, accessed February 13, 2018.

TransCanada

2017a About the Project. *The Project-Keystone XL Pipeline*. TransCanada Corporation. Accessed 17 April, 2017. <http://www.keystone-xl.com/kxl-101/project/>

2017b Community, Aboriginal and Native American Relations. *Community, Aboriginal and Native Relations*. TransCanada Corporation. Accessed 17 April, 2017. <http://www.transcanada.com/662.html>

2017c Respecting the Diversity of Indigenous Cultures. Indigenous Relations-Keystone XL Pipeline. TransCanada Corporation. Accessed 17 April, 2017. <http://www.keystone-xl.com/engagement/indigenous-relations/>

Trump, Donald J.

2017a Executive Order: Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, January 24. <https://assets.documentcloud.org/documents/3410441/EXPEDITING-ENVIRONMENTAL-REVIEWS-and-APPROVALS.pdf>, accessed November 17, 2017.

2017b MEORANDUM FOR THE SECRETARY OF ARMY, SUBJECT: Construction of the Dakota Access Pipeline, January 24. <https://assets.documentcloud.org/documents/3410448/Construction-of-the-Dakota-Access-Pipeline.pdf>, accessed November 17, 2017

2017c Presidential Memorandum Regarding Construction of the Keystone XL Pipeline, January 24. <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-construction-keystone-xl-pipeline/>, accessed April 25, 2018.

United States Congress

1994 H.R. 4230-103rd Congress: American Indian Religious Freedom Act Amendments of 1994. GovTrack.us.

<https://www.govtrack.us/congress/bills/103/hr4230>, accessed February 13, 2018.

United States Department of Agriculture

n.d. National Environmental Policy Act (NEPA). Forrest Service.
https://www.fs.usda.gov/Internet/FSE_MEDIA/stelprd3822590.gif,
accessed February 2, 2018.

United States Environmental Protection Agency

2017a National Environmental Policy Act Review Process. EPA.
<https://www.epa.gov/nepa/national-environmental-policy-act-review-process>, accessed February 2, 2018.

2016 Summary of Executive Order 12898- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, October 17. <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>, accessed February 2, 2018.

2017b What is the National Environmental Policy Act? EPA.
<https://www.epa.gov/nepa/what-national-environmental-policy-act>,
accessed February 2, 2018.

U.S. Army Corps of Engineer

2015 Draft Environmental Assessment: Dakota Access Pipeline Project Crossings of Flowage Easements and Federal Lands.
<https://cdm16021.contentdm.oclc.org/digital/collection/p16021coll7/id/2426>, accessed November 28, 2017.

2016 Mitigated Finding of No Significant Impact: Environmental Assessment Dakota Access Pipeline Project, Williams, Morton, and Emmons Counties, North Dakota.
<https://cdm16021.contentdm.oclc.org/digital/collection/p16021coll7/id/2801>, accessed November 28, 2017.

U.S. Department of Education

2016 Federal Records Act, August 23.
<https://www2.ed.gov/policy/gen/leg/fra.html>, accessed February 2, 2013.

U.S. Department of Justice

2015 Joint Statement from the Department of Justice, the Department of the Army and the Department of the Interior Regarding Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers.
<https://www.justice.gov/opa/pr/joint-statement-department-justice->

[department-army-and-department-interior-regarding-standing](#), accessed November 17, 2018.

U.S. Department of State

- 2008 Keystone Pipeline President Permit. Electronically accessed 25 April 2018. <https://2001-2009.state.gov/r/pa/prs/ps/2008/mar/102254.htm>
- 2011 Final Environmental Impact Statement for the Keystone XL Project, August 26. https://2012-keystonepipeline-xl.state.gov/archive/dos_docs/feis/index.htm, accessed April 25, 2018.
- 2014 Final Supplemental Environmental Impact Statement. Electronically accessed 5 April 2017. <https://keystonepipeline-xl.state.gov/documents/organization/221135.pdf>
- 2017a Department of State Record of Decision and National Interest Determination. Electronically accessed 5 April 2017. <https://keystonepipeline-xl.state.gov/documents/organization/269323.pdf>
- 2017b Presidential Permit for Keystone XL Pipeline. Electronically accessed 5 April 2017. <https://keystonepipeline-xl.state.gov/documents/organization/269322.pdf>

U.S. Forest Service

- 2002 Cave Rock Management Direction FINAL Environmental Impact Statement, Lake Tahoe Basin Management Unit. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5410706.pdf, accessed November 10, 2017.
- 2003 Record of Decision for Cave Rock Management Direction. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsm9_046251.pdf, accessed November 10, 2017.
- 2009 Wa She Shu: “The Washoe People” Past and Present. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5251066.pdf, accessed November 17, 2017.

Washoe Tribe of Nevada and California

- 2017 Historic De’ek Wadapush (Cave Rock) Receives Land Use Management Planning Protection. https://www.washoetribe.us/contents/images/newsletters/march_april_2017_newsletter.pdf, accessed November 28, 2017.

Wilma, David

2000 Wheeler-Howard Act (Indian Reorganization Act) shifts U.S. policy toward Native American right to self-determination on June 18, 1934, August 8. HistoryLink.org.
<http://www.historylink.org/File/2599>, accessed February 13, 2018.

Wolff, Eric

2016 Obama administration blocks Dakota pipeline, angering Trump allies. Politico, December 12.
<https://www.politico.com/story/2016/12/us-army-corps-blocks-dakota-access-pipeline-232172>, accessed November 28, 2017.