



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

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The Honorable Dave Archambault II
Chairman, Standing Rock Sioux Tribe
P.O. Box D
Fort Yates, North Dakota 58538

Kelcy Warren
Chairman and Chief Executive Officer
Energy Transfer Partners, L.P.
8111 Westchester Drive
Dallas, TX 75225

Joey Mahmoud
Executive Vice President
Dakota Access LLC
3738 Oak Lawn Avenue
Dallas, TX 75219

Dear Gentlemen:

I am writing regarding the review that the Department of the Army initiated in September regarding the proposed crossing of the Dakota Access Pipeline (DAPL) under Lake Oahe. As you know, on September 9, 2016, the Department of Justice, the Department of the Army, and the Department of the Interior stated that the Army would move expeditiously to determine whether it would need to reconsider any of its previous decisions regarding DAPL's proposed crossing at the Lake Oahe site. The Army has completed that review, accounting for information it has received from the Tribes and the pipeline company since September, and has concluded that its previous decisions comported with legal requirements.

The Army is mindful of the history of the Great Sioux Nation's repeated dispossessions, including those to support water-resources projects. This history compels great caution and respect in considering the concerns that the Standing Rock Sioux Tribe has raised regarding the proposed crossing of Lake Oahe north of its reservation. The Army recognizes that portions of Lake Oahe remain within the Standing Rock Sioux Tribe's reservation boundaries and the Tribe retains hunting and fishing rights in the lake. Additionally, the Army recognizes that the Tribe relies on Lake Oahe and the Missouri River for drinking water. We take seriously our government-to-government relationship with the Tribe. This history, the importance of Lake Oahe to the Tribe, and our government-to-government relationship call for caution, respect, and particular care regarding the proposed DAPL crossing at Lake Oahe.

As you are aware, the statute governing rights of way for pipelines through Federal lands mandates that the Army "impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public

from sudden ruptures and slow degradation of the pipeline." 30 U.S.C. §185(g). It also requires the Army to "protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes," 30 U.S.C. §185(h)(2)(D). In addition, the statute authorizes the Army to subject a right-of-way to "terms and conditions" "regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination," to protect the environment and public health and safety, 30 U.S.C. §185(k).

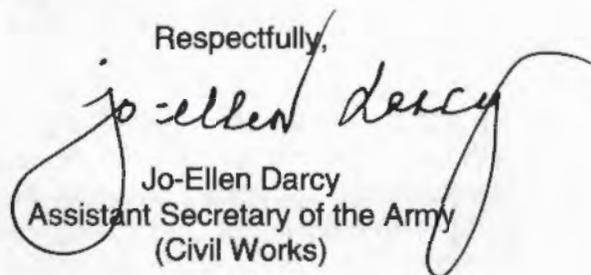
Accordingly, the Army has determined that additional discussion with the Standing Rock Sioux Tribe and analysis are warranted. The Army invites the Standing Rock Sioux Tribe to engage in discussion concerning the following topics:

- Potential conditions in an easement for the pipeline crossing, which would further reduce the risk of a spill or rupture, hasten detection and response, or otherwise enhance the protection of Lake Oahe, the Tribe's water supplies, and its treaty rights;
- With such conditions, the risk to the Tribe of a spill from the pipeline crossing Lake Oahe at the proposed location; and
- In light of such conditions, whether to grant an easement for the pipeline to cross Lake Oahe at the location currently proposed.

The Army plans to provide a framing paper to facilitate this discussion with the Standing Rock Sioux Tribe regarding these topics. While these topics are of particular interest to the Army, we welcome any input that the Tribe believes is relevant to the proposed pipeline crossing or easement. The Army will work with the Tribe on a timeline that allows for robust discussion and analysis to be completed expeditiously.

While these discussions and analysis are ongoing, construction on or under Corps land bordering or under Lake Oahe cannot occur because the Army has not made a final decision on whether to grant an easement.

Respectfully,

A handwritten signature in cursive script that reads "Jo-Ellen Darcy". The signature is written in black ink and is positioned above the printed name and title.

Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)