



December 13, 2023

Brent Cossette  
U.S. Army Corps of Engineers  
CENWO-ODT-N  
1616 Capitol Avenue  
Omaha, NE 68012

RE: U.S. Army Corps of Engineers' (USACE) Draft Environmental Impact Statement for the Dakota Access Pipeline

Dear Mr. Cossette;

USACE is in the unfortunate position of conducting a National Environmental Policy Act (NEPA) analysis of a pipeline, the Dakota Access Pipeline (DAPL), that has been operational for over six years, with oil safely flowing through it without environmental incident. Western Energy Alliance recognizes that USACE is complying with judicial orders that require such reanalysis, but to do anything other than adopt Alternative Three would be detrimental to the economy of the Mandan, Hidatsa, and Arikara (MHA) Nation, the State of North Dakota, and the entire country. Shutting down the pipeline or significantly altering or limiting its operations would be harmful to U.S. energy security and limit oil supply domestically and to our allies. Besides the obvious negative economic impacts of shutting down DAPL in terms of upward pressure on global oil prices, cutting thousands of jobs, and denying significant local, state, and tribal revenues, there is an inherent destabilization of financial, energy, and regulatory permitting systems were the government to shut down a completed project that has successfully operated for over six years.

Western Energy Alliance (Alliance) is the leader and champion for independent oil and natural gas companies in North Dakota and across the West. Working with a vibrant membership base for 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. The majority of independent producers are small businesses, with an average of fourteen employees.

The Alliance understands NEPA litigation, having intervened in several lawsuits from obstructionist groups, against the Bureau of Land Management (BLM) in particular. We have been in court defending BLM from NEPA challenges by groups that wish to shut down any oil and natural gas development on federal lands and frankly, in America at all. As NEPA is a procedural law that requires careful analysis but does not dictate outcomes, the remand in many of the cases results in corrective analysis, not a predetermined outcome. Often the deficiencies with the NEPA analysis identified in court rulings are just that, deficiencies, not fatal flaws. Likewise, the deficiencies identified in the DAPL analysis have been more than adequately addressed with this DEIS. USACE has taken the hard look at the environmental impacts, as required by NEPA, and the analysis shows that Alternative Three is the best balance between environmental protection and socio-economic factors.

Besides the obvious strategic importance, DAPL has demonstrated adherence to the highest safety standards and a minimal environmental footprint. Maintaining the existing route and continued uninterrupted operation guarantee the least environmental impact. Removing or abandoning DAPL would result in much greater environmental and safety impacts, as the alternatives of rail and truck transport carry higher safety risks than pipeline transport in terms of oil spilled per billion-ton-miles and result in greater greenhouse gas emissions and criteria pollutant emissions.

Western Energy Alliance is especially concerned with the broader implications to regulatory and permitting certainty in the United States should any alternative be chosen other than Alternative Three. We have extensive experience helping our member companies in North Dakota and across the West navigate NEPA and regulatory processes. We have seen how excess regulatory costs and delay have stopped projects that would have had billions of dollars of economic benefits for local, state, tribal, and federal governments. By sending Dakota Access into another cycle of permitting and all the time and cost that entails, we are struck by the larger signal it would send to projects not just within the oil and natural gas sector, but across the country. When federal regulatory agencies sow such uncertainty into regulatory processes by renegeing on approved permits, easements, NEPA documents, and other approvals, it calls into doubt the credibility of the federal government and the reality of “Made in America.” The instability in regulatory systems should USACE choose anything other than Alternative Three would reverberate far beyond DAPL.

A decision to shut down the operations of DAPL and completely overturn the original NEPA analysis and permit approvals, as in Alternatives Two and Three, would obviously raise red flags about the certainty companies have investing in a government-permitted project. But Alternatives Four and Five also inject extensive uncertainty into permitting systems, as USACE would retroactively impose extensive new regulatory measures not originally required at the time of approval. Alternative Four imposes retroactive costs to Dakota Access after the company conducted extensive economic, financial, and engineering planning based on the original approvals, and Alternative Five would send Dakota Access into additional rounds of federal, state, and local permitting. Given the difficulty of permitting and the expense and time it entails, it sends the message to all companies and potential investors that permitting systems are never secure, thereby increasing risk to investments and discouraging similar large-scale projects.

Removal or abandonment of the pipeline involve obvious negative socio-economic consequences in terms of lost jobs and tax revenues from oil production for North Dakota and the MHA Nation. But the governmental devaluation of financial assets in Alternatives Four and Five are also significant. USACE must weight those socioeconomic factors carefully. The only alternative that provides the right balance between environmental protection and economic prosperity is Alternative Three.

USACE should particularly consider environmental justice factors in making its decision. The MHA Nation brings in hundreds of millions of dollars in revenue from oil resources contingent on DAPL’s operation, as 60% of MHA oil is transported by DAPL. The pipeline has led to the creation of numerous jobs and revenue flowing from its operations has been used to build schools, justice centers, drug rehabilitation clinics, and other community facilities. Were DAPL to shut down, the MHA Nation would lose an estimated \$160 million a year, affecting the 80% of the tribe’s budget provided by oil and natural gas royalties and tax revenues.

The existing pipeline route, as maintained under Alternative Three, was developed after extensive environmental analysis and public consultations, ensuring minimal environmental and socioeconomic impact. DAPL is fully encased 95 feet below Lake Oahe and has robust monitoring and leak detection systems that already surpass regulatory requirements. State-of-the-art technology ensures early detection and rapid response to any potential incidents. Further, the project proponent has agreed to additional safety measures above and beyond those of the original 2016 environmental assessment. These include increased monitoring using advanced technologies such as smart pigs or fiber optic cables; leak detection using methods such as flow monitoring, acoustic sensing, or thermal imaging; emergency response plans including steps for isolating the affected section of pipeline, mitigating the impact of the leak, and cleaning up any spilled oil; and enhanced maintenance and upgrades including replacing older sections of pipe, installing new valves for better control of oil flow, or adding secondary containment structures to catch any leaked oil.

Alternative Three has no new environmental impacts than what has already occurred with the original construction. It has a lower greenhouse gas (GHG) footprint than Alternatives One and Two, both of which would result in the oil currently transported via DAPL moving to rail and truck, and lower potential spills. It also has lower GHGs than Alternative Five, which requires additional construction work as well as several years of transportation of Bakken oil via rail and truck, both of which incur higher GHG emissions than continued transport via DAPL.

Rerouting DAPL, as proposed in Alternative Five is also highly problematic and carries more environmental impact than Alternative Three, requiring the 111 mile-long North Bismarck reroute, crossing the Missouri River north of the city. Besides requiring additional construction activities that would create more environmental impact, USACE has no jurisdictional authority to require Dakota Access to construct a reroute off its property. Alternative Five would require intervals to be excavated, cut, and capped, leading to further impacts on the land, water resources, and wildlife. During the two to four years estimated for the rerouting, DAPL oil would be transported by truck and rail, with associated impacts on air quality, GHGs, traffic, safety, and noise. The unnecessary construction activities exposes water bodies to risk of runoff or accidental spills.

While Alternative Four is less disruptive than Alternatives One, Two, and Five, it would impose extra costly measures that are unnecessary. DAPL already has a proven track record of safety and reliability. The new conditions under Alternative Four would need to be evaluated by a rigorous cost-benefit analysis. USACE has not provided any information in the DEIS to suggest that the gains in risk mitigation are justified considering the significant financial and operational burdens it would entail.

The Alliance strongly supports maintaining DAPL as currently situated and outlined in Alternative Three, which maintains the best balance of environmental protection, environmental justice, energy security, economic benefit, and regulatory certainty. Thank you for the opportunity to comment.

Sincerely,



Kathleen M. Sgamma  
President