

## Black Snake Prophecy

# Indigenous resistance to for-profit energy pipelines | Angelique EagleWoman (Wambdi A. Was'teWinyan)

By Angelique EagleWoman



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(February 21, 2020, 11:07 AM EST) -- There are basic concepts that permeate Indigenous law among First Nations and the Indigenous peoples of North America. These concepts include the following principles: Mother Earth and human beings are in a reciprocal relationship; water is life and sacred for use in religious ceremonies; collective promises and responsibilities are to be kept and passed on from generation to generation; and there is a responsibility to steward natural resources for the next seven generations to come. These are legal principles and encapsulated in the teachings, oral histories and, in recent decades, written laws of Indigenous peoples in the Western Hemisphere.

The Dakota/Lakota/Nakota (also known as the Sioux) speak of a prophecy that the *Zuzeca sapa* (Black Snake) will come from the north and where it enters the ground sickness and death will devastate all. The prophecy speaks to the likely contamination from oil spills of waters relied upon for household use, religious ceremonies and habitat to continue treaty hunting and fishing rights. This was raised in a legal religious freedom argument for a preliminary injunction in federal court by the Cheyenne River Sioux Tribe to stop a government permit to drill under the Missouri River's Lake Oahe for the Dakota Access pipeline (DAPL), but the court dismissed the request as barred by laches and not likely to succeed under U.S. law. See *Standing Rock Sioux Tribe (Standing Rock II)*, 239 F.Supp.3d 77 (D.D.C. 2017).

The two settler-nations in North America, Canada and the United States, have partnered to construct, expand and run crude oil and natural gas pipelines through the homelands and waters of Indigenous nations in both countries purely based on profit motives.

Like snakes, the pipeline companies and investors are incredibly intertwined. There is the Enbridge 5,000-kilometre pipeline system that runs from Alberta across northern parts of the U.S., including Minnesota, to re-enter Canada in Ontario. Then there is the Keystone XL pipeline originating in the tar sands of Alberta with planned routing through Montana and South Dakota to the Gulf of Mexico to export oil to China. Internal to Canada is the GasLink pipeline stretching across unceded territory from northern inland British Columbia to the coast.

A New York based company, Kohlberg, Kravis, Roberts (KKR) Co. Inc. owns a 65 per cent interest with Alberta Investment Management Corporation (AIMCo) in this fracked natural gas pipeline as of December 2019. The approximately 1,800-kilometre DAPL constructed by Energy Transfer Partners, runs internally in the United States from the Bakken oil fields in North Dakota to southern terminals at the Gulf of Mexico. Enbridge, Inc., headquartered in Calgary, owns 75 per cent of the Bakken pipeline system, including this pipeline. KKR and Energy Transfer Partners have teamed up for natural gas processing in furtherance of the British Columbia pipeline.

More often than not, Indigenous peoples, who are treaty partners and permanent neighbours, are treated as the enemies of the Canadian and U.S. governments with both government officers and corporate hired forces allowed to trample basic human rights of Indigenous peoples. In 2016, the world watched as private security forces hired by the Energy Transfer Partners, owners of the DAPL, fired plastic bullets, unleashed attack dogs and in freezing November weather shot high-pressure streams of cold water on water protectors comprised of Indigenous treaty-rights holders

and their allies in North Dakota north of the Standing Rock Sioux Reservation. In recent months, the world has watched as the hereditary chiefs and peoples of the Wet'suwet'en First Nation have set up protests and barricades in their unceded territory in British Columbia.

The Royal Canadian Mounted Police (RCMP) continue to arrest groups of Indigenous peoples, criminalizing the advocacy for protecting Indigenous homelands, following the extension of an injunction on Dec. 31, 2019, by Justice Marguerite Church of the B.C. Supreme Court supporting the side of the pipeline company.

In Canada, there are two systems of law formally recognized: common law and civil law. As there are two official languages: English and French. At some point, there has to be an awakening that the Indigenous peoples of these lands have laws, language and collective rights that must be recognized for there to be peaceable relations. Justice Church refused to recognize Indigenous law on equal terms to Canadian law as presented by the Wet'suwet'en First Nation by stating, "As a general rule, Indigenous customary laws do not become an effectual part of Canadian common law or Canadian domestic law until there is some means or process by which the Indigenous customary law is recognized as being part of Canadian domestic law, either through incorporation into treaties, court declarations, such as Aboriginal title or rights jurisprudence or statutory provisions: *Alderville First Nation v. Canada* 2014 FC 747 at para. 40." See *Coastal GasLink Pipeline v. Hudson* 2019 BCSC 2264 at para 127.

It is not for an external government to decide the validity of Indigenous law or require it to be domesticated to have force and effect. Rather, when Indigenous law is presented to the courts, the judge should take judicial notice and seek to apply that law or reconcile it with the duty of the Crown and Aboriginal rights under the *Constitution Act* 35(1) as rights pre-existing the formation of Canada or any province.

Nationwide and worldwide protests in unity with the Wet'suwet'en First Nation hereditary leaders and peoples will continue as the protests against pipelines have in the United States. The time for re-examining colonial imposition and suppression of Indigenous law is at hand. By supporting for-profit pipelines through Indigenous homelands without "free, prior, and informed consent," as required in Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP), Canadian governments will cause unrest as Indigenous peoples continue to maintain their spiritual relationships with their homelands and waters for the next seven generations. See Article 25 of the UN DRIP.

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