

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-5259**September Term, 2016****1:16-cv-01534-JEB****Filed On:** October 9, 2016

Standing Rock Sioux Tribe,

Appellant,

Cheyenne River Sioux Tribe,

Intervenor-Appellant,

v.

United States Army Corps of Engineers,

Appellee,

Dakota Access LLC,

Intervenor-Appellee.

BEFORE: Brown, Griffith, and Pillard, Circuit Judges

ORDER

Upon consideration of the emergency motion of appellant Standing Rock Sioux Tribe for injunction pending appeal, the oppositions thereto, the reply, the administrative injunction entered September 16, 2016, and the oral argument of the parties, it is

ORDERED that the administrative injunction be dissolved. It is

FURTHER ORDERED that the motion be denied. Our precedent requires the party seeking an injunction to clearly show (1) a substantial likelihood of success on the merits; (2) the existence of irreparable harm absent injunction; (3) the equities favor injunctive relief; and (4) injunctive relief will not negatively impact the public interest. *See Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1291 (D.C. Cir. 2009); *Cobell v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2009). We find the Tribe has not carried its burden of persuasion on these factors, and so we deny the motion.

Although the Tribe has not met the narrow and stringent standard governing this extraordinary form of relief, we recognize Section 106 of the National Historic Preservation Act

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was intended to mediate precisely the disparate perspectives involved in a case such as this one. Its consultative process—designed to be inclusive and facilitate consensus—ensures competing interests are appropriately considered and adequately addressed. But ours is not the final word. A necessary easement still awaits government approval—a decision Corps’ counsel predicts is likely weeks away; meanwhile, Intervenor DAPL has rights of access to the limited portion of pipeline corridor not yet cleared—where the Tribe alleges additional historic sites are at risk. We can only hope the spirit of Section 106 may yet prevail.

Per Curiam**FOR THE COURT:**

Mark J. Langer, Clerk

BY: /s/

Laura Chipley

Deputy Clerk