

Hamre, John G.

From: Fedorchak, Julie L.
Sent: Monday, May 08, 2017 11:09 AM
To: Hamre, John G.; Fahn, Patrick J.
Subject: FW: DAP Tree Plan

Here is a note I received from Derrick Braaten. Not sure if it should be docketed but I'm thinking it probably wouldn't hurt.

Julie

From: Derrick Braaten [mailto:derrick@baumstarkbraaten.com]
Sent: Monday, May 08, 2017 10:34 AM
To: Fedorchak, Julie L.
Cc: zep@pearce-durick.com
Subject: DAP Tree Plan

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Commissioner Fedorchak:

I read an article in the Tribune last week regarding the tree plan filed for Dakota Access, and the comments that we filed on behalf of our clients. Our inspectors had some issues with how the DAP contractors were conducting the tree replacements, and we wanted to provide that same input to the PSC as you considered the plan that was submitted. The article in the Tribune made it appear (to me at least) that our filing was the result of a dispute with Dakota Access. I'm writing to let you know that that is not the case, and DAP has been very good to work with on issues such as this. While we do have some concerns about how the contractor is replacing trees, I do not see it as an issue that we will not be able to resolve with Dakota Access – we simply wanted to provide some information to the PSC on the issue.

Thank you,

Derrick Braaten
BAUMSTARK BRAATEN LAW PARTNERS
109 North 4th Street, Suite 100
Bismarck, ND 58501
Phone: 701-221-2911
Fax: 701-221-5842
derrick@baumstarkbraaten.com
www.baumstarkbraaten.com

PRIVILEGED COMMUNICATION

This e-mail message is intended only for the named recipient(s) above and is covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521. This e-mail is confidential and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. Recipients should not file copies of this e-mail with publicly accessible records. If you have received this message in error, please immediately notify the sender by return e-mail and delete this e-mail message from your computer.

This transmission, email and any files transmitted with it, may be: (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential under federal or state law. If you are not the intended recipient of this message, you may not use, disclose, print, copy or disseminate this information. If you have received this transmission in error, notify the sender (only) and delete the message. This message may also be subject to disclosure under the North Dakota Open Records Laws.

NO NEXT STEP SHOULD BE MORE PAINFUL.



Expand

<http://www.apnewsarchive.com/2017/North-Dakota-regulators-are-investigating-whether-the-developer-of-the-Dakota-Access-pipeline-removed-too-many-trees-while-laying-pipe-in-the-state/id-7b28382cdef7457bbbe8b01717be35bc>

AP

Dakota Access pipeline developer involved in tree dispute

By BLAKE NICHOLSON Associated Press May 5, 2017 Updated May 5, 2017



Tom Stromme

FILE - In this Sept. 29, 2016, file photo, shows a section of the Dakota Access pipeline under construction near St. Anthony in Morton County, N.D. North Dakota regulators are investigating whether the developer of the pipeline removed too many trees while laying pipe in the state. A report from a third-party inspector identified more than 80 sites where trees might have been improperly cleared. Energy Transfer Partners denies violating terms of its permit. And its plan for replacing trees calls for crews to plant more than two trees for every one that was removed. (Tom Stromme/The Bismarck Tribune via AP, File)/The Bismarck Tribune via AP)

BISMARCK, N.D. (AP) — North Dakota regulators who want to fine the developer of the Dakota Access oil pipeline over the reporting of Native American artifacts during construction are now looking into whether the company removed too many trees while laying pipe in the state.

The Public Service Commission planned to discuss both matters during a closed executive session on Friday, with resolutions to both issues possible by the group's next public meeting on Wednesday, Chairwoman Julie Fedorchak said.

The \$3.8 billion pipeline to move North Dakota oil to a distribution point in Illinois has been controversial because of opposition by American Indian tribes and environmental groups who fear environmental harm. Construction is complete, however, and the pipeline should be fully operating by June 1, said Vicki Granado, spokeswoman for the Texas-based developer, Energy Transfer Partners. Mop-up work remains, such as tree restoration.

A December report from third-party inspector Keitu Engineers and Consultants Inc. identified 83 sites along the 380-mile (610-kilometer) pipeline corridor in North Dakota where trees might have been cleared in violation of the commission's orders. The report by analyst Dean Mostad doesn't estimate the number of trees involved.

Granado insisted to The Associated Press that ETP didn't violate terms of its permit. Mike Futch, ETP's pipeline project manager in North Dakota, said in a letter to commission attorney John Schuh in March that it's possible the company cleared the disputed areas of trees before the company and commission agreed in June 2016 how large an area could be cleared. The company submitted its tree replacement plan in April.

That plan calls for two trees to be planted for every one that was removed — a total of about 94,000 trees — and for the company to inspect them annually for three years to monitor survival rates. The PSC must approve the plan.

Sponsored By **Beverly Hills MD**

How To: Fix Crepey Skin [Watch]

How To: Fix Crepey Skin [Watch]

[See More](#)

A law firm representing numerous landowners on Monday filed a consultant's report that contends ETP's tree replacement plan includes far fewer species than were removed and that a "flawed approach" to soil work could result in trees "being planted and growing well for five or ten years, then dying."

Fedorchak said ETP could be fined for any violation of the Public Service Commission's tree removal orders.

The commission already has proposed a fine of at least \$15,000 after the company diverted construction of the pipeline around artifacts last October without first running the plan by regulators. No artifacts were disturbed.

ETP maintains it didn't intentionally violate state rules and has asked for that case to be dismissed.

—

Follow Blake Nicholson on Twitter at: <http://twitter.com/NicholsonBlake>