

# *Greenpeace Tries a Novel Tactic in Lawsuit Over Dakota Access Pipeline*

The environmental group, which is being sued by the pipeline company in North Dakota, threatened to use new European rules to try to limit potential damages.



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Aug. 20, 2024, 9:31 a.m. ET

## The News

Greenpeace recently unveiled a new strategy for fighting a costly lawsuit by an energy company that the group contends is designed to silence critics of the oil industry.

The suit, first filed in federal court in 2017, alleged that Greenpeace had incited the protests against the Dakota Access Pipeline near the Standing Rock Sioux Reservation in North Dakota in 2016 and 2017, and it sought \$300 million in damages.

Greenpeace disputes the claims. It says the lawsuit is designed to essentially force the environmental group to go out of business with an expensive legal fight.

Its new tactic, led by Greenpeace International in Amsterdam, would use the European legal system to try to minimize the financial consequences of a potential loss in United States courts. In a letter to the company last month, lawyers for the

group cited a new European Union directive aimed at curbing SLAPP suits, or Strategic Litigation Against Public Participation. Those are defined as meritless suits that seek to shut down civil society groups.

The letter called on the company suing it, Dallas-based Energy Transfer, to drop its suit against Greenpeace International, and to pay damages for its legal costs, or risk a countersuit under the new European rules.

## **The Background**

After the Dakota Access Pipeline was approved in 2016, it became the target of high-profile protests by Native American tribes and environmental groups. The Standing Rock Sioux Tribe argued that the pipeline encroached on reservation land and endangered the water supply. Thousands of its supporters joined a nearly eight-month protest encampment near the reservation, and tribal leaders mounted their own legal challenge to the project.

The protesters clashed with the police and private security at times, and the camp was razed after an evacuation order by the North Dakota governor. The state and federal governments are still wrangling over who should pay for \$38 million in associated costs, including the response by law enforcement.

The pipeline was paused under the Obama administration, but began operating in 2017 after President Donald J. Trump gave it the green light in an executive order. While the pipeline remains in operation, it is still awaiting final federal approval, which is expected early next year.

The lawsuit by Energy Transfer, the company behind the 1,770-mile crude oil pipeline, names two U.S.-based Greenpeace entities, as well as Greenpeace International, which is based in the Netherlands and coordinates other Greenpeace groups around the world.

After being kicked back to a state court, the suit is scheduled to go before a jury in Morton County, N.D., early next year.

## The Claims

Energy Transfer, which is led by a close ally of Mr. Trump, Kelcy Warren, alleged that Greenpeace and other activists incited the protests, spread misinformation and vandalized the project, leading to delays that cost the company millions of dollars.

Energy Transfer initially sued in North Dakota federal court, where it argued that the activists had violated Racketeer Influenced and Corrupt Organizations, or RICO, laws. A judge dismissed that claim and found that others were out of its jurisdiction, allowing the case to continue in state court.

Greenpeace says the protests were directed by Native American leaders, not the environmental organization. The group said that it supported the protests but never engaged in property destruction or violence, and that the suit seeks to impose “collective liability” for anything that might happen at a demonstration. Greenpeace International says that its branches operate independently, and that its only involvement was to sign an open letter in 2016 along with 500 other organizations.

Energy Transfer said in a statement that the lawsuit “is not about free speech as they are trying to claim,” referring to Greenpeace. “We support the rights of all Americans to express their opinions and lawfully protest,” the statement said. “However, when it is not done in accordance with our laws, we have a legal system to deal with that. Beyond that we will let our case speak for itself in February.”

## Why It Matters

The new legal strategy in Europe is an early test of the anti-SLAPP rules there. The directive that took effect this year was spurred by a long campaign by journalism and civil-society groups that said powerful interests were trying to clobber them with long, costly legal battles.

The directive instructs national governments to not recognize judgments in foreign SLAPP suits, and to allow countersuits. It leaves it to national governments to decide what constitutes a SLAPP suit.

A growing number of American states also have some sort of anti-SLAPP laws, though North Dakota is not one of them. On the federal level, Representative Jamie Raskin, Democrat of Maryland, cited the oil and gas industry's use of lawsuits against opponents when he introduced an anti-SLAPP bill in 2022.

Deepa Padmanabha, acting co-executive director of Greenpeace USA, said she saw the case as particularly concerning given a rise in anti-protest laws in many states since 2017. "How this case is fought is going to impact the future of advocacy and peaceful protest," she said. "Freedom of speech and freedom of assembly are what this case is about."

**Karen Zraick** covers federal law enforcement, courts and criminal justice and is based in New York. More about Karen Zraick