

Congress of the United States
Washington, DC 20510

August 16, 2021

Mr. Jaime A. Pinkham
Acting Assistant Secretary for Civil Works
U.S. Army Corps of Engineers
441 G St. NW
Washington, DC 20314

Dear Acting Assistant Secretary Pinkham:

We write to thank you for conducting an Environmental Impact Statement for the Line 5 permit application and to urge you to take immediate action to suspend the Line 3 pipeline Clean Water Act permit 404 in order to undertake a thorough review of what we believe was a faulty permitting process under the previous administration.

The Trump Administration aggressively expanded fossil fuel infrastructure projects under a new policy of “energy dominance” and severely limited public scrutiny on those projects. In addition to weakening the National Environmental Policy Act (NEPA), the Trump Administration attempted to restrict the scope of the Clean Water Act, limit state and tribal authority under the Clean Water Act, and relax regulations on methane emissions from oil and gas wells. Applying the National Environmental Policy Act (NEPA) will ensure a full and significant environmental review that includes assessing the project’s real costs on environment, public health, and climate change and ensuring the public is aware of those costs.

As you know, NEPA requires a comprehensive review of proposed major federal projects. For oil pipeline projects, this includes oil spills, climate risks, and impacts on Tribes. NEPA also requires that the environmental review incorporate the concerns of local communities and determine whether an action may have a significant impact. If the agency finds that there will be a significant impact, it is then required to conduct the more stringent environmental impact statement (EIS) that carries with it more significant public comment requirements.

We believe that, in its November 2020 decision to issue the Clean Water Act 404 permit, the Army Corps of Engineers failed to consider significant information on the Line 3 tar sands pipeline’s impacts, including the risk of oil spills, climate change impacts, and impacts on Indigenous peoples. Despite evidence that the project would have significant impacts, the Corps did not prepare an environmental impact statement (EIS) for Line 3.

For instance, the Corps analysis included almost no independent evaluation of the risk of oil spills at the crossings it authorized, despite the fact that the route for Line 3 crosses 227 lakes and rivers, including the headwaters of the Mississippi River and rivers that feed directly into Lake Superior. A thorough and independent review would assess the potential risk posed by a spill from the 760,000 barrels

of tar sands oil that would flow through Line 3 every day and the potentially severe damage to the wetland areas.¹

In addition, we would like to see the Corps examine how impacts from climate change – such as the ongoing drought which has drastically lowered river levels throughout the region – will further exacerbate the environmental costs of an oil spill. Currently, the Corps’ analysis on climate is a single paragraph in which greenhouse gas emissions from construction and operation of a major tar sands pipeline are dismissed as “*de minimis*”.

In our opinion, one of the most serious areas of omission has been in the area of Tribal consultation and impact. In his historic Memorandum on Tribal Consultation and Strengthening Nation to Nation Relationships issued on January 26, President Biden stated that, “It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and vigorous consultation with Tribal Nations cornerstones of Federal Indian policy.” We believe that there must be a full consultation process with Tribes on the effects of Line 3 on treaty rights around hunting, fishing, harvesting wild rice, and cultural resources. This should include the effects of the June 2021 Minnesota Department of Natural Resources approval to move ten times more water during construction than originally granted in November 2020. The magnitude of this transfer will have grave implications for the ecosystems near the pipeline, including the wild rice beds that are a staple food for the Anishinaabe people and core to the way of life. It is our understanding that the Red Lake and White Earth tribes were not consulted on this dramatic increase, despite the fact that it will directly impact them.

The effects of construction of Line 3 on the land, water and peoples that it affects are irreversible. We urge you to utilize the authority you have to immediately suspend the 404 permit for Line 3 in order to conduct a full federal EIS prior to any additional construction.

We thank you for your important work and leadership on this matter. We look forward to hearing from you.

Sincerely,



Pramila Jayapal
Member of Congress



Ilhan Omar
Member of Congress



Jeffrey A. Merkley
United States Senator

¹ See, e.g., Keystone XL FSEIS at 3.13-3 (2014), <https://keystonepipeline-xl.state.gov/finalseis/>; Nat’l Acads. of Scis., Eng’g, & Med., Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response (2016), <http://www.nap.edu/catalog/21834/spills-of-diluted-bitumen-from-pipelines-a-comparativestudy-of>.

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