

DEAN PHILLIPS

3RD DISTRICT, MINNESOTA

2452 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2871
(202) 225-6351 FAX

13911 RIDGEDALE DRIVE, SUITE 200
MINNETONKA, MN 55305
(952) 656-5176



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August 24, 2021

The Honorable Jaime Pinkham
Acting Assistant Secretary of the Army for Civil Works
Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Dear Acting Assistant Secretary Pinkham:

On March 12th, 2021, I sent a letter to President Biden expressing my concerns regarding the Clean Water Act 404 permitting process for the Line 3 pipeline in Northern Minnesota and requesting a review of this permit. On May 19th, 2021, I sent a letter to Special Presidential Envoy for Climate John Kerry regarding cross-border pipeline permitting and how the Administration would ensure that consideration of climate risk and meaningful Tribal consultation are included in all future pipeline permitting processes. I have received no response from my previous correspondence.

Similar to what my colleagues wrote last week, my concerns extend from the fact that 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 former 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. I believe applying NEPA to the Line 3 project would ensure a full and robust environmental review that includes assessing the project’s impacts on the environment, public health, and climate change.

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 robust public comment requirements.

In its decision to issue the Clean Water Act 404 permit in November of 2020, the Army Corps of Engineers failed to consider significant information regarding the Line 3 pipeline’s potential impacts and the aforementioned risks, and therefore did not prepare an 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, even though 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 have assessed the risk posed by a potential

spill with 760,000 barrels of tar sands oil flowing through Line 3 every day – particularly to sensitive wetland areas.

In addition, considering the alarming report issued this past month by the U.N.'s Intergovernmental Panel on Climate Change, I would like to see the Corps examine how projects such as these will impact global climate change, and how climate change itself might further exacerbate the environmental costs of a potential 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."

Finally, I believe one of the most serious areas of omission has been in the area of Tribal consultation. 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 robust consultation with Tribal Nations cornerstones of Federal Indian policy." I 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 their way of life. It is my understanding that Red Lake and White Earth Tribal leaders were not consulted on this dramatic increase, despite the fact that it will directly impact them.

While it is possible that the Line 3 project would meet the requirements of a strict environmental review and Tribal consultation process, it has yet to be held to the high standards we should expect for such undertakings. Given the potential effects of the construction and operation of the Line 3 pipeline on the land, water, and Indigenous peoples affected may well be irreversible, I therefore urge you to utilize the authority you have to suspend the 404 permit for Line 3 in order to conduct a full federal EIS prior to any additional construction. I do not predispose what the outcome of that review may be, but believe we all have a duty to ensure science – and not politics – drive these decisions.

Thank you for your leadership and your consideration of this matter. I look forward to hearing from you at your earliest convenience.

Sincerely,



Dean Phillips
Member of Congress