

United States Senate
JOHN HOEVEN
SENATOR
NORTH DAKOTA

United States Senate
HEIDI HEITKAMP
SENATOR
NORTH DAKOTA

United States Congress
KEVIN CRAMER
CONGRESSMAN
NORTH DAKOTA

State of North Dakota
JACK DALRYMPLE
GOVERNOR
NORTH DAKOTA

September 14, 2016

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street, NW, Room 5665
Washington, D.C. 20240

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
U.S. Army Corps of Engineers
108 Army Pentagon
Washington, DC 20310

Dear Attorney General Lynch, Secretary Jewell, and Assistant Secretary Darcy:

We write today to seek immediate answers to the U.S. Department of Justice, U.S. Department of Interior, and the Department of the Army's joint press release on September 9, 2016, which announced that the final authorizations to allow construction of the Dakota Access Pipeline across Lake Oahe in Morton County, North Dakota, were being withheld indefinitely. **As a result of your delay, North Dakota is experiencing a strain on its law enforcement resources. The Governor and Tribal Leaders have requested assistance to help North Dakota with its law enforcement effort and to help with public safety. We urge you to follow through on your joint release and begin planning immediately for cost share reimbursement and manpower that will be needed to support state and local law enforcement as they continue to provide public safety.** In addition, we request a meeting with the U.S. Department of Justice, U.S. Department of Interior, U.S. Army Corps of Engineers (Army Corps), North Dakota's governor, the Standing Rock Sioux Tribe, and the company to discuss this matter and work toward a solution, as the Administration's unprecedented announcement warrants further clarification.

The proposed Dakota Access Pipeline is a 30-inch diameter, 1,172-mile project that would carry crude oil produced in northwest North Dakota to southern Illinois. The Dakota Access Pipeline is projected to carry 470,000 barrels per day, although its capacity could reach 570,000 barrels per day. The projected cost is 3.8 billion dollars, and according to the builder, is now 60 percent complete.

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In July 2016, the Army Corps granted the developer a series of permits authorizing the parts of the pipeline under the Army Corps' jurisdiction. The Army Corps provided the developer with verification of Nationwide Permit 12 ("Utility Line Activities") permits under the Rivers and Harbors Act (Section 10) and the Clean Water Act (Section 404) for 202 proposed water crossings dispersed along the pipeline route. The Army Corps also granted permissions under separate provisions of the Rivers and Harbors Act (33 U.S.C. Section 408) for the pipeline to cross federal lands or flowage easements acquired and administered by the Army Corps in seven locations, including Lake Sakakawea, ND; Lake Oahe, SD; and five locations in Illinois, although all the actual easements have not yet been issued.¹

On September 9, 2016, U.S. District Judge James Boasberg ruled the Army Corps of Engineers had conducted a 1,261-page environmental assessment in accordance with applicable statutes and regulatory parameters. Subsequently, the U.S. Department of Justice, the U.S. Department of Interior, and the Department of the Army issued a press release stating that, despite the U.S. District Court's ruling, the federal government will not authorize construction on Army Corps land around Lake Oahe "until it can determine whether it will need to reconsider any of its previous decisions".

Clarity is needed on the timing, substance, and standard of this announcement. We are concerned that this unprecedented action by federal agencies at the conclusion of an established statutory and regulatory review process creates additional uncertainty for this project, for the parties to the original lawsuit including the Standing Rock Sioux Tribe, and fails to recognize the potential wide-ranging implications for future energy infrastructure projects.

Therefore, we ask detailed responses to the following questions:

- How will the Army Corps "move expeditiously" to make a "clear and timely resolution" on the proposed project, as stated in the joint press release on September 9, 2016?
- How long will the Army Corps require to "determine whether [the Army Corps] will need to reconsider any of its previous decisions regarding the Lake Oahe site under the National Environmental Policy Act (NEPA) or other federal laws"?
- Please detail the exact timeline and evaluation criteria the Army Corps will use to make this new determination.
- When will the U.S. Department of Justice, U.S. Department of Interior, and the Army Corps convene a tribal consultation on the overall permitting process as stated in the letter? Where will this consultation take place? Who will be invited? How will this effect, if at all, any decision on the authorization for the Dakota Access Pipeline to cross Lake Oahe?

¹ Congressional Research Service (IN10567), *Dakota Access Pipeline: Siting Controversy* (September 9, 2016)

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We believe the U.S. Department of Justice, U.S. Department of the Interior, and the Army Corps should provide all interested stakeholders, including the state, Standing Rock Sioux Tribe, the company, and landowners, further clarity and immediate answers to these questions. Furthermore, we request a meeting with the U.S. Department of Justice, U.S. Department of Interior, Army Corps, North Dakota's governor, the Standing Rock Sioux Tribe, and the company to continue dialogue and work towards an amicable resolution on the proposed Dakota Access Pipeline project.

Thank you for your attention to this matter and we look forward to hearing from you.

Sincerely,



John Hoeven
U.S. Senator



Heidi Heitkamp
U.S. Senator



Kevin Cramer
U.S. Congressman



Jack Dalrymple
North Dakota Governor