Don't let President Trump distract you: public comment is now open for DAPL.

Now until Feb. 20 is the public's chance to push for a full review of the pipeline's climate impacts.

It's been a tumultuous few days for anyone following the ongoing battle against the Dakota Access pipeline. Within the course of just over a week, the project's backers tried to get a judge to cancel environmental review of the project, environmental review officially began, and, on Jan. 24, President Trump issued a memorandum calling for the Army Corps of Engineers to ditch the Environmental Impact Statement process and approve the pipeline.

Things look bleak, but it's unclear whether Trump's order will actually have any effect.

The exact wording of his statement is that the Army Corps of Engineers should "consider, to the extent permitted by law and as warranted" whether this environmental review should be canceled. Federal courts have previously ruled that agency decisions cannot be reversed simply because a new president is in power, so this order could just be a bunch of hot air.

Because the situation is so uncertain, however, anti-DAPL activists should prepare for both scenarios: one in which the pipeline plows forward in the coming weeks and months, and one in which the full environmental review proceeds. If you're willing to take a stand in the streets and in the cold of North Dakota, why not take a few moments to put your concerns into writing?

If Trump's order is not legally actionable, now through Feb. 20 is the only chance we will have to push for a *full* review of the pipeline's climate impacts. Consider that Trump's picks (and lack thereof) have not yet been appointed to the Army Corps. This means there may still be decision-makers on the inside who are committed to fully analyzing the project.

How the EIS process involves the public

As I explained in detail in a previous article, the environmental review process that has now begun is known as an environmental impact statement or EIS. This is a highly regimented form of review that is part of the National Environmental Policy Act (NEPA). An EIS is required any time a federal action (including federal permit approval) will have significant environmental impacts. It requires a full, detailed analysis of those impacts, as well as an evaluation of how alternatives to the project as-proposed would lessen or heighten those impacts. Although the Army Corps originally issued a "Finding of No Significant Impact" for the DAPL, its Dec. 4 announcement reversed that decision, citing that additional review was needed.

A standard pipeline EIS proceeds as follows:

- Notice of Intent (official announcement of the EIS) is issued.
- Scoping Period (public input on which impacts and project alternatives should be studied).
- Army Corps drafts EIS document.
- Draft EIS is published, and the public is invited to comment (on whether the report is complete or which alternative is best).
- EIS is modified based on public comment.
- Final EIS is published (possibly with another comment period).

- Army Corps decides whether or not to approve a permit for the pipeline crossing.

Though the EIS process itself cannot deny the pipeline, the environmental information gathered through the process can be used by the Army Corps to deny a permit if the project is "injurious to the public interest"—in other words, if the project's impacts outweigh its benefits.

One problem with that is past EISs have only looked at environmental impacts to the immediate project site and surrounding area (in this case, the sliver of land that the Army Corps owns and Lake Oahe). On the other hand, the Army Corps will be weighing those spatially-limited impacts against the overall benefits of the project, such as jobs and tax revenue.

If this seems like an unequal comparison to you, now is your chance to speak up and say so.

The EIS Notice of Intent was published in the Federal Register on Jan. 18. During the 32-day scoping period that began simultaneously, the Army Corps is reaching out to the public for input on which environmental impacts should be studied within the EIS, and what the alternatives to Dakota Access' "preferred route" should be. Unlike the second comment period, this first comment period is solely to decide what the scope of analysis should be.

What kind of impacts to comment on ?

One of the most important impacts of the pipeline is the potential for oil spills into Lake Oahe and the Missouri River. However, spills are certain to be studied in the EIS, and there will be ample opportunity to comment extensively on those impacts during the second comment period, once the draft EIS is published. That doesn't mean that the public shouldn't include spills in their scoping comments, and the Standing Rock Sioux and their lawyers will certainly need to provide information on their water intakes, fishing rights, etc., but there are other important issues to tackle in this comment period as well.

It is virtually certain that without an overwhelming public push during the scoping notice, greenhouse gas emissions and climate change impacts will *not* be studied in the EIS.

One of the most important impacts of the pipeline is the potential for oil spills.

In order to have the strongest argument possible when it comes to deciding if this project is "injurious to the public interest," activists should, at this point, focus on expanding the scope of the EIS to cover the effect of the global greenhouse gas emissions that will result from the oil that will run through the pipeline.

If completed, up to 570,000 barrels of crude oil would flow through the DAPL every day. According to one estimate, utilizing data specific to the Bakken oil fields in North Dakota, the transportation, processing, and burning of that oil would result in 101.4 million metric tons of CO2 every year. To put this in perspective, that's the same amount of annual emissions that would result from operating 21.4 million passenger vehicles or 29.5 coal plants.

The original Environmental Assessment (think: preliminary, mini-EIS) for the DAPL did not address climate issues at all, with merely a one sentence mention ("The contribution of the Proposed Action to greenhouse gas emissions during construction would be considered a minor indirect impact to climate change"). This ignoring of the project's larger impact is inconsistent

the U.S. Council on Environmental Quality's guidance for evaluating climate change under NEPA. This guidance, released in 2016, states that agencies should evaluate "direct and indirect," "long- and short-term," and "broad-scale" effects of greenhouse gas emissions and climate change. Though the Army Corps has not yet updated their standards to match these, overwhelming public pressure might convince them to provide a full analysis of climate impacts from the pipeline.

Suggest the true "no-action" alternative

While inclusion of climate impacts in the EIS would set major precedent for pipeline projects going forward, in order for them to help the argument that the project is "injurious to the public interest," an additional change to the EIS' scope must be made.

Every EIS includes evaluation of alternatives to the proposed project. In addition to alternate routes for the pipeline, the project is also required to evaluate a "no-action" alternative, in which the pipeline is not built. Exactly how this no-action alternative is structured will play a critical role in how the proposed route under Lake Oahe is viewed, both in terms of local water quality impacts and global greenhouse gas impacts.

The proposed project should be evaluated against a scenario where the oil is left in the ground.

In the initial Environmental Assessment for the DAPL, the no-action alternative assumed that, if the pipeline was not built, the oil would be carried by rail and truck instead. As these methods of transportation are more dangerous and energy-intensive than pipeline transportation, the no-action alternative was written off as being worse than building the pipeline. The only problem with this is that earlier in that same report, it was noted that truck transportation of the oil was "not ... a realistic alternative" and that transportation by rail would first require construction of a facility more than 150 percent of the size of the largest existing oil-by-rail facility in the United States.

Creating a no-action alternative in which the oil is still transported by truck and rail, therefore, is unrealistic. The proposed project should be evaluated against a scenario where the oil is left in the ground due to the multiple financial, technological, and logistical constraints that exist. This would mean that the proposed project's local and global impacts would be evaluated against a *true* no-action alternative, rather than one that looks worse than the proposal but is unrealistic in practice.

Won't Trump just approve the pipeline?

The media shouldn't lie to you. Even if the full environmental review of the pipeline takes place, by the time the review is complete, the secretary of the Army and assistant secretary of the Army for civil works, who oversee the Corps, will be Trump appointees. It's hard to imagine that anyone he appoints would be willing to rule on the side of the environment, regardless of the impacts. His Jan. 24 decree that future pipelines and other infrastructure projects should receive "expedited" environmental review doesn't bode well either.

So it's true. Denial of the pipeline is a long-shot. But if the water protectors at Standing Rock have taught us anything, it's that with enough public pressure, even a long-shot is possible. So if

you're against the pipeline, this is the time to step up, not back down. As long as the public process is still in play, we should do everything we can to push back. We owe it to those who worked so hard to get us to where we are today.

Here's what to do!

Send your public comments by Feb. 20 to:

Mr. Gib Owen
gib.a.owen.civ@mail.mil

Subject Line: "NOI Comments, Dakota Access Pipeline Crossing"

Sample Comment:

Mr. Owen,

Thank you for the opportunity to comment on the Dakota Access pipeline crossing. I have grave concerns that the scope ignores key impacts that the Army Corps' approval would cause, and that the "no-action" alternative, as proposed in the environmental assessment, does not constitute a realistic alternative.

The EA's no-action alternative assumes that, if the pipeline is not built, the oil will be transported by truck or rail instead. This argument is flawed, however. The EA itself points out on page 5 that truck transportation is not realistic, and goes on to state that rail transportation would require massive infrastructure investments, far larger than any currently existing in the United States. For these reasons, the no-action alternative should assume that the oil is not extracted, as there will be no realistic way to transport it to the intended markets.

Additionally, the Council on Environmental Quality has directed federal agencies to evaluate projects' direct and indirect, long- and short-term, and broad-scale greenhouse gas and climate change impacts through the EIS process. Approving this crossing would complete the project, allowing a flow of oil that, when all is accounted for, would have the same annual CO2 emissions as 29 coal-fired power plants. These emissions would have a significant impact on air quality, water quality, human health, and wildlife, and would not occur if this pipeline crossing was denied. Please evaluate these impacts as part of your review, in accordance with the guidance provided by CEQ.

Finally, I support your decision to include a thorough analysis of the effects of an oil spill on Lake Oahe and the people of Standing Rock. Even the strictest precautions today will wear with age, as we have seen with other projects where poor maintenance led to disastrous results. The impacts of a spill on the local population and environment cannot be discounted—a spill 30 years from now would be just as impactful as a spill on day one, and should be treated as a near-certainty in the requestor's preferred alternative.

Thank you again, and I look forward to your inclusion of the project's full impacts, as well as a no-action alternative that takes into account the infeasibility of other forms of oil transportation.