



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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January 8, 2016

Ref: 8EPR-N

U.S. Army Corps of Engineers, Omaha District
CENWO-PM-AC
Attn: Brent Cossette
1616 Capitol Avenue, Suite 9000
Omaha, NE 68102

Re: Dakota Access Pipeline Draft Environmental Assessment

Dear Mr. Cossette:

Thank you for the opportunity to review the U.S. Army Corps of Engineers (USACE) Dakota Access Pipeline Draft Environmental Assessment (EA) posted on December 28, 2015. Our comments are provided for your consideration pursuant to our responsibilities and authority under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.

The project proponent's website¹ describes the proposed Dakota Access Pipeline as a 1134-mile, 12-inch to 30-inch diameter pipeline crossing four states; transporting crude oil from the Bakken/Three Forks oil fields in North Dakota to Illinois. The segment of the project in North Dakota is estimated to be 358 miles long; including a 210-mile main pipeline and a 148-mile supply line. The proposal also includes six tank terminal sites and 3 to 6 booster and mainline pumps (Page 832 of 966 of EA, Appendix H).

We have reviewed the Draft EA and provide these comments in an effort to ensure the project's potential environmental impacts are adequately analyzed, disclosed and minimized, or avoided. As detailed below, our main concerns with Draft EA document for the North Dakota segment of Dakota Access pipeline are: (1) the document lacks sufficient analysis of direct and indirect impacts to water resources, (2) the document lacks information on the measures that will be required to assure that impacts from construction and operation of the pipeline are not significant, and (3) the scope of the document is limited to small portions of the complete project and does not identify the related effects from the entire project segment. We recommend these issues be addressed in the Final EA in order to meet the requirements of the NEPA regulations and in order to support for a Finding of No Significant Impact (FONSI).

¹ <http://www.dapipelinefacts.com/>

Our review of the Draft EA was substantially limited by missing information and by the limited scope of the EA. For example:

- Figures 1 through 13, the maps showing the project layout that are referenced in document index, were not included in the posted document.
- The environmental impact analysis appears to focus exclusively on two small segments of the pipeline crossing Corps lands at Lake Oahe and the Missouri River above Lake Sakakawea and there was no information included on the overall impact of the project to water resources.
- Other than impacts from storm water during construction, our review did not find the analysis of the environmental impacts of constructing and operating the approximately 358 miles of proposed pipelines in North Dakota.
- The EA also did not include potential impacts from the six proposed receiving stations/tank farms collecting oil for the pipeline.

This EA contrasts with the two other recent USACE EAs for crude oil pipelines, Bakkenlink and Sakakawea. Both those EA more thoroughly analyzed potential environmental effects for the length of the pipelines.

To provide a revised EA that supports a mitigated FONSI, we recommend the following:

1. The EA should describe the design, operational and planning measures that will be required for protection of water resources from spills and leaks. These include information on the monitoring equipment, valve locations, pipeline design measures and procedures; Dakota Access would implement to prevent and respond to leaks and spills from the pipeline and associated facilities. The analysis should also describe what measures would be in place to enable the operator(s) to quickly detect and locate leaks and spills, limit the volume of any release, and identify the maximum expected spill volume given those measures. For example, will there continuous monitoring for abnormal pressures in the pipeline? For additional details on the types of emergency preparedness measures that should be included in the EA, please see the EPA Region 8's comments on the Sakakawea Pipeline System Environmental Assessment Addendum, dated December 23, 2015 (enclosed).
2. The water resources impacts section of the EA should be expanded to discuss affected water resources and potential impacts from construction and operation of the pipeline for the segment of the pipeline covered by the North Dakota EA. For example, the EA should identify potentially affected waterbodies, designated water uses (water quality standards), identify impaired waterways, drinking water intakes and aquifers, etc. The enclosed Sakakawea Pipeline letter also provides additional details on potential water quality impacts.

The proposed pipeline crosses several important glacial drift and alluvial aquifers. Groundwater in this area tends to be of poor quality, so the alluvial aquifers and particularly the glacial drift aquifers can be important sources of drinking and agricultural water. For more information please see the "North Dakota Source Water Assessment Program, Strategic Plan."² The State Water Quality Commission and the USGS have also prepared a series of County Ground-Water

² Dated 1999 at <https://www.ndhealth.gov/wq/gw/pubs/swap.pdf>.

resources. For example the Dunn County study³ discusses the aquifer used by the Town of Killdeer as well as other domestic and livestock groundwater uses.

3. The EA should identify potential wetlands within the construction foot print or easement of the entire segment of the proposed pipeline. Currently, the document does not include any information on impacts to wetlands and other waters of the U.S. outside of pipeline segments on Corps Fee Land (Sections 2.3.2.7, 2.3.2.8 and 3.2.3 -- Wetlands). Estimating the proposed route (as maps were not included in the EA), it appears that the pipeline would cross a number of larger (for western North Dakota) perennial streams which may warrant site-specific delineation of Waters of the U.S. and potentially require an individual 404 permit. For example, it appears the pipeline will cross the Little Missouri River, Heart River, and Spring and Beaver Creeks.

For major pipeline projects in the western U.S., such as the Dakota Access, we typically see the proponent develop specific mitigation measures to reduce impacts to streams crossings. There have been a number of FERC⁴ EISs for natural gas pipelines that have done a good job balancing the protection of water and aquatic resources with simplifying construction requirements. We recommend the EA be revised to discuss the use of the Nationwide 404 permit to mitigate impacts to smaller wetlands/waters of the U.S. and identify additional mitigation measures and procedures for crossing perennial streams or streams that have greater potential for impacts to wetlands/waters of the U.S. or other areas of aquatic habitat.

4. Because they are integral components of the overall project, the EA should include information related to the tank farms and associated impacts. The current Draft EA does not evaluate the environmental impacts of constructing and operating six terminals stations/tank farms and 258 miles of pipelines. Specifically, we recommend a discussion of:
 - Location of tank farms;
 - Information on whether the receiving station/tank farms have been located to avoid or reduce impacts to surface and ground waters. In particular, it would be useful to identify whether the facilities been sited over shallow groundwater resources or near any sources of drinking water or critical wildlife areas. Ideally, this EA would document that these facilities do not present a risk to aquatic or drinking water resources.
 - Facility design features and operational controls to avoid and minimize impacts to surface and groundwater. We note that there is an SPCC⁵ plan for construction; however, no plans were included or referenced for proposed terminals/tank farms.

The environmental assessment is a very large document with 966 pages including appendices. For the revised EA, we recommend evaluating the information in the appendices as it appear some of the information could be deleted or summarized in the revised EA. For example, it appears that portions of the directional drilling construction planning appendix have been included four times.

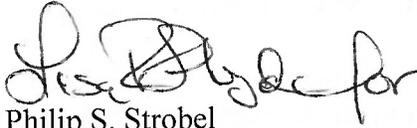
³ http://www.swc.nd.gov/info_edu/reports_and_publications/county_groundwater_studies/pdfs/Dunn_Part_III.pdf,

⁴ Federal Energy Regulatory Commission

⁵ Spill Prevention, Control, and Countermeasure Plan under the Oil Pollution Act

Thank you for the opportunity to provide comments on the Draft EA for the North Dakota segment of the Dakota Access Pipeline. Based on the information and impact assessment gaps identified above, and lack of identified mitigation measures to protect water resources and public health, it does not appear the Dakota Access Pipeline Draft EA would support a FONSI. Based on our experience with similar projects, we believe that information and mitigation could be added to the EA in order to support a mitigated FONSI. If further explanation of our comments is desired, please contact me at (303) 312-6704, or your staff may contact Dana Allen at (303) 312-6879 or by email at allen.dana@epa.gov. We look forward to reviewing the revised EA and the Draft FONSI when available.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip S. Strobel for". The signature is fluid and cursive, with the word "for" written in a smaller, simpler script at the end.

Philip S. Strobel
Director, NEPA Compliance and Review Program
Office of Ecosystems Protection and Remediation

Enclosure