

Analysis of The Kuprewicz Report

Analysis of the Dakota Access pipeline conducted by consultant Richard Kuprewicz, and funded by Earthjustice, fails to articulate any factual basis that could lead an informed expert to believe the U.S. Army Corps of Engineers' ("Corps") Environmental Assessment (EA) is inadequate.

If Mr. Kuprewicz would have taken the time to do a more fulsome and honest analysis of the Dakota Access pipeline, he would have found that the EA was expanded to include additional analysis and consultation and is longer than many EISs conducted by the Corps.

My thorough review, supported by that of two Federal Courts, four judges, and countless other experts, leads me to conclude the 1,200 pages of Environmental Assessment required by the National Environmental Policy Act (NEPA) of 1970, and the project's state-of-the-art design makes the Dakota Access pipeline project a demonstrably safe project.

My concerns with Mr. Kuprewicz's report include a lack of understanding and respect for accepted methodology, inferring that an absence of risk is demonstrative of risk, and the inability to accept the importance of the safe transportation of America's energy. The overall Kuprewicz report runs directly counter to best practices, does not keep with accepted norms, and should not be relied upon when discussing the Dakota Access Pipeline Project.

1. Lack of Scientifically Accepted Methodology

Environmental Assessment studies are conducted without any preconceived outcomes and are undertaken by the Army Corps of Engineers and career civil servants in the federal government. The report written for an activist, environmental organization by Mr. Kuprewicz however takes the opposite approach and attempts to blur the line between factual information and pure speculation.

Scientific reports and analyses require methodologies which are not subjective. Quantitative Research uses measurable data to formulate facts and uncover patterns in research. Safety experts understand that the accuracy and credibility of an analytical undertaking requires that each analysis rely upon factual information and data that is extensive and accurate. The report provided by Mr. Kuprewicz disregards this important tenet and puts the proverbial cart before the horse.

Instead of utilizing supporting data to analyze or even simply review the full document, Mr. Kuprewicz instead makes broad assertions which he then attempts to substantiate with no fact and subjective opinions. The result is a confusing, and at times, contradictory 10-page rebuttal to the more than 1200 page analysis conducted by the Corps.

2. Using Absence of Risk to Indicate Risk

Throughout his analysis, Mr. Kuprewicz attempts to persuade the reader that the lack of risk to the integrity of the pipeline and the surrounding area is indicative of an absent risk. For the reasons stated above, such assertions are not supported by the EA and must be disregarded as being without merit.

Mr. Kuprewicz makes conclusions simply based on the fact the information was not publicly available to him – the EA, along with supplemental information, was reviewed by representatives from each state and the Corps – all of which approved the project after careful consideration.

3. Oil Spills And Resulting Impact

The overall purpose of the EA is completely ignored as the Kuprewicz report attempts to make the “what if” scenario. When discussing these matters, all pipeline safety experts are required to express professional opinions within a reasonable degree of scientific certainty. The injection of the “what if” scenario is not only inappropriate for an EA, it is an inappropriate benchmark for experts because such assertions are, on their face, baseless.

Mr. Kuprewicz focuses on the issue of potential oil spills and their likelihood, detectability, redressability, and damage. This EA’s stated purpose is to assess “whether USACE may grant permission for Dakota Access to place the pipeline on federal property interests acquired and managed by the USACE for the Garrison Dam/Lake Sakakawea and Oahe Dam/Lake Oahe projects.”¹ The EA looks at the impact of installation, the methodology for installation, and the impact of the existence of the pipeline in that particular location.

Focusing solely on the issue of an oil spill, Mr. Kuprewicz zeroes in on landslides, which he admits “no pipeline can be designed to withstand massive landslide forces.”² Yet, in his first substantive section of the report, he critiques the EA for the lack of adequate planning and information to determine whether the pipeline can withstand a landslide.³ He concludes with a seemingly neat and tidy solution, just route the pipeline out of the landslide area.⁴ This solution has no contextual consideration and provides no understanding of the area. It fails to consider that the route was selected, in part, due to existing energy infrastructure in the area – a 1982 natural gas line and electric transmission line.

In addition, the Dakota Access pipeline and location was designed with consideration for Native American sacred sites, endangered species, and many other concerns – which again, points to the selection of the route and collocation of Dakota Access with existing infrastructure in the region.

4. Solutions Are Not Given Parameters, EA Not Reviewed Carefully

In Mr. Kuprewicz's memo, his solution to the lack of adequate information is his assertion that additional testing is needed. Yet these parameters are open ended and appear designed to delay construction rather than to address a realistic concern.

In addition, several of his main points, are all easily refuted once the time is taken to review the actual analysis. Had the EA been more carefully reviewed, Mr. Kuprewicz would have found that Dakota Access has instituted numerous safety measures that go above and beyond normal pipeline construction. For example, in his report, he recommends that the project should employ, "nondestructive testing for girth weld inspection should clearly specify 100% radiographic testing." On page 18 of the EA, it clearly states that, "Welding would be performed in accordance with the American Petroleum Institute Standards, PHMSA pipeline safety regulations, and Company welding specifications. All welds would be coated for corrosion protection and visually and radiographically inspected to ensure there are no defects."

5. Kuprewicz Disregards the Necessity of Oil

The question with oil is not whether or not it will be transported, but how and at what level of risk and cost. Pipelines are the safest, most economical, and most ecologically sound way to transport large volumes of crude oil.

Mr. Kuprewicz fails to recognize or address the alternative options because he would be unable to state that alternative measures would result in an equivalent level of safety afforded by pipelines.

Dakota Access's state-of-the-art modern design and construction will enable the safe transportation of American energy produced in the Bakken region to markets in the Midwest and Gulf Coast. The development of this project is critical to safely move this product to market. The construction of Dakota Access would remove up to 700 rail cars per day currently transporting crude oil and open up those rail lines for other commodities in the region.

Conclusion

After reviewing both the Army Corps' Environmental Assessment and the report authored for Earthjustice by Mr. Kuprewicz, I conclude the Earthjustice report lacks credibility and was, from its conception, a report designed to undermine confidence in the Dakota Access Pipeline Project as opposed to a paper realistically designed to review the government's work and decision to fully permit the project.