

POLICY ISSUE

DAKOTA ACCESS PIPELINE CONTROVERSY



Photo looking south toward one of the protest camps located on public land as viewed from private land to the north. (©Nouveau 2016).

Last Update: January 17, 2017

Nouveau is providing updates to this infrastructure project as conditions warrant. You can read a summary of our reporting in reverse chronological order at the end of this issue paper.

SUMMARY

According to its owner, the Dakota Access Pipeline (DAPL) is a “\$3.8 billion privately funded infrastructure project that runs 1,172 miles from the Bakken Formation in North Dakota, through South Dakota, Iowa, and ending in Illinois.” The 30” pipeline is designed to bring 57,000 barrels per day of U.S. crude oil to Midwest refineries in a

more efficient and safer manner than is currently utilized as oil from the Dakotas is largely transported via rail, truck, and barge due to inadequate pipeline infrastructure.

Made public in July of 2014, the project was fully approved by the federal government and the four states through which it passes. It is more than 84% complete but has recently run into intense opposition by fossil fuel opponents who see the pipeline as enabling further dependency on fossil fuel. These groups allege the pipeline could leak and potentially pollute the Missouri River that provides water supplies to the local population; for the Standing Rock Sioux Tribe, the project is a form of desecration of their ancestors sacred lands; while supporters say the project will actually be more efficient and safer for the environment than current transportation methods. Although originally approved, the U.S. Army Corps of Engineers has subsequently withdrawn a single permit requires for completion of the project. Although the river itself is under state jurisdiction, the Army controls the flood plain which extends 540 feet inland from the east and west banks of the river. It is that remaining 1,080 which remains at issue.



Photo of protest camp showing organization and support vehicles. (©Nouveau 2016).

The Project

#DAPL

The Dakota Access Pipeline (DAPL) is a \$3.8 billion privately funded infrastructure project that stretches 1,172 miles. Supporters say the pipeline will connect the oil-rich areas in North Dakota, Bakken, and Three Forks, to existing pipelines in Illinois.

The United States possesses over 3.5 million miles of existing pipelines which transport nearly 70% of all energy products consumed daily in the country. Despite numerous pipelines, most were constructed in traditional oil producing and distribution regions of the country. The shale revolution has shifted production to new areas of the country, which in turn lack adequate pipeline infrastructure. Initial production of oil from the Bakken was transported by rail, highway, and river. As volumes have increased however, these methods are seen by experts as more costly and less safe than would be achieved by transporting large volumes of oil via pipeline.

Dakota Access LLC is a joint project of Energy Transfer Partners, L.P. (NYSE: ETP) and Sunoco Logistics Partners, L.P. (NYSE: SXL). The line was originally projected to be in service by the end of 2016, but recent protests over the final portion of the line has slowed construction as explained below.

DAPL Opposition

#NoDAPL

Protests originated from the Standing Rock Sioux Tribe have seen hundreds of individuals marching against the construction of the pipeline, which they believe threatens water supplies of Missouri, and the sacredness of the land where their ancestors have lived and have been buried. The Standing Rock Sioux indicate they had not been adequately consulting during the federal permit process which was led by the U.S. Army Corps of Engineers. The federal government disputes that position.

The project is currently opposed by varying groups including:

- The Standing Rock Sioux Tribe,
- Misc Native Americans tribes,
- Environmental activists / anti-fossil fuel groups
- 'Water protectors'¹
- Some non-governmental Organizations (Amnesty International, Greenpeace, Sierra Club),
- Social Movements (Black Lives Matter),
- Various Hollywood celebrities.



Site of violent confrontations between law enforcement and protestors near burned out police vehicles across state highway 1806. (©Nouveau 2016).

DAPL Supporters

#YesDAPL

MAIN Coalition (Midwest Alliance for Infrastructure Now)²

¹ Their fear is that any kind of accident might threaten their water resources, as happened in the Navajo and Ute Nations, in 2015, when the Agency for environmental protection (EPA) accidentally released toxic waste in the Animas River in Colorado.

² "The Midwest Alliance for Infrastructure Now (MAIN) is a partnership of entities from the agriculture, business, and labor sectors aimed at supporting the economic development and energy security benefits associated with infrastructure projects in the Midwest."

According to estimates, the United States would benefit from the pipeline by becoming less dependent on energy import, and rail and trucks transportation; moreover, it brings \$156 million in sales and income taxes to state and local governments, and it adds 8,000 construction jobs. Additionally, the project is based on the employment of advance technology and monitoring systems to ensure safety and reliability.

Other arguments in support of the project are centered on the environmental estimates conducted before the beginning of the construction. The Corps and EA led environmental investigations that were carefully reviewed and approved by each state before the initial installation of the first segment of pipeline. Overall the pipeline will be buried 90 feet under the ground and the portion that will cross Lake Oahe will have a thicker wall to increase safety. Additionally, remotely operated valves have been installed on the pipeline's portion crossing the river.

With the protest becoming more intense and violent, the environmental safety is the first victim. According to DAPL supporters, protesters are creating more damages than the pipeline itself by living in camps near the Missouri River in poor conditions. There are entire families with children living in cold areas exposing themselves to high health risks. If safety is the main objective of the entire protest, protesters are failing by voluntarily creating health threats that could be avoided.

The pipeline is supported by various groups including the "MAIN" coalition which is currently comprised of:

- Iowa State Building and Construction Trades Council
- Iowa Association of Business and Industry
- SD Trucking Association
- Pierre Economic Development Corp.
- SD Intrastate Pipeline Company
- SD Petroleum and Propane Marketers Association
- South Dakota Grain and Feed Association
- South Dakota Hotel and Lodging Association
- South Dakota IBEW Union
- South Dakota Corn Growers
- Eastern South Dakota Building and Construction Council

- Great River Economic Development Foundation
- Midwest LECET (Laborers)
- Illinois Association of Convenience Stores
- Illinois Petroleum Marketer Association
- Illinois State Grange
- Petroleum Marketers and Convenience Stores of Iowa
- Laborers District of North Dakota and Minnesota
- ND Association of Oil and Gas Producing Counties
- North Dakota Petroleum Council
- Greater North Dakota Chamber of Commerce



Photograph showing completed Dakota Access Pipeline segment near protest site. (©Nouveau 2016).

CONCLUSIONS

As the project is nearly complete, it will be difficult for opponents to justify holding the entire project as the area in controversy extends only 540 feet on either side the Missouri river, which is the extent of the permit in question. Even the actual water crossing itself is under state, not federal control. The violent opposition which appears to be led by non-local individuals also casts doubt on the validity of a local grown opposition movement and instead appears to center on an anti-fossil fuel political agenda.

The failure to elect Hillary Clinton to the White House means that the project will be quickly approved once President-elect Trump takes office. The potential for violent clashes remains however and policy officials must act to defuse the situation. We will be providing updates to this issue in reverse chronological order as further development occur.

For questions, comments or to speak with a member of our team, please contact:

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TIMELINE UPDATES:

January 2016: Dakota Access, LLC announced the project approval by the North Dakota Public Service Commission and the beginning of constructions on January 25.³

Energy Transfer Partners published a projected DAPL timeline, confirming the pipeline's operation by the end of 2016.⁴

July 2016: The Standing Rock Sioux Tribe filed a lawsuit against the U.S. Army Corps of Engineers. They claimed the Corps violated federal laws regarding the permission for construction, and failed to consult with local Tribes.

August 2016: Authorities faced hundreds of protesters filling the streets with tents.⁵

³ <http://www.psc.nd.gov/database/documents/14-0842/145-010.pdf>

⁴ DAPL Project Timeline by Energy Transfer Partners:

- 3rd Quarter 2014 Initial Meetings with State Permitting Agencies
- 3rd & 4th Quarter 2014 Project Open Houses/Informational Meetings
- 4th Quarter & 1st Quarter 2015 State Applications Filed
- 3rd Quarter 2015 State Authorizations Anticipated
- 4th Quarter 2015/ 1st Quarter 2016 Construction Commences

4th Quarter 2016 Facilities In-Service

(<http://www.daplpipelinefacts.com/resources/faq.html>)

The protests carried over to a highway and to private lands at which point private security contractors and local law enforcement acted to disperse the protesters. These actions gained sympathy for the protestors and resulted in the temporary suspension of construction activities. At this point North Dakota Gov. Jack Dalrymple issued an emergency declaration in response to the protests. Hundreds of individuals were arrested, 80% of which had no local ties to the area.

September 2016:

September 8: North Dakota Gov. Jack Dalrymple officially activated the National Guard, increasing police and military presence to assist the site.

September 9: U.S. District Court Judge James Boasberg in Washington, D.C. rejected the request to stop constructions, stating the Corps did not violate any federal laws. The Obama administration expressed its support to the Sioux protest by imposing a block of the constructions on a critical segment of the pipeline in North Dakota.

September 20: The President of the Standing Rock Sioux, David Archambault II, appealed to the United Nations Council for Human Rights. He stated the construction of the pipeline violated the Sioux's sovereignty on those lands, ratified by the U.S. government with two treaties in 1851 and 1868, and the National Historic Preservation Act.

The protest continues with a total of over 500 people arrested. Of those arrested, law enforcement report that approximately 7% are from North Dakota with the largest groups coming from South Dakota, California, and Washington. The violence has increased and reached a critical level with police using pepper spray and rubber bullets, and protesters setting fires. UN (United Nations) Officials are investigating violations of human rights for inhuman treatment of protesters. Approximately 30 buffalo has

⁵ Since spring 2014 the Rosebud Sioux have started a similar campaign against the Keystone XL project, a pipeline that would have carried half a million barrels a day from North Dakota to Illinois. The Sioux were joined by other tribes and white rancher in the movement "Reject and Protest".

disappeared from neighboring ranches and private property damage is estimated in the millions of dollars.

October 2016:

October 3: The leaders of five Trade Unions (the International Brotherhood of Teamsters, the Laborers' International Union of North America, the United Association, and the International Brotherhood of Electrical Workers) urged President Obama to approve the Dakota Access project without further delay.

October 4: The State Historical Society of North Dakota stated no human remains, or significant cultural materials, were found in the area of the construction's corridor.

November 2016:

November 1: President Obama in an interview with NowThis news stated the Army Corps is examining alternative routes for the Dakota pipeline.

November 2: MAIN Coalition's spokesman, Craig Stevens, in response to the President declarations, affirmed a reroute is theoretically easy but practically not possible, as it will take years to get permissions. Additionally, the entire project would become an economic loss and send the signal to any potential future investors not to waste their time or money on U.S. infrastructure.

November 6: DNB Bank, one of the lenders, presented its concerns on the project and protests. It asked for a more diplomatic approach, focused on a constructive attitude, in order to continue financing the project.

November 7: Energy Transfer Partners announced the mobilization of drilling equipment close to Lake Oahe to finalize construction.

November 14: The US Army Corps of Engineers completed its additional review on DAPL and released an official statement announcing "additional analysis and

discussion" is needed before construction can move forward on Lake Oahe and Missouri River. The Corps discussed additional pipeline safety measures including spill response plans which appear problematic since these areas are outside of the Corps jurisdiction and are already covered under USDOT's Pipeline and Hazardous Materials Safety Administration's authority. The latest release appears concentrated on additional dialog is simply intended to avoid a decision until the end of the administration.

November 15: Energy Transfer Partners appealed to court to avoid political interference and to complete the project that already obtained legal approval.

November 20: Protestors appear to be making their last stand prior to bitterly cold weather has set into the area. 400 clashed with police Sunday night (20 Nov) as protestors were kept off of private land by police in riot gear. The protests were so violent that law enforcement was forced to deploy tear gas, water cannon and even rubber bullets.

November 21: Protests continued at 16 more were arrested following another day of violence in what local law enforcement have called an "ongoing riot."

November 25: The Army Corps of Engineers announced the plan to close pipeline protest camps occupying public land by December 5, for "safety reasons" including the onset of winter and the continuing violent standoffs. Protesters have been asked to move to an area south of the Cannonball River in an attempt to de-escalate confrontations and Senator Cory Booker (D-NJ) asked the Department of Justice to open an investigation regarding the methods used by police against protesters.

November 26-27: David Archambault, Chairman of the Standing Rock Sioux Tribe, announced protesters are staying in the camp. The Corps said it will not remove people by force but emergency assistance will not be guaranteed. Protesters who stay are to be considered unauthorized and will subject to being cited or arrested for trespassing on public land. Sporadic protests occurred in Washington D.C.

November 28: With an Army Corps demand to have protestors leave camps on public land by Dec 5th, North Dakota Governor ordered protestors to evacuate immediately due to winter storms. Protestors see it as a convenient way to force their removal, but the Governor's office says out of state protestors' health is endangered by the approaching blizzard. A group of veterans claims they'll go to ND to stand between law enforcement and protestors.

November 30: North Dakota's Senator John Hoeven affirmed the escalation of violence, and the conflicts between protesters and law enforcement were caused by Obama's block of construction.

December 2016:

December 4: The Obama Administration decided to deny a permit to complete the last segment of pipeline under Lake Oahe, Missouri River. The U.S. Army Corps of Engineers said alternative routes should be considered, together with a full environmental review. That said the administration did not vacate the "FONSI", Finding of No Significant Impact thus the requirement to conduct a full-blown EIS is actually a soft suggestion, not a requirement.

Additionally, the pipeline route had been modified 140 times in North Dakota alone to preserve cultural sites.

December 5: Mr. Jason Miller, spokesman for President-elected Trump, affirmed Trump's Administration will support the project after a full review of the situation. Mr. David Archambault II, president of the Standing Rock Sioux, invited to incoming Administration to have a meeting with the Tribe and to support the Corps decision. Energy Transfer denounced the lack of rule of law in the Obama's decision; while the MAIN Coalition described the result as "purely political" and fears the future of infrastructure projects.

December 19: Judge Cynthia Feland postponed the first pipeline protester trial since

not all the defendants received the evidences from the prosecutor. The trial is rescheduled for January 31 and February 1, 2017.

December 20: More than a thousand protestors remain camped near Cannonball River, despite cold weather. Sen. John Hoeven asked tribal officials cooperation to vacate the protest camp.

December 28: Five protesters were arrested for criminal trespass in Morton County, ND.

January 2017:

January 1: Three people were arrested after they climbed the inside rafters of the U.S. Bank Stadium in Minneapolis (MN) and hanged a big #NoDAPL banner, during a Vikings-Bear NFL game. The game was not stopped but six rows of seats were cleared for security reasons. U.S. Bank is a major investor in the pipeline project with \$175 million invested in Energy Transfer Partners.

January 4: The U.S. Bank Stadium protesters were released from custody on January 2. In North Dakota, a protester refused to testify against other DAPL opponents during an investigation on a violent clash happened in November, in which a woman almost lost her arm.

January 7: More protesters were arrested after they intruded into Turtle Hill, a U.S. Army Corps of Engineers land.

581 protesters were arrested since August; 182 had prior criminal records. 94.5 percent arrestees were from out of state.

January 9: The Morton County Sheriff's Department presented an estimate showing the DAPL protest costs for state and local taxpayers exceeded \$22 million, with 91 in-state agencies and 33 out-of-state agencies provided support.

January 10: The controversy continues; in July 2016, Standing Rock Sioux Tribe filed a lawsuit against the U.S. Army Corps of Engineers claiming the Corps violated federal laws by giving the permission for construction.

Now both the Tribe and the U.S. Army Corps of Engineers are on the same side, asking the judge to dismiss Energy Transfer Partners claim on having permission to complete the last segment of pipeline under Lake Oahe.

END OF UPDATES