



October 28, 2016

Kelcy L. Warren
Chair of the Board of Directors, LE GP LLC
General Partner, Energy Transfer Equity LP
Chairman and CEO, Energy Transfer Partners, LP
8111 Westchester Dr Ste 600
Dallas, Texas 75225-6142

Gregg C. Garland
Chairman and CEO
Phillips 66
2331 Citywest Blvd.
Houston, Texas 77042

Mark Andrew Maki
President and CEO, Enbridge Energy Partners
1100 Louisiana Street
Houston, TX 77002

Larry Robinson
Managing Director
Wells Fargo Bank, National Association
101 North Phillips Avenue
One Wachovia Center
Sioux Falls, SD 57104

Dear Messrs. Warren, Garland, Maki and Robinson,

We are writing to express our concerns about the deteriorating situation in Standing Rock, North Dakota. As joint owners of the Dakota Access Pipeline, you have a corporate duty under international law and the laws of the United States to respect human rights and to avoid complicity in further human rights abuses. It is imperative that you take action to stop the attacks on peaceful occupiers immediately.¹

Our organizations have spent decades advocating and litigating on behalf of Indigenous communities outside the United States. We have seen the rights of Indigenous communities violated by proponents of extractive industries around the world – traditional and sacred lands in the Amazon spoiled by oil extraction; peaceful protestors attacked and too often killed by public and private security forces in Guatemala and Nigeria; and human rights defenders wrongfully arrested in Ecuador and Peru. And we are alarmed that these all-too-familiar patterns are playing out in the United States at Standing Rock.

On September 22, eight United Nations mandate holders expressed concern at reports of intimidation, harassment, and prosecution of Indigenous peoples exercising their right to peaceful assembly.ⁱⁱ The statement followed the release of documentary evidence demonstrating that unlicensed security personnel employed or contracted by your companies attacked peaceful occupiers with dogs, resulting in multiple injuries.ⁱⁱⁱ

In the ensuing weeks, the situation has deteriorated further. The campaign of intimidation and repression, carried out by both private security forces and local police, has included the use of pepper spray and the firing of rubber bullets against protestors, mass arrests, and the arrests and threatened prosecution of the journalists who documented the aforementioned abuses, in clear violation of the First Amendment and of fundamental principles of press freedom recognized worldwide. Notably, media reports suggest coordination by police and your companies or their agents on multiple occasions.

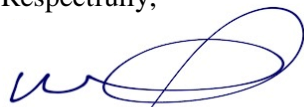
The rapid escalation of tensions over the past 48 hours, including the forcible clearing of at least one camp by militarized police forces deploying teargas, has created a situation of urgency in which the companies must take immediate responsibility for the human rights impacts of their actions, including the companies' complicity in the actions of others.^{iv}

As a matter of international law, your companies have an affirmative responsibility to protect human rights, including the responsibility to: avoid causing or contributing to adverse human rights impacts to peaceful protestors through your companies' own activities; and to seek to prevent or mitigate adverse human rights impacts that are directly linked to your companies' operations.^v These responsibilities also apply to banks and other institutions that provide financing for a project that will cause such adverse human rights impacts.^{vi}

We emphasize and caution that the active involvement by persons acting under color of governmental authority, including state or local law enforcement, does not absolve your companies of these duties. To the extent that human rights abuses occur, business enterprises have an affirmative duty to avoid complicity in those abuses. Your companies may be responsible for injuries or losses suffered by the protestors, including those caused by private security forces or police working in concert with you or at your behest.^{vii} As a matter of international law, your companies have a responsibility to *protect* human rights, which includes a complimentary prohibition on *causing* violations of human rights.

We further note that victims of human rights abuses occurring within the United States may seek redress not only through international human rights mechanisms but also in domestic courts. In this context as well, the participation of third persons in the commission of tortious acts will not absolve your companies of responsibility or liability if your operations have aided and abetted the commission thereof.^{viii}

Respectfully,



Carroll M. Moffett, President
Center for International Environmental Law

Jane Fleming Kleeb, President
Bold Alliance

Stephen Leonard, President
Climate Justice Programme



Katie Redford, Director
EarthRights International

Kelly Mitchell, Energy Campaign Director
Greenpeace USA

Steven Kretzmann, Founder, Executive Director
Oil Change International

Cc:
Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division
US Department of Justice

ⁱ Corporate Complicity and Legal Accountability. (Vol. 3: Civil Remedies). Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes. 2009. Available online at <http://icj2.wpengine.com/wp-content/uploads/2009/07/Corporate-complicity-legal-accountability-vol3-publication-2009-eng.pdf> (accessed Oct. 27, 2016).

ⁱⁱ “North Dakota: “Indigenous peoples must be consulted prior to oil pipeline construction,” United Nations Office of the High Commissioner for Human Rights (September 22, 2016). Available online at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20570&LangID=E> (accessed October 27, 2016).

ⁱⁱⁱ “DAPL dog handlers not licensed; could face charges,” Jim Monk, KFGO (October 26, 1996). Available online at <http://kfgo.com/news/articles/2016/oct/26/dapl-dog-handlers-not-licensed-could-face-charges/> (accessed October 27, 2016).

^v United Nations Guiding Principles on Business and Human Rights, Principle 13. Available online at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed Oct. 27, 2016).

^{vi} United Nations Office of the High Commissioner for Human Rights, *Frequently asked questions about the Guiding Principles on Business and Human Rights* (2014), page 31 (“A company may contribute to an adverse impact if it provides financing to a construction project that will entail [a human rights violation].”), available at http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf (accessed Oct. 27, 2016)

^{vii} See *Murray V. Wal-Mart, Inc.*, 874 F.2d 555, 559 (8th Cir. 1989) (“concerted actions of Wal-Mart and local police department, afford ample evidence of willful, joint activity which supports a claim against Wal-Mart under section 1983”).

^{viii} Restatement (Second) of Torts § 876. Persons Acting In Concert. For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he (a) does a tortious act in concert with the other or pursuant to a common design with him, or (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.