

United States Senate

WASHINGTON, DC 20510

April 3, 2017

The Honorable Lieutenant General Todd Semonite
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers
441 G. St. NW
Washington, DC 20314-1000

Dear Lieutenant General Semonite:

This week, Energy Transfer Partners, the developer of the Dakota Access Pipeline, announced that it has begun to move crude oil through the section of the pipeline under Lake Oahe in preparation for putting the project into service. The company has acted to complete the Dakota Access project at a rapid pace following President Trump's January 24, 2017 memorandum regarding Dakota Access construction and the Corps of Engineers' (Corps) decision on February 8, 2017 to grant the project easement. We write to share our concern that the Corps has provided virtually no information to Congress regarding its oversight of the project. We sorely lack an understanding of the Corps' efforts to make sure that Energy Transfer partners complies with even the most fundamental environmental, safety, and mitigation conditions of its easement and permits as it undertakes project-related construction activities. Given the federal government's trust and treaty responsibilities to tribes affected by the project, we also seek information regarding how the Corps has engaged with affected tribal communities and the extent to which tribes have been appropriately consulted and informed during any permitting and construction activity. In light of these concerns, we request that you answer the following questions by April 12, 2017:

1. Several news reports indicate that Energy Transfer Partners and its subsidiary Sunoco Logistics, who will operate the Dakota Access Pipeline, have violated environmental and other legal requirements in the construction and operation of pipeline projects that have resulted in more than \$22 million in government fines since 2010. In fact, according to one report, a review of federal records found that Sunoco Logistics has had more hazardous materials leaks than any other company. To our knowledge, the United States Army Corps of Engineers (Corps) has presented no evidence that it has considered alternatives to protect the water supplies of the tribes, or the nearly 17 million people who live downstream, should this pipeline leak and contaminate the water supply. Does the Corps have a plan or has it considered any alternative options to protect and provide access to clean drinking water to these citizens if the construction or operation activities of Energy Transfer Partners and their subsidiaries related to the Dakota Access Pipeline contaminate their water supplies? Why or why not? Please provide documentation.
2. Please provide copies of all documents and records (including but not limited to emails, memos, white papers, telephone logs, presentations or meeting minutes) pertaining to

communications between: (a) the Corps and Trump Administration officials (including persons serving on transition and landing teams of the agencies and Executive Office of the President), and (b) the Corps, Trump Administration officials and Energy Transfer Partners or any of its subsidiaries, between November 7, 2016 and January 24, 2017.

a. Specifically, did senior career leadership of the Corps make recommendations regarding President Trump's Executive Memorandum to the incoming Trump Administration prior to the Executive Memorandum being issued? If so, what were those recommendations? Please provide documentation, including copies of drafts of any recommendations and internal communications related thereto.

b. Did the Corps review the Obama Administration's order for additional environmental impact studies on the Dakota Access Pipeline? Why or why not? If so, what did that review entail and what did the Corps recommend to the Trump Administration? Please provide documentation, including copies of drafts of any recommendation and internal communications related thereto.

3. We are concerned that Energy Transfer Partners or its subsidiaries might have been drilling under Lake Oahe without a permit and while project approval was under a court challenge given news reports and court documents showing that the pipeline is close to completion 50 days ahead of schedule.

a. How did the Corps oversee drilling operations to ensure the company and its subsidiaries were meeting their legal obligations during this time?

b. How does the Corps account for the drastically accelerated timeline for drilling and construction activities?

c. Are there any documents that demonstrate that the Corps provided supervision at the site? If so, please provide documentation.

4. We are deeply concerned with the tribal consultation process undertaken by the US Army Corps of Engineers in the permitting process for this project.

a. With which tribes did the Corps coordinate in the Dakota Access Pipeline permitting process? Please provide documentation that includes, dates, times, and the names of the individuals who participated in any consultation – written, in person, or otherwise.

b. How does the Corps typically consult with the tribal governments and affected local communities when granting a permit for or during construction of a project such as the Dakota Access Pipeline? What laws, regulations and operating procedures govern this process? Please provide documentation and citations where appropriate.

c. Has the Corps made a determination that compliance with President Trump's Executive Memoranda satisfies the federal government's obligation to meet its trust and treaty obligations to affected tribal governments? If so, please provide documentation.

5. Which, if any, endangered species reside in the waters and lands impacted by the Corps permit? For any such species, what is the plan for their protection, conservation, and restoration?

6. The Army Corps of Engineers had begun to conduct an Environmental Impact Statement (EIS) to determine the pipeline's effect on tribal governments and the surrounding environment at the time of the release of President Trump's Executive Memoranda. What is the current status of that EIS? Please provide a copy of any documents (including but not limited to emails, memos, white papers, telephone logs, presentations or meeting minutes) related to or any drafts of this EIS.

Executive memoranda and other actions to expedite the issuance of an easement or permits for the Dakota Access project did not exempt the project from the need to comply with federal environmental law as it pertains to tribal, environmental and other legal responsibilities and requirements. It also did not absolve the Corps from its responsibility to ensure the requirements of those laws are fulfilled, the safety of downstream citizens is ensured, and the federal government's tribal trust and treaty responsibilities are met. We appreciate your prompt attention to our request.

Sincerely,



Tom Carper
Ranking Member

Committee on Environment & Public Works



Maria Cantwell
Ranking Member

Committee on Energy & Natural Resources