

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STANDING ROCK SIOUX TRIBE, *et al.*,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS, *et al.*,

Defendants.

Civil Action No. 16-1534(JEB)

DECLARATION OF DAVID MURK IN SUPPORT OF *AMICI CURIAE* BRIEF

I, David Murk, have personal knowledge of the following and hereby make this declaration in support of the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute (“API”), the Association of Oil Pipe Lines, the Chamber of Commerce of the United States of America, and the National Association of Manufacturers’ (collectively “Amici”) Amicus Brief in support of Intervenor-Defendant Dakota Access, LLC’s (“Dakota Access”) Memorandum on Vacatur.

1. My business address is 1220 L Street NW, Washington, D.C. 20005.
2. My current position is Pipeline Director for API, which I have held since April 2016. My current responsibility is to direct API’s policy positions with respect to liquids pipelines in the United States.
3. API is a national trade association that represents all aspects of America’s oil and natural gas industry. API’s approximately 640 members – which include exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms –

provide much of the nation's energy, including oil-related services in North Dakota and the Bakken region. Together with its member companies, API is committed to ensuring a strong, viable U.S. oil and natural gas industry capable of meeting the energy needs of our country in a safe and environmentally responsible manner.

4. Representation of the economic interests of the oil and gas industry in litigation is part of API's overall purpose, and API has on numerous occasions participated in litigation affecting those interests, such as the litigation at issue here.

5. API and its member companies have a significant interest in the continued and uninterrupted transportation of North American-produced crude oil. In particular, API and its members seek to ensure that crude oil produced in North Dakota and transported on the Dakota Access Pipeline ("DAPL") to refinery destinations in the U.S. continues without interruption. DAPL provides needed pipeline capacity to the Bakken region, thereby helping to ensure regional and local economic growth, as well as national energy security and independence. Thus, the issue now before the Court – whether to vacate the U.S. Army Corps of Engineers' ("Corps") approvals for DAPL – is of great importance to API and its member companies.

6. API believes that any order by this Court to require DAPL to cease operations would have the dire consequence of impeding the transport of substantial North Dakota-produced crude oil volumes that are currently relied on by API's (and Amici's) member companies, thereby causing serious and irreparable harms.

7. API believes that the resulting adverse economic consequences would be particularly severe during the initial few months after any required cessation of DAPL operations. Such impacts would continue and be unavoidable until such time that alternative transportation modes could be identified and feedstock could be obtained, if at all.

8. API believes that such impacts would not have been so severe (or even resulted) had DAPL not begun operations in June 2017. However, now that DAPL is operational, businesses at both ends of the pipeline have come to rely on the pipeline to continue to transport increased volumes of North Dakota-produced oil. Such businesses would incur financial and other business-related harms if DAPL service were to be disrupted by this Court for any period of time.

9. For example, while DAPL has been operational for only a few months, API's (and Amici's) member companies have entered into contractual arrangements that depend on DAPL's transportation service continuing for the foreseeable future to transport approximately 450,000 bpd of crude oil. Should that service cease, Amici's members would not be able to immediately fill that supply gap because decisions on shipping/receiving crude oil via pipeline must be made several months prior to the time that the crude oil is actually transported on DAPL. Thus, while Amici's members were previously able to ship and receive crude oil from other transportation modes prior to June 2017, they are now dependent on DAPL's operation for at least the next several months in order to perform under existing contracts.

10. In addition, shutting off DAPL without first emptying out the oil that is contained in the pipeline would leave tens of millions of dollars-worth of crude isolated, thereby preventing the owners of that crude (which include Amici's members) from realizing significant capital investment gains until such time that the pipeline is once again allowed to operate.

11. Nor does API believe that any feasible alternatives exist in the near-term to transport 450,000 barrels of Bakken crude from North Dakota to refinery markets if DAPL operations are ceased. The June 2017 startup of DAPL marks the first time since 2011 that there has been enough available pipeline capacity to transport the volumes that are currently being

produced (and forecasted to be produced) in the Bakken region. Thus, the limited network of pipelines that served the Bakken region pre-DAPL are already stretched to their limits, unable to accommodate the quantity of oil that shippers are able to now transport on DAPL. A substantial volume of crude oil that is currently being produced in the region could therefore not be transported on existing pipelines following any disruption of service on DAPL; hence, that oil would have substantial difficulty reaching refining markets at current crude prices.

12. Also, while rail infrastructure in North Dakota exists, it is not certain that rail transport could be made immediately available to transport the crude oil volumes that are currently transported by DAPL. For example, since DAPL was placed into service in June, it is likely that regional rail cars have been deployed for other non-Bakken uses, and it would take time for such car stock to return to crude delivery service in North Dakota.

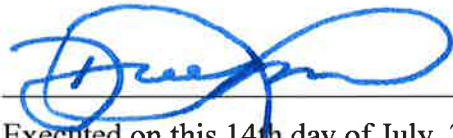
13. The lack of any feasible transportation alternatives to DAPL, along with the higher transportation costs that would result, would in turn decrease the netback for Bakken producers. “Netback” refers to the net profit for producers after royalties, production, and transportation expenses are subtracted out. Thus, Bakken producers’ profit would decrease if the oil that is currently transported on DAPL were forced to be transported on other transportation modes, including other more-costly pipelines.

14. A lower netback for Bakken producers would in turn result in a sudden decline in North Dakota production levels, resulting in an increase in local and regional unemployment. For example, the regional investment in oil production (e.g., wells) that has recently occurred as a direct result of DAPL would decline, and so too would the jobs that have been created in North Dakota in expectation of continued DAPL service. Any disruption to DAPL service would therefore threaten existing and future capital investments, and in turn harm local and regional

economies in the form of fewer jobs, lower tax revenue, and deflated economic growth in North Dakota and the overall Bakken region.

15. For the foregoing reasons, API believes that this Court should allow DAPL to continue to operate so that it can fulfill the national interest through the safe and reliable transportation of 450,000 bpd from North Dakota to refinery destinations, thereby meeting U.S. energy and related security demands.

I, David Murk, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and accurate with respect to the declarations made on behalf of API.



Executed on this 14th day of July, 2017.