

# Native American Rights Fund

## Indigenous Peoples' Rights

<https://www.narf.org/cases/keystone/>

## Campaign and Advocacy

The Rosebud Sioux Tribe and Fort Belknap Indian Community successfully stood strong for years to protect their people, water, and sacred lands from the threat of the Keystone XL Pipeline.

Status: Archived

*The Rosebud Sioux Tribe (Sicangu Lakota Oyate) and the Fort Belknap Indian Community (Assiniboiné (Nakoda) and Gros Ventre (Aaniiih) Tribes) in coordination with their counsel, the Native American Rights Fund, on September 10, 2018, sued the Trump Administration for numerous violations of the law in the Keystone XL pipeline permitting process. The Tribes asked the court to rescind the illegal issuance of the Keystone XL pipeline presidential permit. On October 16, 2020, the court held that the Presidents permit only applied to the border and not the entire pipeline, but that the tribes could sue the Bureau of Land Management (BLM) for its KXL permitting. On November 17, 2020, the Tribes filed a federal lawsuit against the United States Department of Interior and the BLM over their January 2020 issuing of the KXL permit.*

*In a huge success for the tribes, people, and sacred places in the path of the proposed pipeline, TransCanada (TC Energy) announced in June 2021 that it is terminating its Keystone XL pipeline project.*

On Wednesday, June 9, 2021, TransCanada (TC Energy) announced that it is terminating its Keystone XL pipeline project. This is great news for the tribes, people, and sacred places in the path of the proposed pipeline.

Rosebud Sioux Tribe President Rodney M. Bordeaux responded to the announcement, This is great news for the Tribes who have been fighting to protect our people and our lands. The treaties and laws guarantee us protections, and we are committed to see that those laws are upheld.

Fort Belknap Indian Community President Andy Werk also commented, The TransCanada announcement is a relief to those of us who stood in the pipelines path. We were not willing to sacrifice our water or safety for the financial benefit of a trans-national corporation. We are thrilled that the project has been canceled.

On January 20, 2021, President Biden signed an Executive Order revoking the Keystone XL (KXL) pipeline permit issued by the Trump administration. The Rosebud Sioux Tribe (Sicangu Lakota Oyate) and the Fort Belknap Indian Community (Assiniboiné (Nakoda) and Gros Ventre (Aaniiih) Tribes) along with their counsel, the Native American Rights Fund, applaud the Biden administrations action to revoke the illegally issued KXL permit.

Early in his presidency, President Trump made it a priority to issue permits for the questionable KXL project without the required tribal consultation, environmental review, or consideration for treaty rights. It was a blatant attempt to prioritize corporate interests over the health and well-being of the regions citizens and tribes authority to govern their lands and protect their citizens.

Rosebud Sioux Tribe President Rodney M. Bordeaux spoke to the KXL issue, In approving the Keystone XL pipeline, the federal government repeatedly ignored treaty rights, tribal sovereignty, and widespread opposition to push forward the interests of a foreign oil and gas company. Revoking the illegally issued pipeline permit is a start, but we call on the Biden administration to do more, to go further, to respect the rights of Native peoples and improve the relationships between tribes and the federal government.

Our land, water, and people are under direct threat from the KXL pipeline. It is a project that has moved forward without regard to legality or safety. Our water sources are threatened by the dirty tar sand crude, our ancestral homelands are in the direct path of the pipeline, and our people already are suffering the effects of nearby construction worker man camps. Revoking the Trump administrations illegal permit is a necessary first step towards fixing this situation, Fort Belknap Indian Community President Andrew Werk Jr. explained.

NARF [Staff Attorney Matthew Campbell](#) responded to the action, The Rosebud Sioux Tribe and Fort Belknap Indian Community have both poured tremendous effort and resources to defend their treaty rights and the safety of their tribal communities during the last few years. President Bidens action today is an important first step in correcting the callous disregard for tribal sovereignty that has flourished in recent years. We look forward to working with the new administration to ensure that, going forward, Native peoples are included in decision-making discussions and policy development that affect their land, people, and treaty rights.

With President Trumps illegal permit revoked, the Tribes plan to continue their efforts to ensure that TransCanada, and its proposed Keystone XL project, follows all applicable laws that are in place to protect tribal people and ancestral lands.

On November 17, 2020, the Rosebud Sioux Tribe and the Fort Belknap Indian Community, represented by the Native American Rights Fund and co-counsel, [filed a federal lawsuit against the United States Department of Interior \(DOI\) and the Bureau of Land Management \(BLM\) over their issuing of the KXL permit](#). Among other things, the complaint describes:

NARF Staff Attorney Matthew Campbell explained, Before we allow a foreign company to build another pipeline to haul dirty tar sands

across any American soil, we should be taking a hard look at the possible impact on American land, water, health, and safety. For tribal lands, the treaties absolutely require this sort of review. In issuing the Keystone XL permit with shoddy and superficial analysis, the federal government not only didn't do its job, it did not follow the law.

On October 16, 2020, the judge ruled against the Tribes on some claims, finding that the President's permit only applied to the border and not the entire pipeline. The court asked for supplemental briefing on whether the President had the constitutional authority to issue the permit in the first place, which the Tribes are working on now. The court also noted that the Tribes could file a new suit against the Bureau of Land Management given it has approved the pipeline in the remainder of the United States.

On Thursday, April 16, NARF attorneys appeared before Judge Brian Morris of the United States District Court of Montana for oral arguments in *Rosebud Sioux Tribe v. Trump*. In the meantime, the court issued an injunction pursuant to the Clean Water Act in another case that prevents TransCanada from crossing any rivers.

On the same day the Trump Administration announced that up to 240,000 people may succumb to the COVID-19 virus, TransCanada announced it is proceeding with KXL pipeline construction. In fact, TransCanada outlined several activities scheduled for April all along the route of the pipeline, not just at the border. With this construction, workers will descend on the communities along the pipeline's proposed path. TransCanada ignores the threat that this influx of people creates during the COVID-19 pandemic.

In the face of the rapidly evolving COVID-19 pandemic, the Ft. Belknap Indian Community and Rosebud Sioux Tribe [asked the court to grant a temporary restraining order on pipeline construction](#). The Tribes are asking the court to put a short hold on construction until a hearing scheduled later this month.

Fort Belknap has declared a state of emergency on the reservation because of the extremely dangerous COVID-19 pandemic and its threat to the health and well-being of the Gros Ventre and Assiniboine tribal members, said President Werk of the Fort Belknap Indian Community. We are very concerned about TransCanada bringing in outside construction workers from all over to build this pipeline within an hour from our reservation.

Rosebud has issued a curfew, closed businesses, and asked all to shelter in place because of the COVID-19 pandemic. We are joined in a fight against an invisible enemy that we now know is highly contagious before its hosts even show symptoms, said President Bordeaux of the Rosebud Sioux Tribe. Based on these extraordinary circumstances, we ask that TransCanada halt any construction during this pandemic.

A two-week delay in the face of a pandemic would seem like the obvious course of action. Instead, despite the danger to tribal citizens and all of the people living in the area, TransCanada is pushing to quickly build as much of the pipeline as possible. Of course, they can then use this ongoing construction as justification for allowing the project to proceed whether or not the project is legal.

During this time of uncertainty and crisis, NARF is committed to protecting the health, safety, and rights of Native Americans.

In January, TransCanada reported that it would begin Keystone XL pipeline construction in April despite ongoing questions about the project's permitting. These activities could cause irreparable harm to tribal waterways, cultural resources, and minerals in the path of the pipeline's easement.

Therefore, on Monday March 2, 2020, the Fort Belknap Indian Community and Rosebud Sioux Tribe filed a motion for preliminary injunction and asked the court to not allow TransCanada to begin construction of the pipeline while the case is under review. The court's intervention is needed to protect the Tribes' precious lands, water, natural, and cultural resources. Read [the memo in support of preliminary injunction](#).

The Fort Belknap Indian Community and Rosebud Sioux Tribe, represented by the Native American Rights Fund, continued their fight against the illegal permitting of the Keystone XL Pipeline with two filings in the US District Court of Montana. The tribes filed [a response to TransCanada's motion for summary judgment](#) and [a memorandum in support of their own motion for partial summary judgment](#).

In these filings, the Tribes highlight that TransCanada admitted that the Keystone XL pipeline would cross Rosebud mineral estates held in trust by the United States. This undisputed fact, that the pipeline would cross Rosebud mineral estates held in trust, has several legal implications:

The publicly available maps that the Tribes have seen show that the pipeline corridor also would cross Rosebud surface and mineral estates.

According to NARF Staff Attorney Natalie Landreth, What we have seen in these recent filings is that TransCanada's Keystone XL pipeline route crosses Rosebud-controlled lands. If and when TransCanada provides sufficient maps of the pipeline's route, we expect that we will see even more affected tribal lands. These lands are Indian lands. As such, they are protected by treaties as well as tribal and federal laws. As much as they would like to, TransCanada cannot ignore the laws that protect Native American people and lands.

Also in the filings, the Tribes point out that, contrary to defendant's arguments, neither the President's foreign affairs power, nor his role as commander in chief provide him authority to permit the pipeline. The authority to permit the pipeline falls within Congress's exclusive and plenary power to regulate foreign commerce.

On Friday, December 20, 2019, NARF and their clients, the Rosebud Sioux Tribe and the Fort Belknap Indian Community (the Tribes) received some great news from a Montana court. The [federal court denied the United States federal government's and the TransCanada's \(TC Energy\) efforts to dismiss the Tribes' case](#) against the KXL Pipeline.

NARF Staff Attorney Natalie Landreth praised the decision. The court's decision means that ALL of the tribes' claims on the current permits will proceed. The only claims dismissed are the ones that the Tribes conceded should be dismissed because they were based on

an old permit. So this is a complete win for the tribes on the motions to dismiss. We look forward to holding the Trump Administration and TransCanada accountable to the Tribes and the applicable laws that must be followed.

NARF Staff Attorney Matthew Campbell also reacted to the news, Of course, the treaties were agreed to by the president of the United States and ratified by the Senate, so the treaties clearly apply. The court rightly found that today.

Last month, a Keystone Pipeline spill released more than 383,000 gallons of oil half of an Olympic swimming pool. The spill affected 200,000 square feet of wetlands, which could take years to recover if it ever does.

Earlier this year, the Keystone pipeline leaked 1,800 gallons of oil less than half a mile from the Mississippi River. Workers had to excavate sections of the affected pipeline to find and repair the leak.

That leak was nothing compared to the 2017 Keystone spill in South Dakota. It [poured 407,000 gallons almost 3,000,000 pounds of crude oil](#) into the ground. That spill, not far from the Sisseton Wahpeton Oyates reservation, was the second Keystone spill in South Dakota in seven years. This rate of toxic spills is [much more frequent than TransCanada predicted](#) and reported to the federal government. TransCanada **estimated South Dakota spills at no more than once every 41 years.**

Now TransCanada (TC Energy) wants to add more miles to their leaky Keystone Pipeline. The proposed Keystone XL (KXL) Pipeline would cross Nebraska, Montana, and South Dakota, including tribal lands. Of course, TransCanada claims that KXL will be safe, that it will be state of the art. Frighteningly, the KXL pipeline design would only detect 13,000 barrels (535,000 gallons) of tar sands crude leaked in a 24-hour period. The most recent leak, large enough to partially fill a swimming pool, was not big enough to trigger the leak detection system. [This is one of the reasons for the lawsuit.](#) The pipeline is certain to leak (it already has). Those leaks will be undetected unless/until they are huge.

If you are worried about the KXL pipeline, take action now. Only until November 18, 2019, you can comment on the KXL Supplementary Environmental Impact Statement (SEIS).

**<<Comment period is now closed.>>**

at a much higher rate than company estimates. Any new pipeline will leak, it is just a question of when.

Any project that crosses tribal lands must be in compliance with tribal laws and regulations.

The dire climate change findings in the SEIS support the argument against the XL pipeline.

This pipeline will benefit a Canadian company and its shareholders. It's a threat to our climate, our drinking water, and our safety. It has willfully ignored the pipeline's impacts on tribal communities.

Our health and safety should take priority over companies' profits. Do not allow TC Energy and the Trump Administration to ignore their legal and corporate responsibilities to the American people. Take action today.

#HonorTheTreaties

Paramount Network just released [a new mini-documentary entitled Take Action: Protect Our Land](#). The documentary explores the potential impact of the proposed Keystone XL Pipeline on our client, the Fort Belknap Indian Community in Montana.

Today, the United States District Court for the District of Montana, Great Falls Division, heard arguments in *Rosebud Sioux Tribe v. Trump*.

At the hearings, the US government argued that the treaties that the United States signed with tribal nations are not relevant to the Keystone pipeline. In fact, the treaties were created **specifically** for this sort of violation.

When the Tribes negotiated their treaties, they gave millions of acres of land to the United States including, ironically, the land on which the courthouse now stands. In return, they asked that the United States protect their lands from trespass and their resources from destruction. Today, the Presidents of Rosebud Sioux Tribe and Fort Belknap Indian Community were in federal court to invoke their sacred inheritance from these treaties because the KXL pipeline is exactly the kind of depredation the Tribes sought to prevent, NARF Staff Attorney Natalie Landreth explained after the hearings.

At the end of July, the Rosebud Sioux Tribe and the Fort Belknap Indian Community (the Tribes) filed [their response to the defendants motions to dismiss](#) in *Rosebud Sioux Tribe v. Trump*.

The federal government argues that the treaties don't matter. Obviously, that is not the case. Like the US Constitution, treaties are the law of the land, and no one is above that law, said NARF Staff Attorney Matthew Campbell.

Treaties are more than solemn promises between nations. They are also solemn promises between the citizens of those nations. Over the years, the United States government willingly made very specific promises to tribal nations. In exchange for measures like safe passage of emigrants and peaceful construction of the railroads, the US government and tribal nations signed treaties to prevent intrusion on or destruction of tribal nations lands and natural resources. The United States formally agreed, among other things, to keep outsiders off Sioux and other tribal nations territory and protect tribal natural resources. Those treaties are binding to this day, and we expect them to be honored. Rather than honoring these legal obligations, the United States has chosen to blatantly violate them.

When they entered into treaties with the United States, the tribal nations meant to protect their natural resources (water, grasslands, and game) and keep people from crossing their lands. The 2019 pipeline approval violates both of these provisions.

Maps issued by TransCanada (TC Energy) clearly show the proposed KXL pipeline crossing tribal lands. They are proposing to do so without the tribal consent required under the treaty law. [The Tribes argue](#) that the 2019 permit, which would allow a Canadian company (TransCanada) to build another dirty tar sand crude pipeline across American soil, also creates a substantial risk of

The United States must answer to the Tribes for violations of the treaties and be instructed to honor them. NARF will not allow the US government to ignore or forget the agreements made with tribal nations. Neither the president nor wealthy foreign corporations are above the laws of our country.

Hearings on the motion to dismiss were held Thursday, September 12, 2019, in the United States District Court for the District of Montana, Great Falls Division.

On June 6, the Ninth Circuit Court of Appeals dismissed a case that sought to revoke the permit for TC Energys (TransCanada) Keystone XL (KXL) Pipeline. In that case, brought by a coalition of environmental organizations, the District Court had decided that the federal government did not follow the law when it issued its 2017 permit for the pipeline. The District Court blocked pipeline construction until the government and TC Energy met those legal requirements. All construction was stopped.

After the District Courts decision, President Trump took the extraordinary step of revoking the original KXL permit issued by the State Department and issuing a new permit himself. If the Presidents goal was to avoid complying with the District Courts decision in that case, it worked. With the original permit revoked, the Ninth Circuit yesterday decided to dismiss as moot the case based on that original permit. The injunction blocking KXL construction has now been lifted.

However, for the Tribes, the KXL fight is just beginning. The Fort Belknap Indian Community and the Rosebud Sioux Tribe, represented by the Native American Rights Fund, have separately sued TC Energy and President Trump *Rosebud Sioux Tribe v. Trump*. Regardless of the new permit and political maneuvering, the President is required to honor the treaties and the Constitution. And TC Energy still must abide by federal and tribal law. The case is now up to the Tribes, and they will not allow a foreign company to break American law, take land that does not belong to them, ignore the voices and laws of the tribal citizens, and destroy an aquifer that feeds millions of Americans. [See the related statement from Rosebud Sioux Tribe President Bordeaux.](#)

People must understand that the Ogallala Aquifer that this pipeline will cross covers 8 states and waters 30 percent of American crops. It is the largest underground water source in the United States. And the President and TC Energy would like to run a pipeline of highly toxic, cancer-causing sludge called tar sands right through it. The Tribes are taking a stand for their people, their culture, their water and their future, but they also are taking a stand for YOU, said NARF Staff Attorney Natalie Landreth.

Although, TransCanada, now known as TC Energy, has said that it has lost the 2019 construction season for the KXL pipeline, the company has asked the courts to lift the current injunction so that they can immediately begin to build their man-camps and pipe-yards. TC Energy has indicated it will be looking at a very ambitious 2020 construction season to make up for the lost time, as well.

Therefore, the Rosebud Sioux Tribal Utility Commission held public hearings on the proposed TransCanada KXL Pipeline on Tuesday, May 28, and Wednesday, May 29, 2019 at the St. Francis Indian School Gym, 502 Warrior Dr, St Francis, SD 57572.

### **TC Energy Must Comply with Rosebud Law**

Greetings my friends and relatives,

ante wasteya nape iuzapelo (I take your hand in friendship). As the elected President of the Rosebud Sioux Tribe, I write regarding a critical issue affecting not only our Tribe, but all of the United States. The Rosebud Sioux Tribe also known as the Siangu Lakota Oyate is one of the seven tribes that make up the Oeti Sakowin (the Seven Council Fires of the Lakota people). Together with the Fort Belknap Indian Community, we brought a lawsuit to stop the construction of the Keystone XL pipeline through our territories.

We are ensuring that TC Energy (TransCanada) follows and respects our law. We have been mistreated in this process, and TC Energy has never sought or obtained our consent to build a pipeline in our territory, including on lands held in trust by the United States. In granting a permit for the pipeline, the President has ignored his obligation to protect the Rosebud Sioux Tribe in direct violation of the Fort Laramie Treaties of 1851 and 1868, ignored federal right of way and mineral statutes, and ignored basic principles of federal Indian law.

Although TC Energy had twice been denied a permit for the Keystone XL pipeline, on January 24, 2017, President Trump invited TC



Energy to resubmit its application. Once resubmitted, the U.S. State Department did not bother to seek any new information or public comment, but instead quickly granted TC Energy a permit. Now, after the courts have told the United States it must follow the law, President Trump has attempted to circumvent the courts by issuing a new permit. But, the President must comply with the Treaties, and TC Energy must comply with Rosebud law.

TC Energy must follow the law, and that includes our laws and regulations with respect to the construction of this pipeline. Our Land Use, Environmental Protection, and Public Utilities Codes directly apply, and TC Energy has failed to comply with them. To that end, the Rosebud Sioux Tribal Utility Commission will be holding a public hearing on Tuesday, May 28, 2019, and Wednesday, May 29, 2019, to address the Keystone XL pipeline and its impacts on our territory and people. We invite anyone interested in providing testimony to attend. For those of you that will not be able to attend, I ask that you submit a letter about your concerns and in support of our lawsuit.

Like that of the United States, the Rosebud Sioux Tribe also has laws that require us to ensure that any company seeking to build a pipeline in our territory must obtain our consent. We must ensure our people are safe, and that the economic security, health, welfare, and general well-being of Rosebud and our members are protected.

The promises made to the Rosebud Sioux Tribe, as well as the Oceti Sakowin, were broken before the ink on Fort Laramie treaties dried. The lands, water, and promises made in those treaties were paid for, literally, with the blood of our ancestors and relatives. The obligation of the United States to uphold those treaties is paramount, and Keystone XLs current path cannot be approved without the Siangu Lakotas consent.

Heetu yelo. (This is true.)

Rodney Bordeaux

President

The United States District Court for the District of Montana recently accepted an [amended complaint in what will now be known as \*Rosebud Sioux Tribe v. Trump\*](#) (formerly *Rosebud Sioux Tribe v. US Dept of State*). The Native American Rights Fund represents the Rosebud Sioux Tribe and Fort Belknap Indian Community in this case.

In late 2018 and early 2019, the courts repeatedly blocked TransCanadas attempts to start construction on the Keystone XL pipeline. The judge found that the US State Department had not fulfilled its duties to the American people when it issued TransCanada a 2017 permit for the Keystone XL pipeline without the required environmental and safety review. They prohibited any construction until the Trump Administration and TransCanada conduct the necessary review. President Trump did not like these decisions. So, in March he withdrew the State Departments permit and issued his own presidential permit as an attempt to avoid any environmental or regulatory oversight and to circumvent the court decisions.

The new complaint in *Rosebud Sioux Tribe v. Trump* responds to President Trumps March 29 presidential permit. President Trump is now a defendant and the case is now called *Rosebud et al v. Trump, et al*. The Tribes filed this amended complaint (1) to stop the President from trying to circumvent the court and (2) to add claims against TC Energy Corp. (formerly TransCanada Corp.) because maps now show the pipeline corridor crossing tribal territory and water supplies.

President Trump tried to go around the courts, the laws, and the will of the American people, in order to put a foreign-owned pipeline on tribal lands, said NARF Staff Attorney Natalie Landreth. However, maps now reveal that the pipeline will cross tribal lands and water supplies so the pipeline and the president MUST comply with tribal laws and treaties. The Native American Rights Fund is prepared to fight to ensure those treaties are honored and the water is protected.

Importantly, the new complaint also calls on President Trump to protect Native American people. In his recent proclamation, *Missing and Murdered American Indians and Alaska Natives Awareness Day, 2019*, President Trump declared it imperative to end the violence that disproportionately affects American Indian and Alaska Native communities. To that end, the government must examine the potential impact of pipeline construction and man-camps on Native people, especially women and children.

On April 23, 2019, the Rosebud Sioux Tribe and Fort Belknap Indian Community, represented by the Native American Rights Fund, filed [an amended complaint against TransCanada and President Trump](#) over the handling of the Keystone XL pipeline. In addition to extensive violations of law outlined in [the original complaint](#), the new complaint raises the following issues:

**Maps released by TransCanada show the pipeline corridor and access roads crossing Rosebud territory, some of which is held in trust, as well as Rosebuds Mni Wiconi Water system.** The 1868 Treaty of Ft. Laramie and other federal laws requires Rosebud consent to cross Rosebud territory. Rosebud has land use, environmental, and utilities codes that apply, and **TransCanada must comply with Rosebud law on Rosebud land.**

**TransCanada agreed to abide by tribal law.** Fort Belknap has a Cultural Property Act that applies to the pipeline. TransCanada failed to comply with Rosebud and Fort Belknap law.

**New climate change information requires a new environmental impact analysis.** Recent governmental reports contain new data about climate change, which necessitates new analysis.

**The federal government violated the 1851 Treaty of Ft Laramie and 1855 Lame Bull Treaty, in which the US committed to protect against future harm to the tribes natural resources.** The US did not adequately review the pipelines proposed route and whether it crosses tribal territory.

**The federal government must examine potential impacts on the safety and welfare of Native peoples especially women and children.** An influx of itinerant workers, like those required for pipeline man-camps, correlates with increased sexual assaults, domestic

violence, and sexual trafficking. The federal government has a treaty obligation to protect tribal citizens likely to suffer increased rates of violence and abuse.

In an unprecedented action, President Trump has attempted to circumvent the law by issuing TransCanada yet another presidential permit for the Keystone XL pipeline.

This new permit is a blatant attempt to avoid any environmental analysis for the pipeline that United States law and courts have required. President Trump's attempt to circumvent the judicial branch is extremely troubling because he has elevated the profits of a foreign corporation above the will of the American people and the laws of the United States.

The Rosebud Sioux Tribe and Fort Belknap Indian Community have government-to-government treaties with the United States that the President cannot violate. The Tribes are entitled to protect the health and welfare of their people and territory and to ensure that their treaties are upheld.

The Native American Rights Fund and our clients will continue to fight to ensure our treaties are upheld and that the health and welfare of our people is protected.

Back in 2017, the mainline of the Keystone pipeline ruptured in South Dakota outside of the Lake Traverse Reservation, home to the Sisseton Wahpeton Oyate. The spill, more than 400,000 gallons of unprocessed crude, is the seventh largest on-shore spill since 2002. While TransCanada replaced topsoil and reseeded the area affected by the spill, it will take decades for the lasting damage of the spill to be known and remedied.

Last month, the Keystone base pipeline spilled in Missouri; while the spill was caught early and a small amount of crude was lost, the fact that it spilled speaks volumes to the safety of such projects going forward.

NARF stands with our clients, the Rosebud Sioux Tribe and the Fort Belknap Indian Community, in their staunch opposition to the completion of the Keystone XL arm of the pipeline system. The KXL phase of the pipeline cuts directly through the traditional homelands of our client tribes. In addition, the possibility of damaging community water supplies, valuable agricultural lands, and wildlife habitats is not a cost our clients are willing to bear on behalf of a foreign extractive company propping up a dying energy industry. **The cost is too high.**

Rosebud Sioux Tribes President Rodney Bordeaux delivered the South Dakota State of the Tribes address in January. President Bordeaux had this to say about the KXL pipeline:

*There are a great many things that trouble us about this project. Some of the current concerns are rooted in our responsibility to take care of Unci Maka, which is grandmother earth. As you know, our natural resources are finite. Once they are gone and depleted, they are gone. What is missing is an appreciation of the long-term effects of an oil pipeline going through our sacred land*

NARF has two important updates regarding our defense of the Rosebud Sioux Tribe and the Fort Belknap Indian Community against the Keystone XL pipeline. Earlier this week, NARF filed a motion to intervene at the Ninth Circuit Court of Appeals in the *Indigenous Environmental Network v. U.S. Department of State* case regarding the federal permit for the Keystone XL pipeline. See [our request for intervention](#).

NARF Staff Attorney Natalie Landreth said, We believe it's imperative for the voices of our tribal clients to be heard regarding the impacts of the proposed pipeline. Today, as in the past, the Rosebud Sioux Tribe and the Fort Belknap Indian Community drink the water that comes from the rivers and the ground sources to provide for their communities. The water has been there to support the people on their ancestral lands since time immemorial. The water delivery system for the Rosebud Sioux Tribe is called the Mni Wiconi, which translates to Water is Life. On February 11, 2019, an 1,800-gallon spill was detected in Missouri on the main Keystone line, and last year more than 400,000 gallons were spilled from the main Keystone line in South Dakota near a tribal community. We cannot allow another pipeline to be constructed, dangerously close to yet another tribal community, for the benefit of a foreign energy company.

In addition to the intervention, a hearing has been scheduled in *Rosebud Sioux Tribe et al v. United States Department of State et al.* on April 10, 2019, in Montana. This hearing will focus on the United States motion to dismiss. NARF and our clients are confident in our claims against the construction of the pipeline, and we are optimistic the court will not allow this case to be dismissed. See [our original complaint filed](#).

The Keystone XL pipeline would cross the United States border into Montana, then cut through the Great Sioux Reservation, as set forth in the 1868 Fort Laramie Treaty, in South Dakota and finally Nebraska to Steele City where the crude would mix with US crude reserves and continue to Texas for export.

#### **September 26, 2018:**

TransCanada has begun construction of the Keystone XL pipeline near the Rosebud Reservation, just a week after the Rosebud Sioux Tribe (*Sicangu Lakota Oyate*) and the Fort Belknap Indian Community (Assiniboine (*Nakoda*) and Gros Ventre (*Aaniiih*) Tribes) sued the Trump Administration for its illegal approval of the pipeline.

Bulldozers were seen this week grading the land in Tripp County, South Dakota, adjacent to Rosebud lands. Construction has begun despite the fact that there are three lawsuits currently going on. The one filed by Rosebud Sioux last week cites the fact that the Trump Administration has not undertaken any analysis of: trust obligations, the potential impact on tribal hunting and fishing rights, the potential impacts on the Rosebud Sioux Tribes unique water system, the potential impact of spills on tribal citizens, or the potential impact on cultural sites in the path of the pipeline. This is in violation of federal law.

The United States is allowing TransCanada to begin construction even though there has been no review of our treaty rights, hunting and fishing rights, or the impacts to our people, our water, or our environment. We will fight to ensure that federal law is followed.

The Rosebud Sioux Tribe and the Fort Belknap Indian Community intend to move ahead with their claims against the United States and to demand that the United States honor its legal obligations.

The Rosebud Sioux Tribe (*Sicangu Lakota Oyate*) and the Fort Belknap Indian Community (Assiniboine (*Nakoda*) and Gros Ventre (*Aaniiih*) Tribes) in coordination with their counsel, the Native American Rights Fund, on September 10, 2018, [sued the Trump Administration in the U.S. District Court for the District of Montana, Great Falls Division, for numerous violations of the law in the Keystone XL pipeline permitting process](#). The Tribes are asking the court to declare the review process in violation of the Administrative Procedure Act (APA), the National Environmental Policy Act (NEPA), and the National Historic Preservation Act (NHPA) and to rescind the illegal issuance of the Keystone XL pipeline presidential permit.

On March 23, 2017, the U.S. Department of State granted TransCanada's permit application and issued it a presidential permit to construct and operate the Keystone XL Pipeline. This decision reversed two previous administrative decisions and was done without any public comment or environmental analysis. The permitting process was completed only 56 days after TransCanada submitted its application for the third time. The State Department provided no explanation in the 2017 decision for its contradictory factual finding; instead, it simply disregarded its previous factual findings and replaced them with a new one. The reversal came as no surprise. According to a 2015 personal public financial disclosure report filed with the Federal Election Commission, then-candidate Trump held between \$250,000 and \$500,000 worth of stock in TransCanada Pipelines, Ltd. NARF [Staff Attorney Natalie Landreth](#) explains, President Trump permitted the Keystone XL pipeline because he wanted to. It was a political step, having nothing to do with what the law actually requires. NARF is honored to represent the Rosebud Sioux and Fort Belknap Tribes to fully enforce the laws and fight this illegal pipeline.

Snaking its way from Alberta to Nebraska, the pipeline would cross the United States-Canada border in Philips County, Montana, directly adjacent to Blaine County and the Fort Belknap Indian Reservation. The pipeline would cross less than 100 miles from the headquarters of the Fort Belknap Indian Reservation and run directly through sacred and historic sites as well as the ancestral lands of the Gros Ventre and Assiniboine Tribes. In South Dakota, the pipeline would cross through Tripp County, just miles from the boundaries of the Rosebud Indian Reservation and within yards of Rosebud's trust lands and tribal members' allotments. These lands are well within the area of impact for even a small rupture and spill. There are countless historical, cultural, and religious sites in the planned path of the pipeline that are at risk of destruction, both by the pipeline's construction and by the threat of inevitable ruptures and spills if the pipeline becomes operational. Additionally, the Rosebud Sioux Tribe operates its own water delivery system, which is part of the Mni Wiconi Rural Water Supply Project. The pipeline would cross the two sources of water for the Mni Wiconi Project.

Despite all of these facts, throughout the permitting process, there was no analysis of trust obligations, no analysis of treaty rights, no analysis of the potential impact on hunting and fishing rights, no analysis of potential impacts on the Rosebud Sioux Tribes' unique water system, no analysis of the potential impact of spills on tribal citizens, and no analysis of the potential impact on cultural sites in the path of the pipeline, which is in violation of the NEPA and the NHPA.

President William Kindle of the Rosebud Sioux Tribe (Sicangu Lakota Oyate) promised continued vigilance in light of the Nebraska Public Service Commission's decision today to permit TransCanada Corp.'s proposed Keystone XL pipeline to cross that state's lands. The Rosebud Sioux Tribe has retained the NARF to represent its interests with regard to the Keystone XL pipeline.

The pipeline's proposed route crosses through traditional Lakota homelands and treaty territories, and will affect not only the Rosebud Sioux Tribe, but also Native Nations in Montana, South Dakota, and Nebraska. It also endangers the Ogallala Aquifer, which supplies water for Native and non-Native users' residential and agricultural needs on the High Plains in eight states.

The land, water, tribal sovereignty, and governmental services were not given to us in those treaties, President Kindle said. They were bargained for with the blood of our ancestors. We will not dishonor our relatives and unnecessarily endanger our health, safety, and wellbeing. The Rosebud Sioux Tribe will take any and all necessary steps, up to and including litigation, to protect our people, our land and water, and our cultural and historic resources.

As we have seen, spills from such projects can be catastrophic, said NARF [Staff Attorney Matt Campbell](#). The Rosebud Sioux Tribe, just like South Dakota, Nebraska, and Montana, has a duty to protect the health and welfare

of its citizens. NARF will help the Tribe make sure it has considered all of its options for ensuring the safety of the Tribes' citizens, territory, and resources.

This is their land, their water, said NARF [Staff Attorney Natalie Landreth](#). They have laws protecting their water and those laws must be respected. Keystone XL will need permission from the Rosebud Sioux Tribe, so this is not over.

See [the open letter from President Kindle](#) for more information on the Rosebud Sioux Tribes' position.

[Listen to more voices from the community on the NARF YouTube channel.](#)

The Keystone XL (KXL) Pipeline is the proposed Phase 4 of the Keystone Pipeline system, which already is online with a capacity to carry more than 500,000 barrels per day. The XL stands for export limited. If completed, KXL would add another 510,000 barrels of capacity.

Phase 1 of the Keystone Pipeline was permitted in March 2008. Phase 2 and 3 did not require Presidential Permits and were built over several years starting in 2010. Because it crosses the U.S.-Canada border, Phase 4 does require a Presidential Permit; however, it has been met with opposition since its initial proposal. A timeline of the Keystone Pipeline project is below.

Tribes and the United States government sign Treaties of Fort Laramie establishing respective territories.

**February:** TransCanada Corporation proposes the Keystone Pipeline project.

**September:** Canadas National Energy Board approves the Canadian section.

**January:** ConocoPhillips acquires a 50% stake in the project.

**March:** The U.S. Department of State issues a Presidential Permit authorizing Keystone facilities at the U.S.-Canada border.

**September:** TransCanada and ConocoPhillips file an application for the Keystone XL Phase 4 extension.

Pipeline representatives start visiting landowners potentially affected by Keystone XL. Opposition emerges in Nebraska.

**June:** TransCanada announces it will buy ConocoPhillips stake in Keystone.

**March:** Canadas National Energy Board approves the Canadian section of the Keystone XL.

**June:** Phase 1 of the Keystone Pipeline goes online. It runs from Hardisty, Alberta, to Patoka, Illinois.

**June-July:** Increased opposition to Keystone XL includes legislators and scientists speaking out against the project; the Environmental Protection Agency questions the need for the pipeline extension.

**July:** The State Department extends its review of Keystone, saying they need more time for review before a final environmental impact assessment can be released.

**February :** The Keystone-Cushing Phase 2 of the pipeline goes online. It connects Steele City, Nebraska, to Cushing, Oklahoma.

**August:** The State Department releases its final environmental assessment that the pipeline would have a limited environmental impact.

**August-September:** Keystone XL protesters organize two weeks of civil disobedience at the White House. Police arrest approximately one thousand people.

**December:** U.S. legislators pass a bill with a provision saying President Barack Obama must make a decision on the pipelines future in the next 60 days.

**January:** Obama rejects the Keystone Pipeline, saying the December bill did not allow enough time to review the new route. Obama says TransCanada is free to submit another application.

**February:** TransCanada announces it will build Phase 3 of the Keystone Pipeline as a separate project that is not subject to presidential permission, since it does not cross an international border.

**April:** TransCanada submits a new route to officials in Nebraska for approval.

**May:** TransCanada files a new application with the State Department for the northern part of Keystone XL.

**January:** Nebraska Gov. Dave Heineman approves the proposed route for Keystone XL, sending the project back to the State Department for review. Pipeline opponents file a lawsuit against the Nebraska government claiming the state law used to review the new route is unconstitutional.

**January:** The Cushing MarketLink Phase 3a pipeline goes online. It connects Cushing, Oklahoma, to Port Arthur, Texas. Phase 3b is added later, connecting the pipeline from Port Arthur to Houston, Texas.

**February:** A Nebraska judge rules that the law that allowed the governor to approve Keystone XL over the objections of landowners was unconstitutional. Nebraska appeals.

**April:** The State Department suspends the regulatory process indefinitely, citing uncertainty about the court case in Nebraska.

**November:** TransCanada says the costs of Keystone XL have grown to US\$8 billion from US\$5.4 billion. Elections turn control of the U.S. Congress over to Republicans, who pledge to move forward on Keystone XL.

**January:** The Nebraska Supreme Court narrowly strikes down the lower-court decision, ruling that the governors actions were constitutional. The U.S. Senate approves a bill to build Keystone XL.

**February:** Obama vetoes the bill.

**November:** The Obama administration rejects TransCanadas application to build the Keystone XL pipeline.

**November:** Trump elected president.

**January:** Trump signs a presidential memorandum inviting TransCanada to resubmit their application for a Presidential Permit and directing the Secretary of State, Department of the Interior, and Department of the Army to fast-track the decision. He also signs an order requiring pipelines in the United States to be built with U.S. steel.

**March:** The Trump White House exempts the Keystone Pipeline from the requirement to use U.S. steel.

**September:** The Rosebud Sioux Tribe and the Fort Belknap Indian Community, in coordination with their counsel, the Native American Rights Fund, on September 10, 2018, sued the Trump Administration in the U.S. District Court for the District of MT for numerous violations of the law in the Keystone XL pipeline permitting process.



Boulder, CO [\(303\) 447-8760](tel:(303)447-8760)  
Anchorage, AK [\(907\) 276-0680](tel:(907)276-0680)  
Washington, DC [\(202\) 785-4166](tel:(202)785-4166)