

# Congress of the United States

Washington, DC 20515

January 18, 2024

The Honorable Michael L. Connor  
Assistant Secretary of the Army for Civil Works  
108 Army Pentagon  
Washington, DC 20310

Dear Assistant Secretary Connor,

We write to express our concerns with the climate analysis in the Army Corps of Engineers' (Corps) court-ordered Draft Environmental Impact Statement (DEIS) for the Dakota Access Pipeline (DAPL) and how Corps' policies limit the ability of the environmental justice community of the Standing Rock Sioux Tribe to protect itself in the event of an oil spill. Thank you for the extended timeframe for public comment to allow the Standing Rock Sioux Tribe and other stakeholders more time to meaningfully engage. We believe that a thorough Environmental Impact Statement (EIS) is essential to ensuring projects are well-designed and protect the environment. We urge you to ensure that the Final EIS thoroughly examines the climate impacts of DAPL and to work with the Pipeline and Hazardous Materials Safety Administration (PHMSA) and any other relevant agencies to provide the Standing Rock Sioux Tribe and other stakeholders with the information they need to meaningfully participate in the public comment and Tribal consultation process.

## *Insufficient Climate Analysis*

The Corps' climate analysis in the DEIS systematically underestimates the climate impacts of DAPL. The DEIS relies on outdated climate projections, fails to report impacts beyond 2050, uses flawed greenhouse gas (GHG) and social cost of carbon calculations, and limits relevance to such a narrow scope to make the assessment meaningless.

It is especially troubling that the Corps ignores the pipeline's climate impacts, including downstream emissions, because the Corps claims the oil would be transported through other means or extracted from a different region if the pipeline were shut down. Simply assuming away the no-action alternative by saying limiting fossil fuel supply would not affect emissions ignores a robust and growing body of literature<sup>1</sup>, and it is not acceptable.

The environmental analyses required under the National Environmental Policy Act (NEPA) are valuable tools that must not be shortchanged or neglected. Unfortunately, we believe this DEIS does just that. In the Final EIS, the Corps should account for both upstream and downstream emissions by evaluating climate impacts from the project, consider the impacts of climate change

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<sup>1</sup> <https://www.rff.org/publications/reports/partners-not-rivals-the-power-of-parallel-supply-side-and-demand-side-climate-policy/>  
<https://www.sei.org/publications/supply-side-climate-policy-the-road-less-taken/>

on DAPL, quantify the emissions from the project, and recalculate the social cost of carbon and GHG estimates to include the project's complete lifecycle emissions.

### *Transparency*

The Standing Rock Sioux Tribe has repeatedly expressed concerns with the Corps' and PHMSA's lack of transparency. The Tribe has still not received unredacted versions of documents relating to potential pipeline spills and emergency planning that it needs to craft an adequate spill response plan. Now, PHMSA and the Corps are redacting documents that underpin the DEIS.

The DEIS justifies its findings by citing these redacted materials in the spill model report and facility and geographic response plans, which remain undisclosed. It is impossible for the Tribe and the broader public to draft substantive comments on the DEIS when the supporting justification remains undisclosed. If the public is to provide substantive comment on a DEIS, the Corps must find a way to provide access to the underlying information. With respect to the DAPL DEIS, the Corps should reconsider the redactions in Appendices F, the Facility and Geographic Response Plans, and G, the Optimization Modeling Reports.

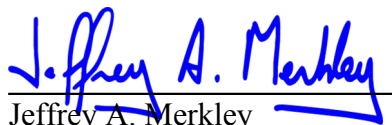
### *Conclusion*

As federal agencies, you have a trust responsibility to not only consult with Tribes but to protect and support Tribal lands, assets, and resources – a responsibility enshrined in countless treaties. Tribal consultation is paramount in recognizing Tribal sovereignty and self-determination. Per the White House's Uniform Standards for Tribal Consultation, this process is "a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the United States and of Tribal Nations regarding Federal policies that have Tribal implications." Therefore, an open exchange of information and communication is central to ensuring meaningful consultation – and continuing to withhold documents that are the basis of the DEIS, and that the Tribe needs to develop their own spill response plan, prevents achieving meaningful engagement.

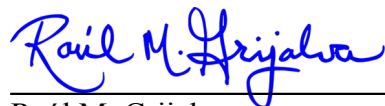
We ask that the Corps reevaluate the assumptions made in the DAPL DEIS to provide a thorough, quantitative analysis of climate impacts, consistent with the intent of NEPA, by considering the full scope of the climate impacts in the Final EIS for the DAPL project. Transparency and scientific integrity are essential to the NEPA process and vital to any community's ability to meaningfully review and respond to an agency's conclusions about a project's environmental impacts.

We look forward to your response.

Sincerely,



Jeffrey A. Merkley  
United States Senator



Raúl M. Grijalva  
Member of Congress



Kevin Mullin  
Member of Congress



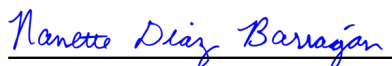
Katie Porter  
Member of Congress



Jared Huffman  
Member of Congress



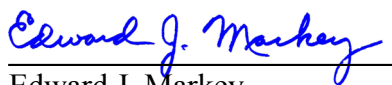
Betty McCollum  
Member of Congress



Nanette Diaz Barragán  
Member of Congress




Grace F. Napolitano  
Member of Congress



Edward J. Markey  
United States Senator



Bernard Sanders  
United States Senator



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Lloyd Doggett  
Member of Congress



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Rashida Tlaib  
Member of Congress



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Summer Lee  
Member of Congress



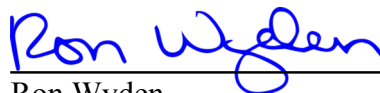
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Elizabeth Warren  
United States Senator



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Mike Levin  
Member of Congress



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Ron Wyden  
United States Senator



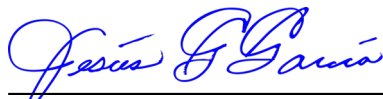
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Alexandria Ocasio-Cortez  
Member of Congress



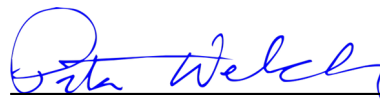
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Eleanor Holmes Norton  
Member of Congress



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Jesús G. "Chuy" García  
Member of Congress



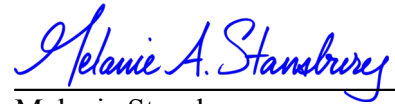
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Peter Welch  
United States Senator



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Steve Cohen  
Member of Congress



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Melanie Stansbury  
Member of Congress



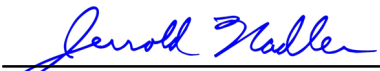
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Delia C. Ramirez  
Member of Congress



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Ro Khanna  
Member of Congress



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Jerrold Nadler  
Member of Congress



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Adriano Espaillat  
Member of Congress



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Barbara Lee  
Member of Congress



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Frederica S. Wilson  
Member of Congress



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Earl Blumenauer  
Member of Congress



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Jan Schakowsky  
Member of Congress



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James P. McGovern  
Member of Congress



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Cori Bush  
Member of Congress



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Greg Casar  
Member of Congress