



CONTACTS

(General Questions)

Kerry Libby

Standing Rock Sioux Tribe

External Affairs Director

(701) 854-8638

kerry.libby@standingrock.org

(Technical Questions)

Doug Crow Ghost

Standing Rock Sioux Tribe

Water Resources Department Director

(701) 854-8534

dcrowghost@standingrock.org

For Immediate Release: U.S. Army Corps of Engineers Releases Dakota Access Pipeline's Draft Environmental Impact Statement for Public Comment

*The Standing Rock Sioux Tribe Asks for Public Support Demanding Shutdown of
Pipeline and a New Environmental Review Addressing Tribal Concerns Amid
Pipeline Company's Horrendous Safety Track Record*

Key Points

1. In 2016 and 2017, tens of thousands of allies stood with the Standing Rock Sioux Tribe in North Dakota at resistance camps and around the world to protest the Dakota Access pipeline (DAPL). Though Standing Rock never gave its free, prior and informed consent to DAPL — as required by the United Nations United Permanent Forum on Indigenous Issues — the pipeline was built through the Tribe's unceded treaty lands, just upstream of the reservation and beneath the Missouri River. Today, DAPL presents a clear and enduring threat to delicate ecosystems and Standing Rock's primary source of freshwater.
2. DAPL's Parent company, Energy Transfer, has an abysmal safety track record. It's responsible for numerous spills and toxic chemical releases, and it has been cited and fined tens of millions of dollars for a host of callous public safety violations.

3. After Standing Rock brought a lawsuit against DAPL, a federal court revoked DAPL's easement to cross federal lands, pending the release of a new Environmental Impact Statement (EIS) under the guidance of the U.S. Army Corps of Engineers. The draft EIS has been routinely delayed, and DAPL continues to operate illegally, without a valid federal easement.
4. The Corps tasked Environmental Resources Management (ERM) with preparing the EIS. ERM is a member of the National Petroleum Institute, which submitted a brief in favor of DAPL and against Standing Rock. The Tribe sees this as a clear conflict of interest.
5. The just-released draft EIS, now available for public comment, ignores virtually every major concern voiced by the Standing Rock Sioux Tribe. It fails to account for Energy Transfer's abysmal safety record and DAPL's lack of an adequate emergency response plan. Standing Rock Chairwoman Janet Alkire says the process is a sham.
6. The Army Corps is now accepting public comments on the draft EIS. Standing Rock is asking the public to tell the Army Corps to "start from scratch" on the EIS process and shut the pipeline down. The tribe says an impartial party must be tasked with conducting the review. Comments can be submitted via the Standing Rock Sioux Tribe's website:
<https://standingrock.org/dapl-eis/>.

Fort Yates, N.D, 9/8/23 — On Friday, the U.S. Army Corps of Engineers released a new court-ordered draft Environmental Impact Statement (EIS) for the Dakota Access Pipeline (DAPL), opening a 45-day window for the public to offer [comments](#). After a thorough review of the draft EIS, Standing Rock Sioux Tribe Chairwoman Janet Alkire says it should be invalidated, the Corps should "start from scratch" on a new environmental review using an unbiased firm, and the pipeline — which currently operates without a federal easement for its crossing under the Missouri River just upstream from Standing Rock — should be shut down.

"We're furious that the Army Corps has addressed none of our major concerns during the review process," Alkire says. "The pipeline is an imminent threat to the Missouri River, sensitive habitat and sacred burial sites along the riverbank. The oil company's emergency response plans are inadequate, its safety track record is horrendous, and there's been a stunning lack of transparency with Standing Rock throughout the environmental review process, including inaccurate characterizations of tribal consultation."

Chairwoman Alkire is asking the public to stand in solidarity with Standing Rock by [submitting comments](#) to the Army Corps demanding a new EIS and a shut-down of the pipeline in compliance with the National Environmental Policy Act (NEPA).

Earlier this year, U.S. Sens. Bernie Sanders (I-Vt.), Jeff Merkley (D-Ore.), Ed Markey (D-Mass.) and Tom Carper (D-Del.) submitted [a letter](#) to the Corps seeking more transparency in the process and direct address of tribal concerns. Chairwoman Alkire also wrote a [strongly worded missive](#) to the Corps restating and clarifying the tribe's grievances in detail and demanding a dramatic shift in approach.

Alkire says the draft EIS fails to account for the existence of criminal charges and a host of fines and serious citations from regulators faced by the pipeline's parent company, Energy Transfer. "The Corps is doing all it can to ignore the company's poor safety record and the high risk of DAPL" she says.

In January of 2022, the Illinois Court of Appeals [reversed a decision](#) by state regulators to nearly double DAPL's capacity to 1.1 million barrels per day. The Court cited the need to fully review Energy Transfer's safety record, including subsidiaries such as Sunoco. That decision lines up with a judgment rendered in Standing Rock's federal NEPA litigation, which ultimately [mandated](#) DAPL's new draft EIS. As part of his decision in that case, Federal District Court Judge James Boasberg asserted that "the operator's history did not inspire confidence."

Standing Rock contends that, ignoring both court rulings and evidence of Energy Transfer LP's poor safety record, the North Dakota Public Service Commission approved the capacity increase after a superficial review of the project. "The evidence is overwhelming, but the oil continues to flow without an easement or valid environmental assessment," Alkire says.

Last year, criminal charges against Energy Transfer LP from federal and state agencies included allegations of a flawed "corporate culture" and "obstructionist conduct." The Federal Energy Regulatory Commission (FERC) accused Energy Transfer of intentionally putting toxic waste into its drilling mud for its Ohio Rover pipeline. The hazardous waste was discovered in two million gallons subsequently [spilled into a protected wetland](#). According to FERC, "Contemporaneous evidence demonstrates that these violations were the product of a corporate culture — one that equally infected the executives ... that favored speed and construction progress over regulatory compliance."

FERC found that Energy Transfer executive Joey Mahmoud applied direct pressure to speed up production of the Ohio Rover pipeline. Mahmoud was also in charge of DAPL construction — which was subject to delays and time pressures — during the same period. FERC found that Energy Transfer did not self-report violations and committed "obstructionist conduct" during its investigation, which ultimately led to a \$40 million fine.

"As a result of cost and time pressures, the same unlawful toxic release practices could easily have occurred with DAPL construction, especially with the same executive in charge," says Doug Crow Ghost, director of the Standing Rock Sioux Tribe's Water Resources Department. "What spills or violations did Energy Transfer fail to report with DAPL, like what was done on the Ohio Rover pipeline? What documents were not provided, what data wasn't preserved?"

In December, the Pennsylvania Attorney General Josh Shapiro announced [48 criminal charges](#) against Energy Transfer's Sunoco Mariner East pipeline, entailing accusations of a failure to report releases and the use of unapproved chemicals. The charges resulted from releases of 80,000 gallons of drilling mud into a recreation lake and wetland. "Forty-five of those charges are for illegally releasing industrial waste at twenty-two sites in eleven different counties across Pennsylvania," Shapiro said.

A Pennsylvania Grand Jury also levied [nine criminal charges](#) related to an explosion at the Revolution pipeline in Pennsylvania that entailed "Energy Transfer's failure to conduct proper oversight of the Revolution Pipeline project." This followed a [\\$30 million civil fine](#) for numerous violations during construction.

"The Corps has consistently dismissed facts related to Energy Transfer's safety performance, preferring to gauge DAPL's risk based upon a flawed analysis of generic statistics of crude oil pipelines," Crow Ghost says.

Patrick Martin, Standing Rock Emergency Manager, agrees that any serious assessment of pipeline risk must include analysis of the pipeline company's safety record. "The Corps is hiding the ball when they measure risk by looking at other pipeline company safety records, when the company operating the pipeline is facing multiple criminal charges," he says.

The Tribe's technical reports have emphasized that DAPL is high risk due to numerous safety system deficiencies, including Energy Transfer's poor safety performance. The Tribe's 2020 EIS Scoping Report reviewing the pipeline and Hazardous Safety Materials Administration (PHNSA) database also found overwhelming deficiencies with Energy Transfer's safety record. One example was the PHMSA enforcement record regarding Energy Transfer and its subsidiaries. The Scoping Report found that since 2012, as compared to other corporate families of pipelines with the most spills, Energy Transfer had the largest number of enforcement cases against them by PHMSA and the most penalties collected.

Crow Ghost says that recent government reports only amplify those concerns. "It's outrageous that the federal government would allow a pipeline facing charges and millions in fines in several states for pipeline safety-related crimes and violations to operate just upstream from our water supply," he says.

"The tribe's reports have noted all along the serious spills, citations, and fines for all of Energy Transfer's subsidiaries," says Don Holmstrom, Standing Rock's safety and emergency response consultant. "Our reports involved not only crude oil pipelines, but pipelines transporting other hazardous materials in multiple states. The tribe found this reflects the flawed safety culture of the corporation. All of this needs to be examined thoroughly by an objective agency."

Tribal officials say the entirety of the environmental review process hasn't been taken seriously and is compromised because the Corps selected a company with a clear conflict of interest to prepare the just-released draft EIS. Environmental Resources Management — which also produced a sparkling environmental review for the Keystone XL pipeline, later shelved due to environmental concerns — is a member of the American Petroleum Institute. That organization previously filed a legal brief in support of DAPL in Standing Rock's suit against the Army Corps. Moreover, Environmental Resources Management has contracted with at least five separate companies with an ownership interest in DAPL.

"The Corps' EIS process has been seriously flawed, and its EIS drafts have gotten progressively worse," says Chairwoman Alkire. "The Corps' covering for the pipeline company's outrageous safety record and the reviewer's serious conflict of interest have now resulted in a failed effort. They need to start over with adult supervision."