

that would be prevented by any injunction the Court could issue. The Motion will thus be denied.

I. Background

DAPL is a domestic oil pipeline designed to move over a half-billion gallons of crude oil across four states daily. The oil enters the pipeline in North Dakota, crosses South Dakota and Iowa, and winds up in Patoka, Illinois, nearly 1,200 miles later. Although the route does not actually cross the Standing Rock reservation, it runs within a half-mile of it.

A project of this magnitude often necessitates an extensive federal appraisal and permitting process. Not so here. Domestic oil pipelines, unlike natural-gas pipelines, require no general approval from the federal government. In fact, DAPL needs almost no federal permitting of any kind because 99% of its route traverses private land.

One significant exception, however, concerns construction activities in federally regulated waters at hundreds of discrete places along the pipeline route. The Corps needed to permit this activity under the Clean Water Act or the Rivers and Harbors Act – and sometimes both. For DAPL, accordingly, it permitted these activities under a general permit known as Nationwide Permit 12. The Tribe alleges that the Corps violated multiple federal statutes in doing so, including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). In its Complaint, the Tribe asserts that this DAPL permitting threatens its environmental and economic well-being, as well as its cultural resources.

Despite this broad lawsuit, however, the Standing Rock Sioux now seek a preliminary injunction only on the alleged violation of the NHPA. That statute encompasses sites of cultural or religious significance to Indian tribes and requires that federal agencies consult with tribes prior to issuing permits that might affect these historic resources. The Tribe claims that the