

# United States Senate

WASHINGTON, DC 20510

March 14, 2023

The Honorable Michael L. Connor  
Assistant Secretary of the Army for Civil Works  
108 Army Pentagon  
Washington, DC 20310

Dear Assistant Secretary Connor:

We are writing regarding the Army Corps of Engineers' (Corps) recent work on the court-ordered Environmental Impact Statement (EIS) for the Dakota Access Pipeline (DAPL) relating to the Standing Rock Sioux Tribe and other frontline communities. Specifically, we are interested in better understanding the status of requests from the Tribe for certain documents relating to potential pipeline spills and emergency planning. We believe that transparency and affected communities' access to documents, to the extent consistent with the law, is critical to minimizing the environmental and human health risks of potential pipeline spills or leaks.

DAPL's route across the Missouri River and Lake Oahe, less than a half mile upstream from the Standing Rock Sioux Tribe Reservation, could pose serious risks to public health and the environment if a spill were to occur. As you may well be aware, the Standing Rock Sioux Tribe relies heavily on the Missouri River and Lake Oahe for drinking water, irrigation, hunting and fishing. A leak or spill that contaminates these critical water resources would have devastating impacts.<sup>[1]</sup> The potential impacts are worsened by the historically-low water levels at Lake Oahe. Low water levels create more river bed exposure and the opportunity for higher concentrations of toxins should a spill occur. The low levels also make it difficult for first responders to reach leaked oil in the lake, as boats cannot safely launch into extremely-shallow waters.

As you know, the Corps is the lead agency for analyzing the environmental impacts of a decision to grant an easement that allows for the pipeline to cross under Lake Oahe under Section 14 of the Rivers and Harbors Act of 1899.<sup>[2]</sup> While the Corps originally granted the easement in 2016, a court subsequently required the Corps to go back and prepare an EIS to analyze the environmental effects of the decision. The Corps is currently undertaking this review process and considering modifications to allow the pipeline company to double the current flow-rate of the oil through DAPL.<sup>[3]</sup>

The Standing Rock Sioux Tribe has requested various documents containing data and analysis underlying the Corps' findings related to the EIS.<sup>[4]</sup> The Tribe views this information as critical to its

<sup>[1]</sup> Standing Rock Sioux Tribe, *Report to the U.S. Army Corps of Engineers on the Scope of the Court-Ordered Environmental Impact Statement for an Easement for the Dakota Access Pipeline*, (November 24, 2020).

Ellison, Garret. "New price tag for Kalamazoo River oil spill cleanup: Enbridge says \$1.21 billion." Mlive.com, November 5, 2014, [https://www.mlive.com/news/grand-rapids/2014/11/2010\\_oil\\_spill\\_cost\\_enbridge\\_1.html](https://www.mlive.com/news/grand-rapids/2014/11/2010_oil_spill_cost_enbridge_1.html).

National Oceanic and Atmospheric Administration, *Oil spills*, accessed February 1, 2023 from <https://www.noaa.gov/education/resource-collections/ocean-coasts/oil-spills>.

National Park Service, *Effects of Oil Spills*, accessed February 1, 2023 from <https://www.nps.gov/subjects/spillresponse/spilleffects.htm>.

<sup>[2]</sup> Dept. of the Army, Corps of Engineers, *Notice of Intent to Prepare an Environmental Impact Statement to Cross Under Lake Oahe, North Dakota for a Fuel-Carrying Pipeline Right-Of-Way for a Portion of the Dakota Access Pipeline*, 85 Fed. Reg. 55843 (Sept. 10, 2020).

<sup>[3]</sup> Energy Transfer, *Dakota Access Pipeline Fact Sheet, Capacity Optimization* (January 2020), [https://energytransfer.com/wp-content/uploads/2020/04/DAPL\\_Capacity\\_Optimization\\_01-07-2020.pdf](https://energytransfer.com/wp-content/uploads/2020/04/DAPL_Capacity_Optimization_01-07-2020.pdf).

<sup>[4]</sup> The Standing Rock Sioux Tribe has requested full, unredacted versions of the following documents: the most recently updated spill model and environmental receptor report by RPS/ASA and the Wood Group; the most recent



understanding of the potential environmental impacts of the pipeline crossing Lake Oahe, as well as necessary for the Tribe to develop its own spill response plan. The Tribe also asserts that this information will allow them to provide feedback to ensure that the EIS accurately analyzes and explains the risks of the project, while also addressing those risks to the greatest extent possible.

The Tribe asserts that it has requested each of the documents listed in footnote 4, but that the Corps has either not provided the document or has redacted it so heavily as to severely limit its usefulness. We would like to better understand the concerns and equities on the part of both the Tribe and the Corps in this matter. Thus, we request that you please provide the following by April 3, 2023 for each of the listed documents in footnote 4: the date of receipt of any request for the document from the Tribe; the date and status of your response including whether the document was withheld, provided unredacted, or provided but redacted; and, to the extent that you have withheld or redacted any document, the specific reasons for the withholding or for each of the redactions.

Transparency and the scientific integrity of an agency's work are cornerstones of the National Environmental Policy Act process and are essential to any community's ability to meaningfully review and respond to an agency's conclusions about a project's impacts on the environment. This is particularly important for frontline and environmental justice communities that generally have far fewer resources to obtain information independently. In addition to our information request above, we ask that you actively pursue all avenues for sharing information and community engagement as it relates to the operation of DAPL.

We look forward to working with you on this matter to help keep our communities informed, healthy and safe from environmental harm.

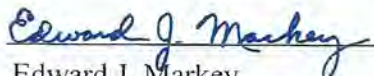
Sincerely,



Jeffrey A. Merkley  
Chairman, Subcommittee on  
Chemical Safety, Waste  
Management, Environmental Justice,  
and Regulatory Oversight



Thomas R. Carper  
Chairman, Committee on  
Environment and Public  
Works



Edward J. Markey  
United States Senator



Bernard Sanders  
United States Senator

---

Facility Response Plan and Geographic Response Plan; the DAPL Lake Oahe crossing worst case discharge calculation and methodology; the as-built drawings for the HDD construction at Lake Oahe; the updated risk assessment; the Integrity Management Plan (specific to DAPL Lake Oahe crossing); surge analysis and protection plan; Operations, Maintenance and Emergencies Manual (specific to DAPL Lake Oahe crossing); Management of change documentation relating to the increase in flow rate for DAPL; the driller logs for the HDD drill; and performance verification tests of the installed leak detection system, the emergency shutdown and isolation system, and the surge prevention and protection system.