United States Senate
WASHINGTON, DC 20510

November 14, 2016

The Honorable Barack H. Obama
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Obama:

We support your administration's decision to suspend construction of the Dakota Access pipeline near Lake Oahe, and we encourage you to maintain the suspension while addressing major shortcomings in the permit and planning process. In addition, we are increasingly concerned about the militarized law enforcement response to those protesting the Dakota Access Pipeline, and we respectfully urge your Administration to ensure that the constitutional rights of protestors are protected.

The planning process for the pipeline had three major shortcomings: inadequate consultation with the Standing Rock Sioux Tribe on the impacts to their historic and cultural land; an inappropriate permitting process utilized by the Army Corps; and a failure to conduct the proper environmental reviews. Due to these shortcomings, which we detail below, we believe construction of this pipeline should be halted until these issues are resolved.

First, it appears that the Standing Rock Sioux Tribe did not have sufficient opportunity for input and was not adequately consulted throughout the process. Despite the pipeline crossing 500 feet from the Standing Rock Sioux Tribe's reservation and under their water source, the tribe was not mentioned in the pipeline's environmental assessment. Large fossil fuel infrastructure projects, like the Dakota Access pipeline, have the potential to damage irreplaceable historic and cultural sites. Accordingly, it is imperative that the permitting process for these types of projects give sovereign tribes and the public ample opportunity to provide substantive input into siting decisions.

Tribal nations across the country, including the Klamath, Warm Springs, Siletz, Grand Ronde and Umatilla tribes in our home state of Oregon, have all stood in support of the Standing Rock Sioux Tribe, and advocated for improved consultation with tribal entities for federal projects. We must work to improve our consultation process, and ensure we fully honor our treaty and legal commitments to Native American tribes.

Second, it is extremely concerning that the Army Corps of Engineers approved the pipeline based on a general permit that is more appropriate for a minor undertaking, such as a boat ramp, than an interstate pipeline. Under the Nationwide Permit 12 (NWP 12), the Army Corps only looks at the impact of each individual waterbody crossing, not the entire pipeline. Therefore, as long as none of the 202 water crossings individually impact more than a ½-acre, the overall

project is allowed to move forward under the preapproved general permit on the understanding that it has "minimal environmental impacts." This pre-approval means that there is no public notice or comment period for the overall project, and that no Environmental Impact Statement (EIS) is required. It is unacceptable that a major project of this nature would use a general permit that does not account for the unique threats and challenges of a crude oil pipeline, or allow for comprehensive public review.

Third, the environmental review of the Dakota Access Pipeline was grossly inadequate for a piece of major fossil fuel infrastructure; this pipeline stretches 1,178 miles across four states and has 202 river crossings. During the initial permitting process, the U.S. Environmental Protection Agency, the Department of the Interior, and the Advisory Council on Historic Preservation all called on the Army Corps to do a more thorough environmental review of the project. The Army Corps, however, chose to ignore those requests, and utilized a NWP 12, which is inappropriate for major projects. The result of this decision is that the Dakota Access Pipeline did not receive a full EIS, and was not required to develop a comprehensive oil spill response plan. In addition, a fossil fuel project of this magnitude should also have a full analysis on the impact to climate change before it is approved. Contrary to the guidance that the Council on Environmental Quality's released this August, this major fossil fuel project was not assessed for its potential impacts to climate change.

Federal government agencies involved should use the current pause to address these shortcomings in the process and no construction should be allowed to continue until that happens. We are, however, mindful that stopping construction once it has started is highly disruptive to the companies and workers involved, who have made major decisions based on permits already granted. It's not fair that workers, who in many cases move to remote areas to do this hard and dangerous work, end up losing pay because government agencies didn't adequately review the project before issuing permits.

Going forward, federal government agencies must set clear standards for consultations with affected communities and especially sovereign tribes, and follow clear standards for assessing the environmental impacts of infrastructure projects. This approval process must give sovereign tribes and the public ample opportunity to provide substantive input into siting decisions, before projects are approved.

We believe we must move aggressively to transition away from the polluting fuels that cause climate change, and toward clean and renewable energy sources. This means taking a rigorous look at new fossil fuel infrastructure. We also owe the many people supporting their families with good-paying jobs building pipelines and other fossil fuel projects the full measure of our energies in creating real, viable alternatives. Our country is desperately in need of huge investments in our water systems, electricity grid, transportation infrastructure, and, of course, clean energy. We should, therefore, pass without delay a major infrastructure bill that would put hundreds of thousands of people to work on such projects; and we should make sure that workers currently employed on fossil fuel projects can be the first in line for the jobs created by this bill.

Until the Army Corps undertakes meaningful and significant tribal and public consultation, conducts comprehensive environmental review, and looks at the specific impacts of this project

through an individual permit under Section 404 of the Clean Water Act, we urge you to halt the construction of the Dakota Access Pipeline.

Finally, as the administration works to review the permitting process, it is essential to ensure the safety of those exercising their constitutional rights to form peaceful protests of the pipeline. We are disturbed by recent accounts of militarized police response to protestors, and urge your administration to ensure the constitutional rights of protestors are protected.

Thank you for your consideration of this important matter.

Sincerely,

Jeffrey A. Merkley

United States Senator
Jeffrey A. Merkley

Ron Wyden

United States Senator
Ron Wyden