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Our Water is Critical

is a protest movement that asserts that waterways and ecosystems are critical infrastructure to the human and animal populations that depend on them. The organization supports direct action to raise awareness about water issues and laws that restrict protest speech, and operates a legal fund to protect individuals and organizations who are prosecuted under these laws, while working to overturn the laws themselves.

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**OUR WATER
IS CRITICAL**



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Texas Legislature Passes Bill to Charge Pipeline Protesters with Felonies

Candice Bernd, *Texas Observer* May 27, 2019

The oil and gas industry-backed bill could blunt environmental groups' fight against the Jupiter oil pipeline and Kinder Morgan's Permian Highway gas pipeline.


Environmental activists, indigenous protesters, landowners and others who damage or "impair or interrupt" operations of oil and gas facilities will be charged with a felony under a bill finalized and approved by the Texas Legislature this week. That's despite public pressure, protests and legislative attempts to soften penalties in the industry-backed bill, which now heads to Governor Greg Abbott's desk, where it is expected to become law.

If Abbott doesn't veto House Bill 3557, the measure will criminalize damage to so-called critical infrastructure facilities, including oil and gas facilities that are under construction, with a third-degree felony, which carries a penalty of up to

10 years in prison. Violators who "impair or interrupt" operations or who entered property with the intent to damage it will face a state jail felony, punishable by up to two years in prison. The legislation could make environmental groups' fight against the 650-mile Jupiter oil pipeline and Kinder Morgan's 430-mile Permian Highway gas pipeline more difficult. Both pipelines would carry fossil fuels from one of the nation's largest oil patches in West Texas' Permian Basin to the Gulf Coast.

"HB 3557 is a fear tactic to dissuade environmental justice movements like Standing Rock from challenging the continued use of fossil fuels. We are at a tipping point as our ecosystems decline at accelerated rates, and instead of protecting our environment, we are protecting big oil and pipelines," said Jennifer K. Falcon, campaign manager for the Society of Native Nations, in a press





release, adding that she believes the measure is a violation of the First Amendment.

The bill uses a previous state definition of critical infrastructure that includes electric power and water treatment facilities, chemical plants, ports, concentrated animal feeding operations (CAFOs), telecommunication services and transmission facilities used by TV and radio stations. The legislation adds to the list oil and gas pipelines and any construction equipment on the property.

The penalties prescribed in the bill started out even higher and, at one point in the legislative process, punishment for impairing or interrupting operations had fallen to a misdemeanor. But they were ultimately elevated back to a felony — a priority for the industry, which has pushed similar model legislation in several other states in response to widespread pipeline protests. Last week, environmental and civil liberties groups filed suit on behalf of landowners and activists in Louisiana alleging that the state's anti-pipeline protest law is unconstitutional, and advocates in Texas say

they are closely monitoring the lawsuit.

As the Observer previously reported, an early version of HB 3557, by state Representative Chris Paddie, R-Marshall, would have punished activists who damage or interfere with critical infrastructure with a second-degree felony, carrying penalties of up to 20 years in prison. Those penalties were lowered on the House floor: Damaging such facilities was lowered to a third-degree felony (up to 10 years in prison), and interfering with operations was lowered to a state jail felony (up to two years in prison). The revised measure passed the House in early May on a 90-51 vote.

As the bill gained more attention and public pressure grew, senators attempted to soften the bill further once it reached the upper chamber. An initially successful amendment by Senator Juan Hinojosa, D-McAllen, lowered the penalty for "impairing or interrupting" operations to a Class A misdemeanor. That version passed the Senate on May 20 on a 25-6 vote.

But Paddie, the bill's author, rejected the Senate

version's lowered penalties in the waning days of the session, and a conference committee convened to hash out the details. Ultimately, Paddie won out, ratcheting most of the penalties back up to their current felony levels, which are slightly lower than those he originally proposed.

cial in pressuring the bill's sponsors to ultimately decrease its criminal penalties from second- and third-degree felonies, she said.

The biggest win for opponents in the final version of the bill is a provision

"WE ARE AT A TIPPING POINT AS OUR ECOSYSTEMS DECLINE AT ACCELERATED RATES, AND INSTEAD OF PROTECTING OUR ENVIRONMENT, WE ARE PROTECTING BIG OIL AND PIPELINES."

Robin Schneider, director of the Texas Campaign for the Environment, said the relative watering down of the bill is a result of a coalition of opponents mobilizing to testify against the bill during a public hearing on May 15. She said her organization alone facilitated messages from at least 1,300 constituents to their representatives in opposition to HB 3557. A group of indigenous activists chanted and dropped a banner from the House gallery reading "Kill the bill, save our land. Protectors are not criminals," during a vote on the bill on May 7. Such engagement was cru-

that charges people who enter facilities "with the intent to impair or interrupt the operation" with a Class A misdemeanor, significantly lower than the original version. Even so, advocates say that the "intent" distinction could ultimately prove meaningless because the line between interrupting operations and acting with the intent to interrupt operations is blurry.

Senator Brian Birdwell, R-Granbury, the bill's upper chamber sponsor, seemed initially receptive to concerns about the bill from landowners, free-speech advocates and conservative advocates of

criminal punishment reform. He worked with Hinojosa to draw up the Senate floor amendment that dropped impairing or interrupting operations to a misdemeanor.

On the Senate floor on Sunday, Birdwell suggested the criminal penalties in the bill will ultimately be left to prosecutorial discretion. "These offenses, the penalties are ceilings, not floors," Birdwell said before supporting the final version. "We defer to the prosecutorial discretion of the district attorneys that would be involved in the state jail felony cases, as well as the merits of the case being brought before the district judge, and then the county judge, for the misdemeanor elements of the intent to disrupt."

Neither Paddie, Birdwell nor Hinojosa's offices immediately responded to a request for comment.

"It's a big disappointment that none of the [Democratic] senators had the courage to do a filibuster on this bill, and kill the bill," Schneider told the Observer. "There were any number of delay tactics

they could have [been] engaged in throughout the day, and we just had no leadership."

Any lawmaker who single-handedly derailed the measure would have become a prime target of the powerful fossil fuel industry, perhaps the only deterrent necessary in a state that relies heavily on revenue from oil.

"We basically were trying to do the next-to-impossible, which was to beat the Texas Oil and Gas Association and all the other corporate interests here at the Texas Capitol, which is dominated and virtually controlled by [them]," Schneider said.



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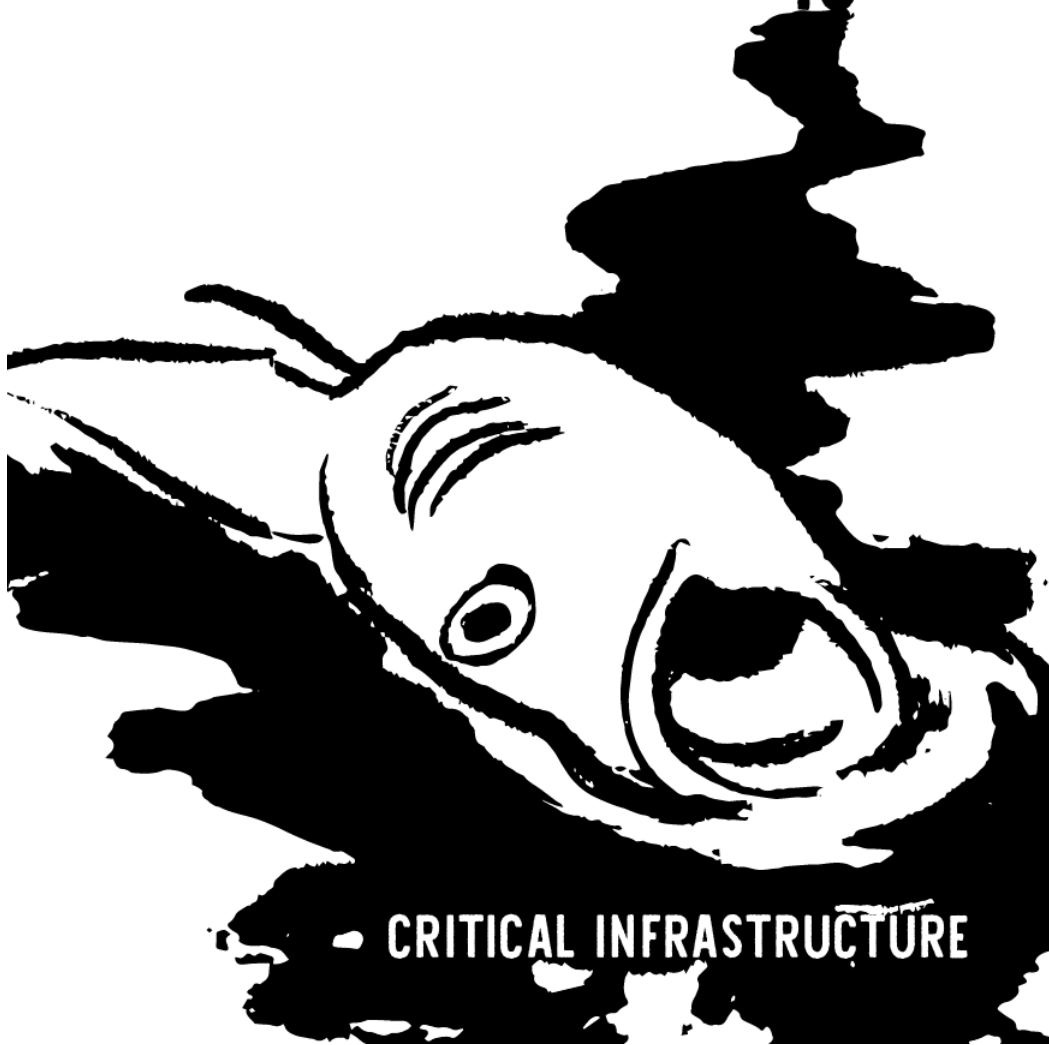
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YOUR PIPELINE

OUR WATER

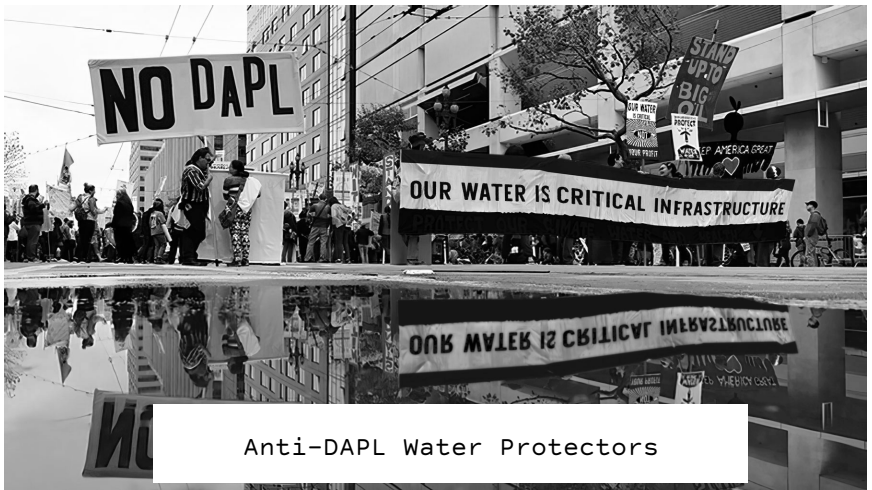
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NYSE Projection mapping action
executed by unknown



Standing Rock protesters hold out against extraordinary police violence

Julia Carrie Wong and Sam Levin, *The Guardian*,
Nov 2016

Apprehension and distrust pervade North Dakota protest site as promises from state that there are no plans to forcibly remove people does little to assuage fears

Police violence against Standing Rock protesters in North Dakota has risen to extraordinary levels, and activists and observers fear that, with two evacuation orders looming, the worst is yet to come.

A litany of munitions, including water cannons,

combined with ambiguous government leadership and misleading police statements, have resulted in mass arrests, serious injuries and a deeply sown atmosphere of fear and distrust on the banks of the Missouri river.

Statements by the US Army Corps of Engineers and North Dakota state government that, despite their orders of evacuation, there are no plans to forcibly remove protesters opposing the Dakota Access pipeline have done little to assuage fears.

As the first snows have fallen and more protesters arrive in support, apprehension at the encampments about the coming days is running high.

"We're going to hope for the absolute best," said Linda Black Elk, a member of the Catawba Nation who works with the Standing Rock Medic & Healer Council. "If they do attempt to remove people forcibly, we are certainly preparing for mass casualties."

'An infinite arsenal'
Standing Rock protests
Facebook Twitter Pinterest
Police use a water cannon on Standing Rock protesters last week. Photograph: Stephanie Keith/Reuters
Harkening back to an earlier era, when police in Birmingham, Alabama, attacked African American schoolchildren with dogs and high-pressure water hoses, North Dakota officers trained water cannons on hundreds of Dakota Access pipeline protesters.

On the night of 20 November, though, the temperature was below freezing and the protesters, who call themselves "water protectors", were camping outdoors for the evening.

Water is just one many "less-than-lethal" munitions that have been trained against the activists.

"They seem to have almost an infinite arsenal of different types of weapons," said Rachel Lederman, attorney for the National Lawyers Guild (NLG). "I don't think local law enforcement understands how dangerous they are."

Police have acknowledged using sponge rounds, bean bag rounds, stinger rounds, teargas grenades, pepper spray, Mace, Tasers and a sound weapon. The explosive teargas grenades in use at Standing Rock have been banned by some US law enforcement agencies because they indiscriminately spray people, Lederman said.

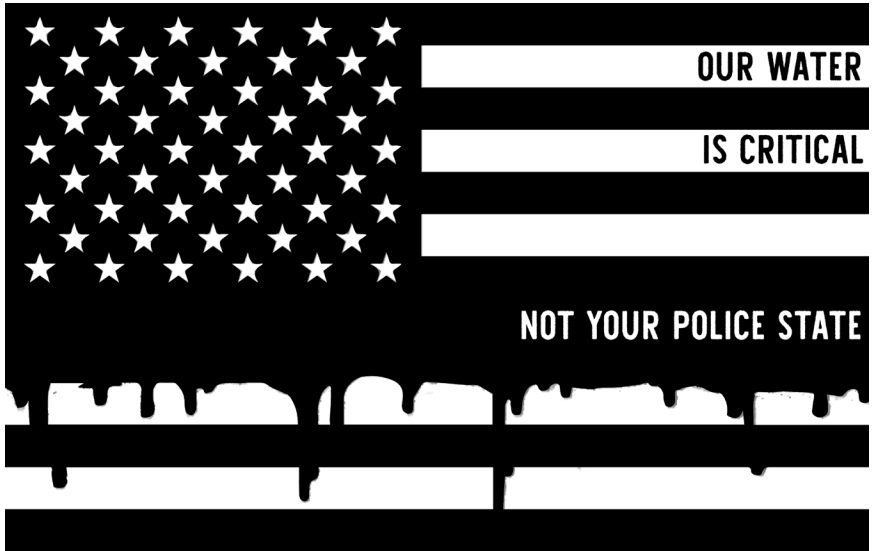
"I feel like Morton County law enforcement is experimenting on us," Black Elk said. "It's like they received all this free military equipment and they're just itching to try it out."

On Monday, the NLG filed a federal class action lawsuit against the Morton County sheriff's office, alleging excessive force

at the 20 November encounter. The group is seeking a temporary restraining order to bar police from using "less-than-lethal" munitions, chemical agents, sound cannons, and water against activists.

killed," Lederman said about the suit. "This must stop."

North Dakota law enforcement officials have released misleading or blatantly inaccurate state-



More than two dozen people were hospitalized and 300 injured during the conflict, according to the medic and healer council. One woman's arm was nearly blown off, according to her father, and the complaint alleges that another woman was shot in the eye, resulting in the detachment of her retina and possible permanent blindness.

"It is only a matter of luck that no one has been

ments about protest actions while using charged language to paint peaceful demonstrators as violent threats to public safety.

"There's a lot of testimony on the part of the police that doesn't match up with what we are seeing," said Roberto Borrero, an International Indian Treaty Council representative who assisted the United Nations in an investigation of human rights abuses by law enforcement against Standing Rock activists.

When asked about the water cannons, a sheriff's spokeswoman initially told the Guardian that protesters were "starting fires". But footage later emerged showing police aiming the hoses directly at activists. The department subsequently conceded that it had purposefully used water on the protesters.

On Thanksgiving, Morton County sheriff Kyle Kirchner released a statement condemning the actions of "paid agitators and protesters" without offering any evidence that people were being paid to fight the pipeline. The department has not responded to requests to substantiate the claim.

In another statement that week, the sheriff said activists were not engaged in "civil disobedience" but were acting like "evil agitators". The Mandan, North Dakota, police chief, Jason Ziegler, has asserted that law enforcement agencies "can use whatever force necessary to maintain peace".

Caro Gonzales, a 26-year-old member of the Chemehuevi tribe and an anti-police violence activist in Washington state, said the language from law enforcement officials resembled

that used to discredit unarmed black men killed by police.

Ferguson police officer Darren Wilson, who fatally shot Michael Brown in 2014, said the unarmed black teenager looked like a "demon".

"Police and police unions use this language so they can demonize people who are fighting for their rights," said Gonzales.

A lack of transparency, confusing jurisdictions, and the fact that dozens of law enforcement agencies have assisted the local sheriff's department further complicate the situation.

The Morton County sheriff's department has refused to reveal which law enforcement agencies were involved in the 20 November action. But the American Civil Liberties Union (ACLU) has assembled a list of 76 different agencies - state, county, and local agencies from North Dakota and nine other states - that have sent officers to the protests.

"There are real concerns about how the Morton County sheriff's department is exercising command and control," said Jennifer

Cook, policy director for the ACLU of North Dakota. "Who makes the decision about how to police the protest? When you have so many agencies involved, each one is going to have its own training and protocol."

Adding to the confusion is an exceedingly complicated jurisdictional terrain.

The first Standing Rock encampment, known as Sacred Stone, was established in April on land owned by LaDonna Brave Bull Allard, which sits within the boundaries of the Standing Rock Sioux reservation.

But as more activists joined the movement, camps were established north of the reservation border, on land managed by the Army Corps of Engineers and leased to a private rancher. While the government asserts that the land falls under its jurisdiction, the Standing Rock Sioux tribe says that it has treaty rights dating from the 1851 Treaty of Fort Laramie.

Given the complexity, Ronal Serpas, a retired police chief and professor of criminology at Loyola University, said the courts needed to step in

and provide direction for law enforcement officers.

"This is what you would call a messy, messy mess," Serpas said. "It's unfair for the police to be at the center of that storm."

Many Native Americans involved in the Standing Rock movement ascribe the harsh police tactics to intense racism against indigenous people, both from law enforcement officials and civilians.

Glenn Morris, spokesman for the leadership council of the American Indian Movement of Colorado, said indigenous people in the Standing Rock region were accustomed to mistreatment by police.

"Anybody who knows the history of law enforcement actions in the Dakotas, this is not unusual. But the magnitude of it is extreme," said Morris, who is the uncle of Red Fawn Fallis, an indigenous protester who was arrested and accused of attempted murder against law enforcement at Standing Rock - a charge her family and supporters strongly deny.

Studies have also found that police kill Native Americans at higher rates than any other racial

group, and that indigenous children make up 70% of youth admitted to the federal bureau of prisons despite representing only 1% of the population.

"When someone from Standing Rock goes to Bismarck, we'll always say, 'Watch out for the cops,'" said Black Elk, who has lived on the reservation for much of her life.

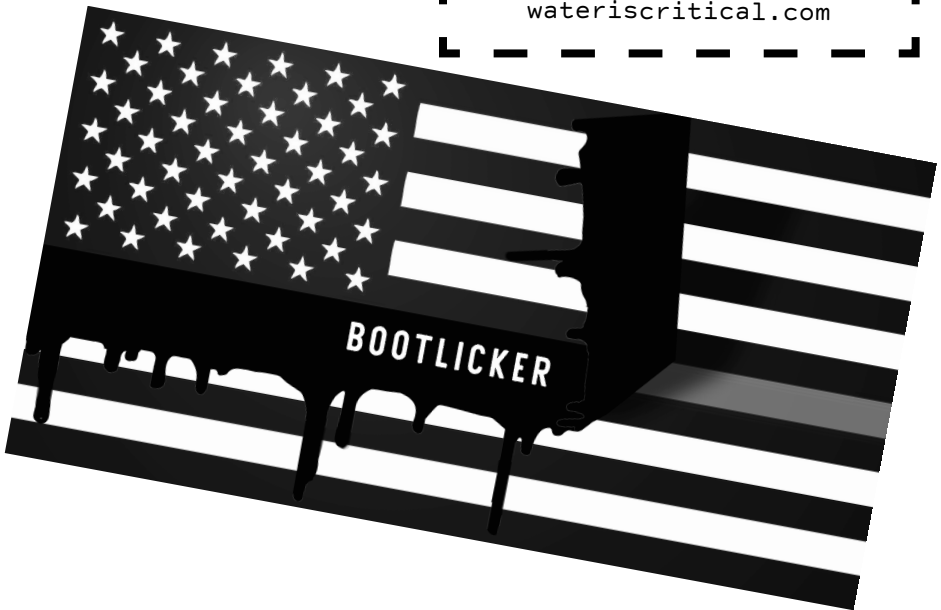
"The thing is, racism is nothing new here. It has always been there; it's just bubbling under the surface."

"Bootlicker Tape"

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What to do if you are stopped by the police while protesting in a public place

Stay calm. Make sure to keep your hands visible. Don't argue, resist, or obstruct the police, even if you believe they are violating your rights. Point out that you are not disrupting anyone else's activity and that the First Amendment protects your actions.

Ask if you are free to leave. If the officer says yes, calmly walk away.

If you are under arrest, you have a right to ask why. Otherwise, say you wish to remain silent and ask for a lawyer immediately. Don't say anything or sign anything without a lawyer.

You have the right to make a local phone call, and if you're calling your lawyer, police are not allowed to listen.

You never have to consent to a search of yourself or your belongings. If you do explicitly consent, it can affect you later in court.

Police may "pat down" your clothing if they suspect you have a weapon and may search you after an arrest.

Police officers may not confiscate or demand to view your photographs or video without a warrant, nor may they delete data under any circumstances. However, they may order citizens to cease activities that are truly interfering with legitimate law enforcement operations.

What to do if you believe your rights have been violated

When you can, write down everything you remember, including the officers' badge and patrol car numbers and the agency they work for.

Get contact information for witnesses.

Take photographs of any injuries.

Once you have all of this information, you can file a written complaint with the agency's internal affairs division or civilian complaint board.



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