



June 1, 2017

First Peoples Worldwide is writing in response to the public summary of the Foley Hoag report “Good Practice for Managing the Social Impacts of Oil Pipelines in the United States.” The report was commissioned by 17 banks providing project finance to the Dakota Access Pipeline (DAPL). When we first learned about the report, we were encouraged that the banks wanted to have an independent review of the process by which the decision was made to build DAPL through the Standing Rock Sioux Tribe’s treaty territory. At the same time, the report met skepticism from many DAPL opponents who believed that it was nothing more than a whitewash. We encouraged skeptics to give the report a chance, citing Foley Hoag’s good reputation and track record of publishing guidance on Free, Prior, and Informed Consent. Reactions to the public summary, in its current state, indicate that the skeptics were right. For this reason, we have detailed several problematic aspects of the public summary that undermine some of the credibility it hoped to demonstrate.

- 1. Lack of substance.** The number one challenge keeping investors from managing social risk is lack of optimal data, and the recommendations listed in the public summary do not fill the void. They read like platitudes and are already found in countless existing CSR papers. They also lack substance that is necessary for the intended audience. An example is the recommendation to establish a grievance mechanism that is “culturally appropriate” (A.5). We are sure that no one at Energy Transfer Partners knows how to make a grievance mechanism culturally appropriate. Another example is the recommendation to “consider appropriate timelines” (B.3) without specificity as to what constitutes an appropriate timeline. This was a fundamental point of disagreement between Energy Transfer Partners and the Standing Rock Sioux Tribe. There is also the recommendation to “conduct stakeholder mapping” (A.2) without delving into the fundamental questions that such an exercise should answer, such as: What are the traditional and contemporary decision making mechanisms? How is information shared among or between impacted communities? What is impacted communities’ capacity for corporate engagement? These are critical data points needed for an accurate assessment of social risk. The full report should contain more of this substantive content, otherwise it possesses little value to bank analysts and company business managers tasked with implementing the recommendations on the ground.

- 2. DAPL is not mentioned.** The report was commissioned in response to DAPL, and cited in nearly every bank's public statements on the controversy. A December 2016 statement by BayernLB said "the syndicate banks have retained Foley Hoag to review the permitting process for the pipeline so far, including compliance with applicable law concerning consultation with the Native Americans." A February 2017 statement by Société Générale said "the study will include the evaluation of policies and procedures employed by the project's sponsors, in the areas of security, human rights, community engagement and cultural heritage." These statements raised expectations that the report would be about DAPL. However, DAPL is not mentioned in the public summary, except for one sentence noting that the report was commissioned by 17 banks providing project finance to the pipeline. The report's current purpose to "consider international industry good practice for community engagement in the development of oil pipelines, with a particular focus on engagement with Indigenous Peoples" differs from the original purpose projected by banks. Important research questions appear to have been replaced by content containing no relevance to the circumstances that triggered the report in the first place.
- 3. No conclusions.** The public summary does not even hint at what conclusions were drawn by the report. The Standing Rock Sioux Tribe and other impacted communities deserve to know whether DAPL was built in alignment with international industry good practice as described in the public summary. We remain firm in our belief that it was not, but are curious to know whether Foley Hoag agrees. The absence of conclusions in the public summary means one of two things: 1) the full report does not say anything either or 2) crucial information is being kept hidden. If the latter is true, the report already ignores two of its own recommendations: engage in information sharing (A.4) and share adequate information (B.6).
- 4. No commitments.** The recommendations listed in the public summary are meaningless if they are not matched with commitments to implementation. The public summary does not say if and how the recommendations will be incorporated by banks or Energy Transfer Partners. We recognize that this was not in the report's scope, but the absence of commitments moving forward will further jeopardize the report's credibility. Our concerns about commitments are justified by the fact that the public summary calls for information sharing twice and then does not share information. This raises questions around what other recommendations will go ignored. Many banks indicated that future actions related to DAPL and other pipelines will be informed by the report. We are now at the time for future actions.

If banks commissioned the report to rebuild trust with Indigenous Peoples and other stakeholders, the public summary, in its current state, has the opposite effect. It walls off crucial information while providing easy fodder to activists who accuse banks of window dressing. Besides damaging banks' credibility, the report could be used to damage the credibility of organizations like ours that advocate for collaborative approaches. It indicates that such approaches lead to nothing but boilerplate white papers.

We respectfully request the banks to make the full report public. If this is not possible, then we request an updated public summary that addresses the points made above. Additionally, we recommend that future studies on Indigenous Peoples give a far greater role to Indigenous Peoples in the research process. We repeatedly see companies source expertise on Indigenous Peoples from consultants and other intermediaries that lack competency and experience with Indigenous Peoples. Companies should choose intermediaries that have 1) Indigenous Peoples represented on their governing board, 2) Indigenous Peoples hired as part of their operations, and 3) experience working at the grassroots level and can point to successful community engagement initiatives within the extractive industry. The quality of any data on Indigenous Peoples depends on the closeness with which it is sourced directly from communities. Without adequate involvement of Indigenous Peoples in the research process, banks will not capture the knowledge needed, while wasting opportunities to build relationship capital and open channels for communication.

Indigenous Peoples are rapidly becoming the cornerstone of social risk facing the extractive industry. Roughly 39 percent of oil, gas, and mining production is on or near Indigenous land, and there is likelihood of more events like DAPL in the future. First Peoples Worldwide remains committed to dialogue with banks on the rights of Indigenous Peoples, and looks forward to continued engagement on these complex issues.