To: homebythehills[Ex. 6 - Personal Privacy
From: Frank
Sent: Thur 9/1/2016 10:59:25 PM
Subject: ICN: Dakota Pipeline Was Approved by Army Corps Over Objections of Three Federal Agencies

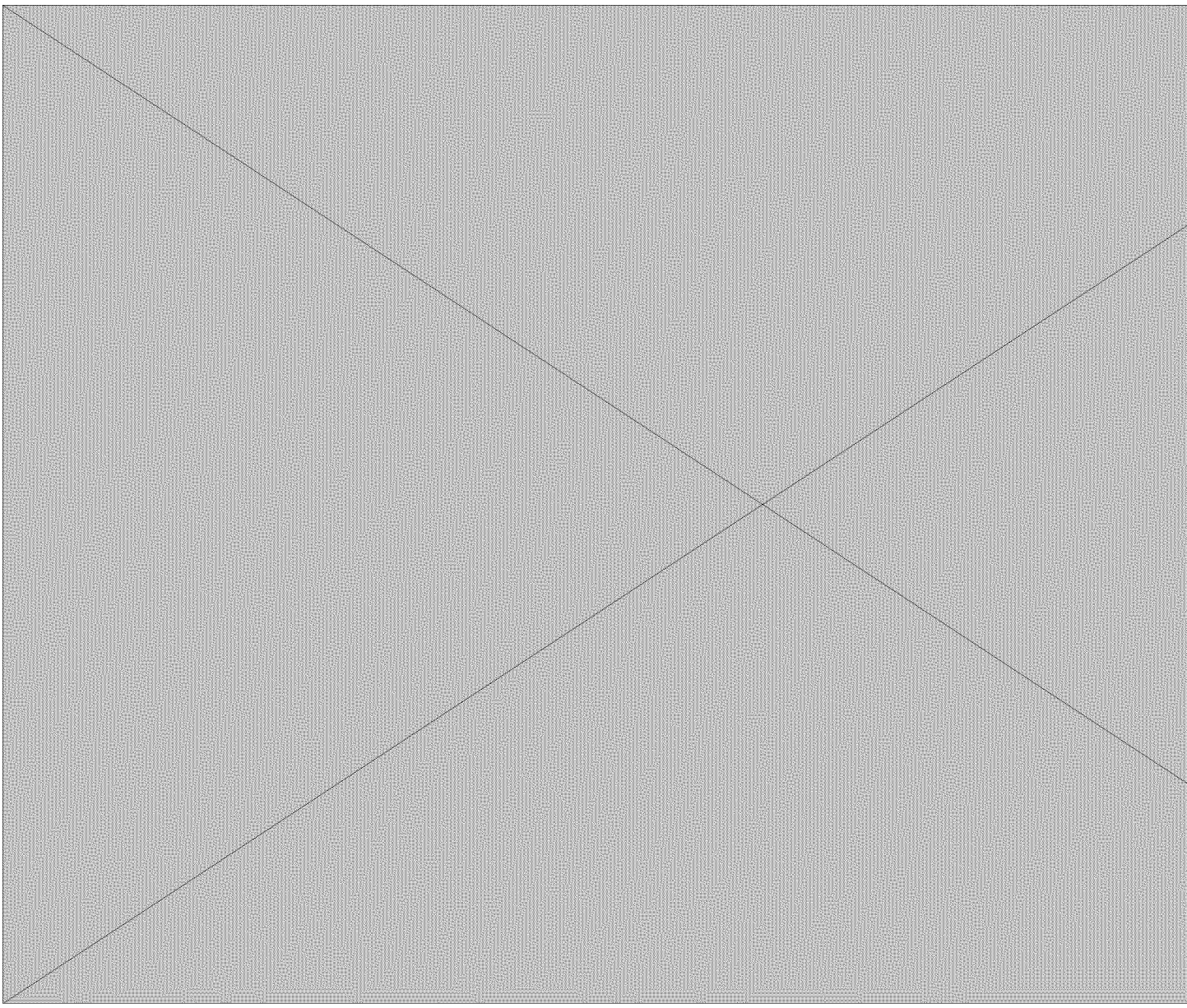
"EXCERPT: Crossings of the Missouri River have the potential to affect the primary source of drinking water for much of North Dakota, South Dakota, and Tribal nations," Philip Strobel, National Environmental Policy Act regional compliance director for the EPA, wrote in a March 11 letter to the Army Corps... The EPA shared its concerns and recommended that the Army Corps undertake a new draft environmental assessment and release it for public comment. In that process, the EPA asked the Army Corps to consider "other available routes or crossing locations that would have reduced potential to water resources, especially drinking water supplies," and to carry out a "more thorough" analysis of environmental justice concerns. The other agencies also asked for further assessments and consultation with the tribes.

Dakota Pipeline Was Approved by Army Corps Over Objections of Three Federal Agencies

Sioux tribe's concerns were echoed in official reports by the EPA and two other agencies, but Army Corps of Engineers brushed them aside.

By Phil McKenna

Aug 30, 2016
https://insideclimatenews.org/news/30082016/dakota-access-pipeline-standing-rock-sioux-army-corps-engineers-approval-environment



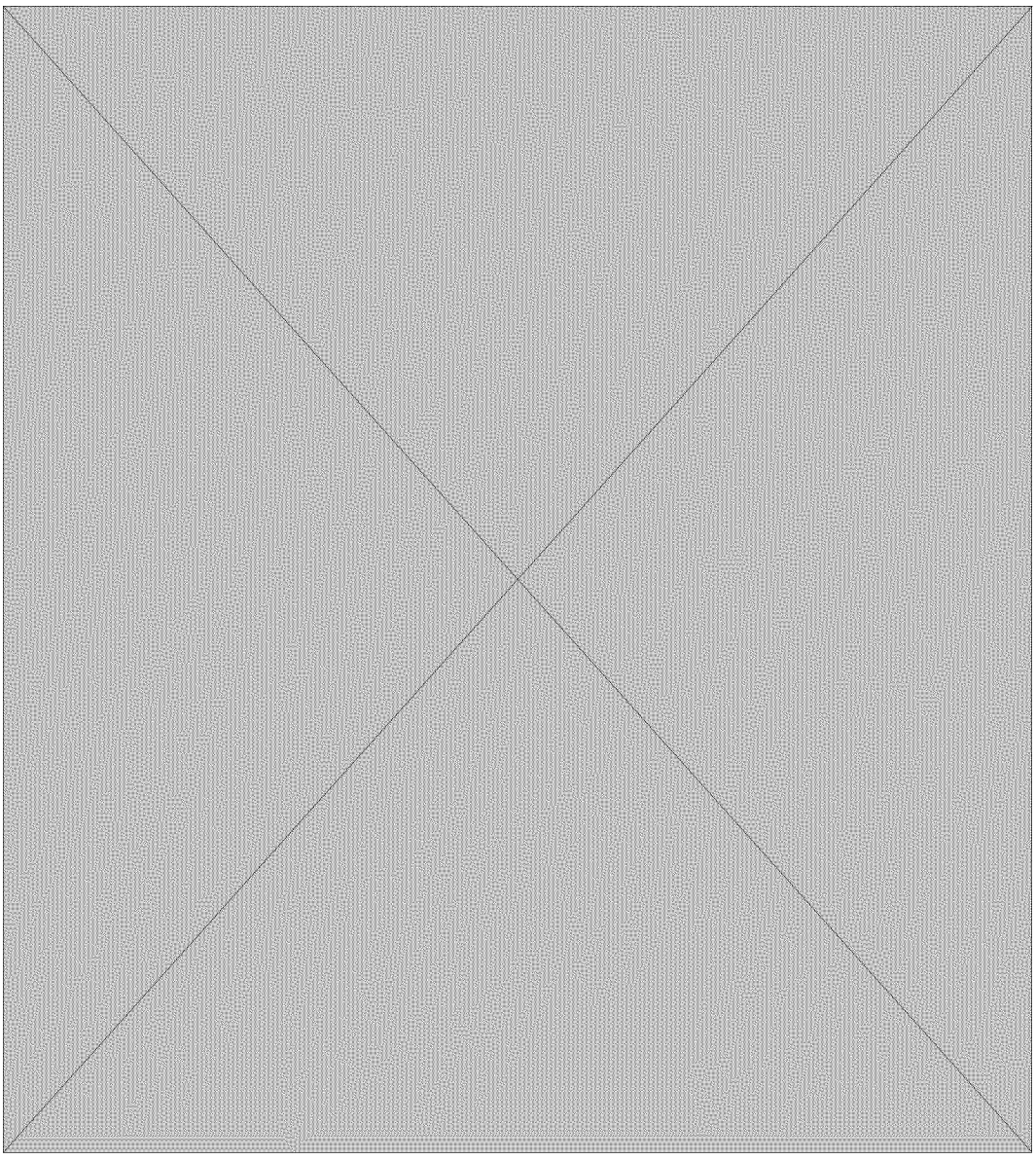
The Sioux tribe objecting to the Dakota Access pipeline had their concerns echoed by several federal agencies, but those concerns were dismissed in the pipeline's approval. Credit Getty Images

BISMARCK, N.D.—Senior officials at the U.S. Environmental Protection Agency and two other federal agencies raised serious environmental and safety objections to the North Dakota section of the controversial Dakota Access oil pipeline, the same objections being voiced in a large protest by the Standing Rock Sioux tribe that has so far succeeded in halting construction.

But those concerns were dismissed by the U.S. Army Corps of Engineers, which relied on an environmental assessment prepared by the pipeline's developer, Dakota Access LLC, when it approved the project in July, according to public documents.

The 1,134-mile pipeline would carry approximately 500,000 barrels of crude per day from North Dakota to Illinois along a route that did not originally pass near the Standing Rock reservation, the documents show. After the company rerouted the pipeline to cross the Missouri River just a half-mile upstream of the reservation, the tribe complained that the Army Corps did not consider threats to its water supply and cultural heritage.

The EPA, the Department of the Interior and the Advisory Council on Historic Preservation echoed those concerns in public comments on the Army Corps' draft environmental assessment. Citing risks to water supplies, inadequate emergency preparedness, potential impacts to the Standing Rock reservation and insufficient environmental justice analysis, the agencies urged the Army Corps to issue a revised draft of their environmental assessment.



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The current route of the pipeline is 10 miles upstream of Fort Yates, the tribal headquarters of the Standing Rock Sioux tribe and the county seat. The Standing Rock Sioux rely on the Missouri River for drinking water, irrigation, and fish.

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especially drinking water supplies," and to carry out a "more thorough" analysis of environmental justice concerns. The other agencies also asked for further assessments and consultation with the tribes.

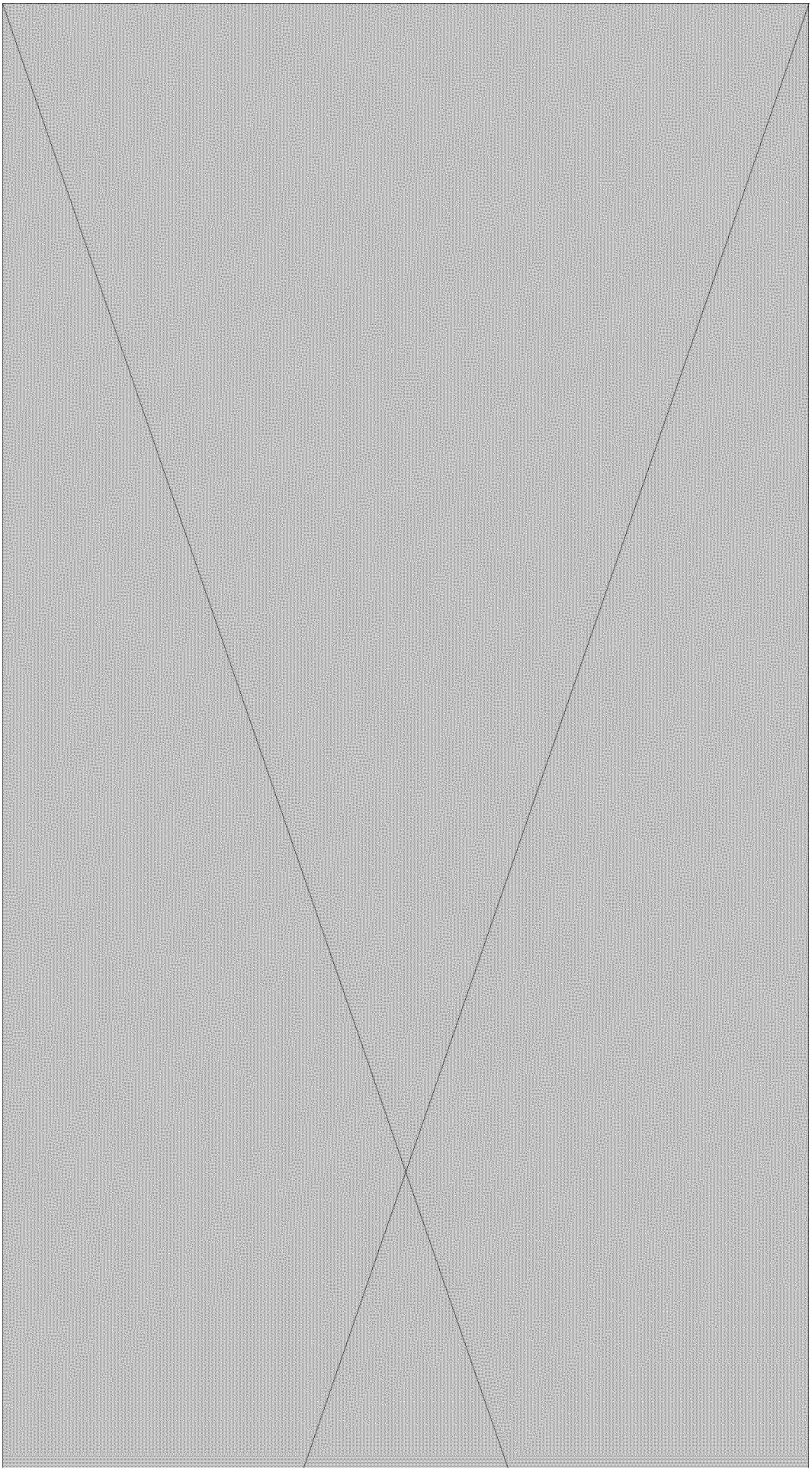
The Army Corps instead published its final environmental assessment four months later, which constituted final approval of the project. In it, the Corps acknowledged the agencies' comments, but said "the anticipated environmental, economic, cultural, and social effects" of the project are "not injurious to the public interest."

The Army Corps, which has jurisdiction over domestic pipelines that cross major waterways, declined a request for comment, citing ongoing litigation. Energy Transfer, owner of Dakota Access LLC, did not respond to a request for comment. The company has previously said "we are constructing this pipeline in accordance with applicable laws, and the local, state and federal permits and approvals we have received."

Tribe Takes their Complaints Public

The tribe's growing protest has gathered in a camp near Cannon Ball, N.D., and has drawn support from Native Americans from around the country as well as environmental activists. An estimated 1,200 people are camping there and Sioux leaders say 90 tribes are represented among the protesters.

The protest blocked construction equipment two weeks ago and Energy Transfer halted construction on the section of pipeline closest to the Standing Rock reservation. A federal judge said last week he will rule by September 9 on whether to grant the Standing Rock Sioux a temporary injunction. That would bar construction on sections of the pipeline where the ground hasn't yet been disturbed until a suit calling for the Army Corps to redo its permitting process can be heard.



The Standing Rock reservation spans 3,600 square miles across North and South Dakota, where 41 percent of its 8,217 residents live below the poverty level, more than triple the national average, according to a 2012 economic development report prepared for the tribe. Nearly a quarter of its population is unemployed.

In its comments calling for a re-do, the EPA said the environmental justice analysis in the Army Corps' draft environmental assessment used county-by-county or state-by-state data when the preferred level of analysis is "census block groups or census tracts."

"A screening level analysis for EJ [environmental justice] indicates there are several census block groups with substantial minority and/or low income demographics that could be potentially impacted by the project," the EPA wrote. "In addition to analyzing potential EJ impacts, Executive Order 12898 on Environmental Justice (February 16, 1994) also requires public outreach to potentially affected EJ communities."

In its final environmental assessment , the Army Corps said its analysis "contains an Environmental Justice analysis that conforms with recognized practice."

The agency also said the pipeline does not cross tribal land. "In fact, tribal land was specifically avoided as a routing mitigation measure," it said. "The Project does not anticipate any impact to water supplies along its route, and to the extent a response action is required, federal regulation will be complied with."

Route Became a Moving Target

The original route for the proposed pipeline crossed the Missouri River further north, 10 miles upstream of Bismarck, the state capital. North Dakota Public Service Commission documents show the route upstream of Bismarck in a May 29, 2014 map by Energy Transfer.

The company later rejected this route, citing a number of factors, including more road and wetland crossings, a longer pipeline, and higher costs. Also listed as a concern was the close proximity to wellheads providing Bismarck's drinking water supply.

"They moved it down to Standing Rock, which is a very remote area, but people live at Standing Rock too. There is an environmental justice component here," said Jan Hasselman, an attorney with environmental advocacy organization EarthJustice, which filed the lawsuit on behalf of the Standing Rock Tribe against the Army Corps of

Engineers.

In its public comments, the Department of the Interior, the government agency responsible for the administration and management of Native American lands, called for the Army Corps to conduct an Environmental Impact Statement, a more comprehensive analysis of the potential impact of the proposed pipeline.

"We believe the Corps did not adequately justify or otherwise support its conclusion that there would be no significant impacts upon the surrounding environment and community," Lawrence Roberts, acting assistant secretary of Indian affairs at the Department of the Interior, wrote in a letter to the Army Corps in March.

The Advisory Council on Historic Preservation (ACHP), a federal agency that promotes the preservation, enhancement, and productive use of the nation's historic resources, also expressed concern over the Army Corps' assessment.

Federal law requires federal agencies to take into account the effect a proposed project will have on historic property. The Army Corps' assessment, however lacked adequate consultation with the Standing Rock Sioux tribe and focused on a limited number of water crossings rather than on the pipeline's entire expanse, according to letters ACHP officials wrote to the Army Corps.

"Based on the inadequacies of the tribal consultation and the limited scope for identification of historic properties that may be affected, the ACHP questions the sufficiency of the Corps' identification effort, its determinations of eligibility, and assessments of effect," Reid Nelson, director of the office of federal agency programs for ACHP, wrote in a May 19 letter to the Army Corps.

In its final assessment, the Corps stated there is "no new significant information on environmental effects" as a result of comments from the EPA and others. "As such, neither a supplemental or revised EA [Environmental Assessment] for further public review nor additional NEPA [National Environmental Policy Act] compliance actions was required."

"We're talking about a broad overarching and fundamental failure which is the decision to look very narrowly at environmental impacts at a few specific locations rather than the pipeline as a whole," Hasselman said of the Army Corps' assessment.

Having their concerns dismissed by the Corps, the tribe turned next to the courts. Their lawsuit calls for a halt to construction and full consideration of the pipeline's impact on

tribal lands and water.

To obtain a preliminary or "emergency" injunction, however, attorneys representing the Standing Rock tribe will have to demonstrate imminent harm to historic sites if construction proceeds.

"To the extent that people are concerned about harm from oil spills, that is still a ways off," Hasselman said. "We can't really seek emergency relief on that front. That is something that we will be seeking in the course of the lawsuit."