



SAC AND FOX NATION

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STATEMENT OF THE SAC AND FOX NATION

CONSENT DECREE LODGED BY THE U.S. DEPARTMENT OF JUSTICE AGAINST HOLLY ENERGY PARTNERS—OPERATING, L.P., AND OSAGE PIPE LINE COMPANY, LLC, RELATING TO 2022 SKULL CREEK PIPELINE BREAK

February 1, 2024

This week the United States Department of Justice lodged a consent decree in federal court against Holly Energy Partners—Operating, L.P., and its subsidiary, Osage Pipeline Company, LLC (referred to together as “HEP”), both with headquarters in Dallas, Texas. The two companies are the co-owners of a 20-inch diameter oil pipeline—named the Osage Pipeline—that ruptured within the Sac and Fox Nation Reservation on July 8, 2022. The discharge from the Osage Pipeline spill was—and continues to be—a significant event for the Sac and Fox Nation as its citizens.

The rupture resulted in the discharge of almost 300,000 gallons of crude oil on Indian allotments held in trust by the United States and located about five miles north of Cushing, Oklahoma. If the consent decree is approved by a federal court, the companies would pay \$7.4 million to the United States as a civil penalty for violations of the Clean Water Act.

The oil discharged from the pipeline polluted Skull Creek and its shoreline, impacted soil, vegetation, surface water, and sediment on the creek bottom. Hundreds of trees, along with plants and shrubs, were destroyed or have been removed as part of response activities. The pipeline rupture has also impacted Sac and Fox cultural resources, including numerous oiled or dead fish and wildlife. The presence of oil in the creek, which flows into the Cimarron River, has been observed for more than two miles downstream. Oil continues to be visible today.

The leadership of the Sac and Fox Nation believes it is important for the tribe to be heard from concerning the developments in this important, ongoing enforcement action.

Although the discharge occurred on individual Indian allotments, the land is within the Nation’s reservation and homeland, and within its Indian country jurisdiction, and plainly is of major interest to our people. The pipeline rupture and its aftermath point to the problem our tribe and others have encountered historically with the entities that hold rights of way on Indian lands. The Nation is hopeful that some of the provisions included in the proposed consent may help avoid a repeat of some of these issues.

As the filings in federal court note, the ruptured portion of the pipeline had been identified by HEP as a "potential area of concern" in inspections in 2014, but that segment of pipe was not excavated and examined until after the rupture. Pursuant to the consent decree, HEP will be required to treat the entire pipeline, which runs for about 135 miles from Cushing, Oklahoma, to El Dorado, Kansas, as "known to be susceptible to threat of failure due to cracks" for future operational purposes and inspections, at least until the companies can establish that the threat of failure due to cracks is no longer a risk. The Skull Creek spill points to the importance for all owners and operators of pipelines to maintain them properly.

Following the pipeline rupture, there were delays in the notification given to the Nation, as well as other problems with the emergency response procedures. At times in the clean-up process, the Nation has been treated as if it was a bystander, even though it is the government with the greatest interest in the discharge. The proposed consent decree sets forth emergency notification procedures, and expressly require HEP not only to notify affected property owners, but to "immediately" notify the Nation in the event of a future discharge, and also sets forth the specific tribal officers to be notified. The Nation believes these procedures are critical to ensuring the safety of not only our citizens but of all persons who live near pipelines.

Additionally, the Nation has been unable to reach agreement with HEP concerning its ongoing involvement in the response and clean-up, and particularly with respect to protection of its resources. For a few months—and only after extended negotiations—the Nation had in place a program, funded by HEP, to provide for tribal monitors to observe construction and clean-up activities. Tribes and tribal citizens are the best experts in their culture and history. Tribal monitoring programs provide trained observers to ensure that archaeological sites and human remains—if uncovered—are treated properly. The program at Skull Creek lapsed last fall, and the Nation has not been able to reach agreement with HEP concerning its continuation. The proposed consent decree would require HEP to make good faith efforts to resume the program for the duration of the clean-up and remediation work, and the Nation remains hopeful that an agreement will be reached.

The Nation has a good working relationship with companies in the pipeline industry, which is an important business and employer within the Sac and Fox Reservation. At the same time, it is important to the Nation that companies that cause major environmental damage, fairly pay for the clean-up and for the damages. The Nation—which will not receive any portion of the penalty to be paid by HEP to the federal government—is not a wealthy tribal government, and it is not in a position to assume responsibility for cleaning up major pollution events such as the Skull Creek spill.

Our leadership team will continue to seek to work with HEP, and we are hopeful that the proposed consent decree will provide incentives for the pipeline owners to work with our tribe.

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