

Executive Summary for Decision-Makers & Investors regarding DAPL – Jan 2017

1. The Dakota Access Pipeline (DAPL) project is a \$3.78 billion project concerning a 1,172-mile-long (1,886 km) underground oil pipeline in the USA. Dakota Access, LLC, is the party responsible for construction of the pipeline, which is a subsidiary of Bakken Holdings Company, LLC; a joint venture of Energy Transfer Partners LP (60%) and Sunoco Logistic Partners LP (40%).
2. The DAPL project has been funded by a group of 16 banks, including: Citigroup, Wells Fargo, BNP Paribas, SunTrust, Royal Bank of Scotland, Bank of Tokyo-Mitsubishi, Mizuho Bank, TD Securities, ABN AMRO Capital, ING Bank, ICBC, SMBC Nikko Securities and Société Générale. DNB (one of the largest banks in Norway) recently divested its funds from DAPL by selling its assets in the Dakota Access Pipeline.
3. The project came to a halt in Dec 2016 when the US Army Corps of Engineers in an official letter dated December 4, 2016, stated that: *“The Army will not grant an easement to cross Lake Oahu at the proposed location based on the current record. The robust consideration of reasonable alternatives that I am directing, together with analysis of potential spill risks and impacts, and treaty rights, is best accomplished, in my judgement, by preparing an Environmental Impact Statement (EIS) that satisfies the accompanying procedures for broad public input and analysis.”*
4. Examination of the Standing Rock Sioux Tribes Treaty Rights as part of the EIS process, pertaining to Lake Oahe for which permission to drill was requested, can set a precedence for the honouring of the First Nations Sovereign Rights. Moreover, according to Attorneys Larry Bragman and Ford Greene, the Standing Rock Sioux Tribes legally own all mineral rights to the land beneath Lake Oahe based on a 1958 public law 85-915 that was passed compensating the Standing Rock Sioux Tribes for tribal lands that flooded ten years prior to form Lake Oahe. It may, therefore, apply that the DAPL cannot be built under Lake Oahe without the permission of the Standing Rock Sioux Tribes.
5. January – March 2017 offers an important window of opportunity to stop DAPL. Analysts with the Institute for Energy Economics and Financial Analysis reported that DAPL investors have the contractual right to pull out their funding from the project during this period, knowing that Dakota Access, LLC, will not be able to complete the works as agreed per contract.
6. A growing coalition of concerned citizens, legal advisers, First Nation representatives, environmentalists, and business leaders believe that the DAPL does not align with International Agreements, such as the UN Agenda 2030 for Sustainable Development and the 2016 Paris Agreement. These agreements outline the importance of divesting from fossil fuel based activities and investing in low-carbon based economies that are based on renewable energy solutions.
7. To achieve these sustainability targets private sector organisations, including banks, are requested to take responsibility to minimize harm to the healthy living conditions of people. These constitutional rights to sustainable livelihoods are gaining growing recognition in lawsuits where governments are held responsible for taking necessary actions to secure sustainable living conditions for citizens, by reducing emissions among others. This will create growing constraints on what is expected from private sector entities, especially those within the financial sector.
8. There is a growing trend among corporate entities, including those of the financial sector, to report on their impacts via Sustainability Reporting frameworks. The DAPL scores negatively when assessed by the progress indicators of these frameworks, including categories of human rights, environment, and climate change. Customers who trusted their money to funders of DAPL might be unaware of this. To avoid reputational damage and possible negative legal implications, it is important that decision-makers take the responsibility to thoroughly examine the involvement of their organisation(s) with projects such as DAPL. Furthermore, leadership for sustainability encourages a redirection of investments to projects that abide by the agreed international targets and best practices of ethical business standards. It is useful to know, therefore, that involvements with projects such as DAPL may come under public review, which may also gain the attention of the media in the future. Leadership for sustainability is becoming a new benchmark for sound decision-making and responsible investment.
9. For further information please read and share this article: Smitsman A. & Chase C. (2017). *The Tide is Turning – Divesting from DAPL and Fossil Fuels*. EARTHwise Centre.
<http://earthwisecentre.org/general/the-tide-is-turning/>