



January 27, 2017

Mr. Gib Owen
Office of the Assistant Secretary of the Army for Civil Works
108 Army Pentagon
Washington, DC 20310-0108
gib.a.owen.civ@mail.mil

Re: NOI Comments, Dakota Access Pipeline Crossing

Dear Mr. Owen,

Thank you for seeking public comment on the Environmental Impact Statement (EIS) review of Dakota Access, LLC's request for an easement allowing the proposed Dakota Access Pipeline to cross the Missouri River at Lake Oahe. Please accept this comment from Amnesty International USA as part of the process to "identify potential issues, concerns, and reasonable alternatives that should be considered in an EIS."

Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion, and are funded mainly by our membership and public donations.

Amnesty International urges the Department of the Army to ensure that the EIS fully takes into account the serious concerns of the Standing Rock Sioux Tribe, as well as downriver Indigenous Peoples and other communities, regarding the impact of the pipeline and the proposed river crossing on the right to access to water, right to a healthy environment, cultural rights, land rights, Treaty rights and other Indigenous and human rights recognized in international law. Due to the

potential risks to human rights and the environment, as well as the need to have input from all communities that could be impacted by this project, it is imperative that the EIS is expanded to take into account the entire Dakota Access pipeline as well as the Missouri River crossing at Lake Oahe.

Furthermore, the U.S. government should have sought the Standing Rock Sioux Tribe's free, prior and informed consent (FPIC) before approving any construction of the pipeline, and should seek it now before granting any further easements or permits, or allowing any further construction—regardless of the outcome of the Environmental Impact Statement. The EIS is not sufficient to fulfil the right of Indigenous Peoples to meaningfully participate in decisions that may have a serious impact on their human rights. Until the free, prior and informed consent of the Standing Rock Sioux Tribe is sought, we urge you to ensure that construction fully stops and that no drilling under the Missouri River takes place.

While this goes beyond the scope of the EIS, we would also like to urge you to ensure that the free, prior and informed consent of Indigenous Peoples is sought as a matter of policy before the government approves any future major infrastructure projects, including pipelines, that may impact their human rights. The requirement for FPIC in such circumstances is enshrined in international law and should be reflected in U.S. law, policy and practice.

Indigenous Peoples' rights regarding FPIC were recognized at the international level in response to a demand from the global movement of Indigenous Peoples. Their legally binding status has been confirmed in a number of rulings of the Inter-American Court of Human Rights. The principle has also been established in decisions of the United Nations (UN) Human Rights Committee and the African Commission on Human and Peoples' Rights. It has been formalized in standards such as General Recommendation no. 23 on the International Convention on the Elimination of All Forms of Racial Discrimination of the United Nations (1997), as well as encompassed in policies of UN agencies, culminating in its inclusion in the UN Declaration on the Rights of Indigenous Peoples, which the United States recognized in 2010. The Declaration's provisions on FPIC build on the provisions of

the earlier ILO Convention 169 requiring consultation. They are an important vehicle for giving effect to the right of Indigenous Peoples to self-determination (Art. 3 of the UN Declaration on the Rights of Indigenous Peoples). The unanimously adopted outcome document of the UN World Conference on Indigenous Peoples (2014) calls for complete implementation of the Declaration.

FPIC applies in those cases where the rights of an Indigenous People might be impacted by a particular policy or development project. It is important to emphasize that the necessity of FPIC rights for Indigenous Peoples arises from their collective modes of living and decision-making structures; the irreparable damage that can be caused by initiatives which impact significantly on their cultural integrity or land rights; and cumulative impacts of human rights violations stemming from colonization or external rule.

In closing, Amnesty International USA urges the Army to pay serious attention to the concerns of the Standing Rock Sioux Tribe and other Indigenous People; expand the EIS review to include the entire pipeline; and ensure that the Army, as a matter of policy, seeks the free, prior and informed consent of Indigenous Peoples before approving future projects that may impact their human rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret Huang". The signature is fluid and cursive, with the first name "Margaret" being more prominent than the last name "Huang".

Margaret Huang

Executive Director

Amnesty International USA