

Pages 991—1003:

”Sample Scoping Letter, Distribution List, & Comments Received”

Letter sent by Dakota Access, L.L.C. Representative, Monica Howard, to Robert Demery (*see page 13*) ; this letter was used “Consultation with Tribes”. Though this was the only letter sent by an Energy Transfer Representative to a Standing Rock Sioux Tribe member according to the EA, Colonel Henderson, despite the tribe's assertion that they had “not been properly consulted” (*see page 4*), Henderson confirmed, after allegedly reviewing the EA, that “The EA establishes that the District made a good faith effort to consult with the tribes & that is considered all tribal comments” (*also shown on page 4*) prior to Authorization (*page 5*).

Screenshot from page 991:

APPENDIX J

Sample Scoping Letter, Distribution List And Comments Received

Screenshot from page 992:



**Solicited Comments on Dakota Access Pipeline Project
Proposed Crossing of Flowage Easements Near Upper End
of Lake Sakakawea and Federal Lands at Lake Oahe in
North Dakota**

May 2015

Screenshot from page 994:

This excerpt shows that Robert Demery was contacted on 3/30/2015, & that no comments were received from him has a response to the letter sent to him by Dakota Access, L.L.C.'s Representative.

AGENCIES			
Contact Information	Date Letter was Mailed	Date Comments Received	EA Section Addressing Comment
American Rivers Kristen McDonald 1101 14th Ave. NW STE 1400 Washington, DC 20005-5637	3/30/2015	N/A	
Bureau of Indian Affairs - Fort Berthold Agency Howard Bemer Earl Silk PO Box 370 New Town, ND 58763	3/30/2015	N/A	
Bureau of Indian Affairs - Great Plains Regional Office Benjamin William 115 4th Avenue Southeast Aberdeen, SD 57401	1st mailing 3/30/2015 2nd mailing 4/23/2015	N/A	
Bureau of Indian Affairs-Standing Rock Robert Demery PO Box E Fort Yates, ND 58538	3/30/2015	N/A	
Bureau of Land Management Rick Rymerson 99 23rd Avenue West, Suite A Dickinson, ND 58601	3/30/2015	N/A	
Dakota Prairie Grasslands Dennis Neitzke 1200 Missouri Ave. Bismarck, ND 58504	3/30/2015	N/A	

Notice:

This page of the document appears to explain *why*, in an article released by *Reuters* on Sep 16th, 2016 entitled “North Dakota governor hopes for quick pipeline resolution” by Ernest Scheyder⁵, North Dakota Governor Jack Dalrymple and Chair of the North Dakota Public Service Commission (which regulates pipelines in the state), Julie Fedorchak, claimed that *the tribe did not respond to requests for input*. “The Sioux had chances to consult and have their issues addressed, and they chose not to,” Fedorchak said.”, the article reads.

The article also reads “The Army Corps made similar statements in its legal filings.”

The article again confirms “Tribal members contend they were not adequately consulted during the review process,” a position acknowledged by Henderson on 8-25-2016 (*see pages 4*), prior to Army Corp's “filings” referenced in this article.

⁵ **Reuters**, “North Dakota governor hopes for quick pipeline resolution” by Ernest Scheyder, Sep 16, 2016: www.reuters.com/article/us-usa-pipeline-native-americans-dalrymp-idUSKCN11M005

Page 1001 of EA (letter sent to Robert Demery):



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VIA CERTIFIED MAIL

March 24, 2015

[insert contact name]

[insert contact address]

Re: Request for Comments on Dakota Access Pipeline Project Proposed Crossing of Flowage Easements Near Upper End of Lake Sakakawea and Federal Lands at Lake Oahe in North Dakota

Dear [insert contact name]:

Dakota Access, LLC (Project Proponent, Applicant) is proposing to construct the Dakota Access Pipeline (DAPL) Project. The overall proposed DAPL Project is an approximate 1,150 mile long light crude oil pipeline project beginning near Stanley, North Dakota, and ending at Patoka, Illinois. In North Dakota (see attached **Figure 1**) the proposed pipeline is approximately 358 miles in length and is proposed to cross flowage easements retained by the U.S. Army Corps of Engineers (Corps) near the upper end of Lake Sakakawea and on Corps managed Federal land at Lake Oahe by utilizing trench/backfill and Horizontal Directional Drill (HDD) techniques. See attached **Figures 2a, 2b and 3** for a map of crossing locations. The proposed crossings will require real estate actions and regulatory permits from the Corps to cross federal lands and flowage easements, which are the federal actions associated with this request for comment on the proposed Project.

Background

The Lake Sakakawea crossing location is proposed to be installed across Corps Flowage Easements (**Figures 2a and 2b**). The Lake Oahe crossing location will cross below lands owned by the federal government under management by the Corps (**Figure 3**). Dakota Access, LLC is sending this letter on behalf of the Corps as the designated non-federal representative for compliance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) Regulations (40 Code of Federal Regulations (CFR) 1500-15-8), Corps of Engineers Regulation ER 200-2-2 (33 CFR Part 230) and related environmental compliance requirements for these crossings. In addition to other requirements, the Lake Sakakawea and Lake Oahe crossings portions of this Project shall comply with the National Historic Preservation Act (Section 106); Tribes, Tribal Historic Preservation Offices, State Historic Preservation Offices, Advisory Council on Historic Preservation and interested parties will be consulted with by Corps Omaha District personnel as required through their Programmatic Agreement with Tribes that reside within the Missouri River basin.

These crossings will require Department of the Army (DA) authorization under either Section 404 of the Clean Water Act (Section 404) and/or Section 10 of the Rivers and Harbors Act (Section 10). At this time it is not known how many additional crossings may require DA authorization; however, the

Corps will **not** have regulatory authority over the entire proposed pipeline project. It is anticipated that the majority of the approximate 620-miles of the proposed pipeline construction in the Omaha District will occur in uplands and not impact waters of the United States. The DA - Omaha District will evaluate each separate and distinct crossing of waters of the United States as a single and complete project, consistent with the requirements of Nationwide Permit 12 (NWP 12) for utility lines. A single and complete project includes crossings of a single Waters of the U.S. at a specific location.

The affect analysis is being completed in accordance with CEQ regulations in Section CFR 1506.5(b), which allows an applicant to prepare an Environmental Assessment (EA) for a federal action in coordination with the lead federal agency (i.e. Corps). The Corps will make a final determination regarding compliance of the activities with NEPA and NWP 12 once complete information is received. The Corps will independently evaluate and verify the information and analysis undertaken in the EA and take full responsibility for the scope and content contained within.

DAPL Project Description

Flowage Easement Crossings Near Lake Sakakawea/Missouri River

The proposed flowage easement crossings are located in Sections 7, 18, 19, and 30, Township 152 North, Range 103 West in Williams County, North Dakota (see attached **Figures 2a and 2b**) for a total of 2.97 miles (15,692 feet). The proposed pipeline is routed parallel to an existing buried pipeline, and associated valve sites, that crosses the Missouri River and Corps Flowage Easements just west of the DAPL pipeline. The proposed pipeline route crosses seven privately owned tracts of land which contain Corps Flowage Easements.

The majority of the pipeline would be installed using conventional trench/backfill construction methods across the easements; 14,122 feet of the total 15,692 feet across the easements. The remainder of the footage will be drilled in association with the Lake Sakakawea/Missouri River crossing. The HDD entry point and pipeline stringing corridor are located on the easements. The exact HDD entry and exit locations are pending review of geotechnical investigations, but preliminary design indicates that potential HDD crossing length is approximately 2,700 feet. The HDD entry workspace would be located on one of the flowage easement tracts (Corps Easement LL3440E) north of the river. A valve used for operation of the planned pipeline would be installed near the HDD entry point on one of the flowage easement tracts. All contours would be restored to preconstruction contours and conditions, except for the valve site that would be graveled and fenced in. All above ground structures placed within flowage easements (e.g. fill) may require excavation from the easement in order to retain flood retention as calculated when the flowage easements were obtained by the Corps. The exact location of excavation is yet to be determined, but would be within the easement for which the valve site is retained.

Federal Lands Crossing at Lake Oahe

The proposed Lake Oahe crossing is located in Section 10, Township 134 North, Range 79 West in Morton County, North Dakota, and Section 11, Township 134 North, Range 79 West in Emmons County, North Dakota (**Figure 3**). The proposed pipeline is routed to parallel existing linear infrastructure (an overhead powerline and a buried pipeline) across Lake Oahe. The exact entry and exit locations are pending review of geotechnical investigations, but preliminary design indicates an HDD crossing of 7,500 feet (**Figure 4**).

Page 3 of letter sent to Robert Demery:



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Request for Comment

Dakota Access, LLC respectfully requests your comments on the proposed flowage easement crossings near Lake Sakakawea and federal lands crossing at Lake Oahe and any information you may have that will assist in evaluating potential impacts and preparation of an EA in compliance with NEPA requirements. We request information you may have regarding resources and/or concerns about the proposed Project crossing location at these locations which will be reviewed and assessed in the EA document. Specifically, if special features exist with the Project crossing areas (e.g., culturally sensitive areas, domestic water resources, sensitive wildlife habitat, noxious weeds, etc.), please let us know.

Please note that the Corps has the ultimate responsibility to determine whether or not to approve the proposed action. If approved, the Corps will decide the terms and conditions under which the Project crossing should occur (e.g. timing restrictions to reduce disturbance to wildlife, recreation or other concerns; revegetation guidelines, monitoring requirements, etc.).

Copies of correspondence received in response to this letter will be evaluated and included with the EA document to be prepared for the Project crossings. Dakota Access, LLC respectfully requests receipt of your comments within 30 calendar days of receipt of this letter. We appreciate your assistance and timely response with this request. Should you have any questions or comments, please contact me at 713.898.8222 (cell), 713.989.7186 (office) or Monica.Howard@energytransfer.com.

Sincerely,

Dakota Access, LLC

Monica Howard
Director Environmental Sciences

cc: Johnathan Shelman, Corps Environmental Resource Specialist, Omaha District

Enc. Figure 1 Dakota Access Pipeline Project Map
Figures 2a and 2b Dakota Access Pipeline Project Proposed Crossing of Flowage Easements Near Upper End of Lake Sakakawea
Figure 3 Dakota Access Pipeline Project Proposed Crossings of Federal Lands at Lake Oahe
Figure 4 Dakota Access Pipeline Project Conceptual Site Plan and Profile Lake Oahe HDD