

House Energy and Commerce Committee
Subcommittee on Energy
Hearing on Modernizing Energy and Electricity Delivery Systems
February 15, 2017

Testimony of Joey Mahmoud
On behalf of Energy Transfer Partners

Mr. Chairman, it is a pleasure to be here today. I am Joey Mahmoud, project executive for the Dakota Access Pipeline and Executive Vice President of Energy Transfer Partners.

Over the course of the last six months this project, and our company, have been subjected to a series of politically motivated actions by the previous administration, accompanied by a host of half-truths and misrepresentations in both social and mainstream media. These have inflicted significant financial and reputational damage on our company. For the most part we have refrained from public comment while we worked directly with the regulatory agencies, the Native American community and the last administration in an effort to bring this matter to a satisfactory close. Sadly, those efforts came to naught.

We are now prepared to tell our side of the story. In so doing, I hope to introduce some important, and badly needed, reality to the discussion.

Dakota Access is a \$3.8 billion, privately funded pipeline project which, during the course of construction, has employed more than ten thousand skilled and unskilled workers. During its entire 1172 mile journey from the Bakken shale in North Dakota to Patoka, Illinois it does not cross a single inch of tribal reservation or trust land. It crosses a mere 1094 feet of federally owned land.

During the greater than two year-long permitting process for the project we and the Army Corps reached out to, and accommodated, 55 different Native American groups. Among the tribes, it has been the Greater Sioux Nation, led by the Standing Rock Sioux Tribe, who have resisted to a degree that have generated national attention. The Standing Rock Tribe was the first tribe we approached and our initial presentation to them was made in September, 2014. Over the next two years we continued to reach out to the tribe, both publicly and privately. It was clear from their response they had no interest in discussing the project with us. In addition to our efforts, the Army Corps reached out to the tribe on nine separate occasions. Despite these efforts the Standing Rock declined to participate in any meaningful way.

On July 25, 2016, the Army Corps brought to conclusion its two-plus year review of the project, issuing an environmental assessment approving, among other things, our application for a crossing of the Missouri River at the current site. After declining to identify specific objections to the project and repeatedly rejecting any meaningful efforts at consultation, the tribe, supported by Earthjustice, brought a legal action seeking to block the project. On September 9, 2016, a federal judge issued a 58-page opinion rejecting the tribe's request for a preliminary injunction and finding that the tribe "largely refused to engage in consultations."

Within minutes of the judge's ruling the Departments of Justice, Interior and the Army issued a joint statement indicating that, notwithstanding their successful defense of the permitting process in federal court, they were declining to issue an easement—the only outstanding document needed for completion of the project. That easement was not issued for another five months,

during which time a host of misconceptions about the nature of the project attracted nationwide attention.

Perhaps the most prominent, and ill founded, of these is that Dakota Access represents a threat to the Missouri River and those who rely on it for drinking water. Nothing could be further from the truth. Much of the oil from the Bakken is currently being transported across the Missouri River via truck and rail transportation—modes which, statistically, are far more likely to experience an oil spill than a new, state-of-the-art pipeline. The Dakota Access pipeline, which will be at least the 15th pipeline to cross the Missouri, will employ state-of-the-art technology and will be buried more than 90 feet *below* the lowest part of the river.

Perhaps the greatest irony in a saga replete with ironies is that the Standing Rock have just relocated their Missouri River water intake to a point more than 70 miles downstream from the pipeline crossing, but less than two miles downstream from a railroad crossing that is known to carry large amounts of crude oil in tank cars. To cast this as a dispute about protection of water resources is, quite simply, at variance with the facts and it ignores universally accepted scientific and engineering practices.

Others have asserted the route chosen for the pipeline was indifferent to, and would disrupt, sites of archeological importance to the tribe. Again, this is totally contrary to the facts. Dakota Access employed dozens of cultural experts to work alongside state and tribal cultural officials to ensure that nothing of historic significance was disturbed. Based on their findings, the project undertook 140 route changes in North Dakota alone. Indeed, the selection of the river crossing

site was largely driven by a desire to ensure the protection of cultural resources. The river crossing site for the Dakota Access Pipeline is located within a utility corridor which already includes the Northern Border Natural Gas Pipeline and a high voltage electric transmission line.

Some have alleged that the crossing site was chosen in an effort to avoid crossing at the more populous site north of Bismarck. That is simply not true. The Army Corps' extensive alternatives analysis found that crossing at the northern site would require the crossing of an additional 33 waterbodies that are connected to or drain to the Missouri River and 21 additional wetland crossings. Quite simply, the site chosen is, by far, the most benign site for the crossing, and would reduce impacts to stakeholders and the environment.

The facts above were conspicuously absent from either the social or mainstream media coverage of the protest movement. To have followed this dispute only through those media would have led one to believe that the protest movement was all about a small band of Native Americans peacefully expressing their First Amendment rights in opposition to the project. While that may have been the case at the outset, it quickly ceased to be so as the protest grew in size and intensity. And, whatever the motivation of the protestors, this movement was far from peaceful.

Protestors assaulted numerous pipeline personnel, one of whom required hospitalization. Millions of dollars in construction equipment was destroyed. Two publicly owned vehicles were burned and a pistol was fired at law enforcement personnel. The makings of improvised explosive devices were found at a bridge crossing, one of which exploded causing a protestor to lose her arm. Local ranchers reported incidences of stolen cattle, buffalo, fuel, and farm

equipment. As of February 9, over 660 protestors have been arrested for arson, criminal trespass, interference with law enforcement personnel, and in one case, attempted murder. Fewer than 6% of those arrested are from North Dakota.

Beyond the protest at the river crossing site, Energy Transfer offices across the country were vandalized. Our employees have been and continue to be subjected to disparagement and threats. Most frighteningly, several of our employees and their children have been subjected to death threats.

Whether directly or not, the protest movement induced individuals to break into and shut down pump stations on four operational pipelines. Had these actions been undertaken by foreign nationals, they could only be described as acts of terrorism.

The unfortunate truth, which I would respectfully urge this Committee and the Congress to recognize, is that this is a well-organized and well-funded effort based primarily on hostility to fossil fuels. We have received numerous reports that some of the protestors are being paid, and the North Dakota Commissioner of Revenue is investigating. Law enforcement personnel have also reported that a number of the protestors appear to have been professionally trained.

Whether those being paid for their protest efforts share the agenda of those paying them is unknown, but what is known is many are now showing up in resistance to other pipeline projects. Far from being an exception, I fear the aggressive tactics we have seen in North Dakota will soon be the norm—if they are not already.

Perhaps most troublesome is the support given these efforts by the recently departed administration. Their politically driven interference in the statutory and administrative permitting process first became apparent in late July of last year. As I indicated, Dakota Access had received all necessary permits for completion of the project, including approval to cross the Missouri River, as of July 25. The “easement” which has been the focus of so much public attention since, is a simple ministerial document which was part and parcel of the river crossing permit. That easement was arbitrarily withheld by the former Assistant Secretary of the Army, Civil Works and was not received until last week.

We can only speculate as to her motivation, but what is abundantly clear is that the Department of the Interior, and most likely senior members of the White House staff, interfered deeply and inappropriately in the waning stages of the regulatory process. What is also abundantly clear is that I and other senior representatives of my company sat in the Department of Justice while representatives of that agency, the Army and the Department of Interior repeatedly made factual misrepresentations about the process and their intentions. Finally, it is abundantly clear that notwithstanding their repeated public pronouncements that the Army Corps and Dakota Access had complied with all applicable requirements for construction of the pipeline, and notwithstanding two successful defenses of the permitting process in federal court, these agencies had made the political decision that they were not going to issue the easement.

Mr. Chairman, we came to realize that even a company as large as Energy Transfer is helpless in the face of a government which will neither obey nor enforce the law. We came to realize that playing by the rules can count for little. And we came to realize that good faith efforts to reach

accommodation, whether with the Native American community or our own government, can be a fool's errand when political motivation overrides the rule of law.

As I indicated, the easement withheld by the politically appointed Assistant Secretary was the sole remaining administrative step needed for completion of this project. This \$3.8 billion, 1172-mile pipeline had already received all other necessary federal, state and local permits, as well as all other rights of way necessary for completion of the project. All of this was accomplished over a two-year period. I would respectfully submit that a project of this size does not receive those approvals in that time frame unless it places a heavy emphasis on cultural and social concerns, is sensitive to diversity and gives great deference to the environment.

When that is no longer enough, the ability to build infrastructure in this country is in grave jeopardy.

I look forward to your questions.