STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:	)	
	)	Docket No. HLP-2014-0001
DAKOTA ACCESS LLC	)	

DIRECT TESTIMONY OF

Carolyn Raffensperger

ON BEHALF OF

The Science and Environmental Health Network

OCTOBER 12, 2015

EXHIBIT SEHN-CR-1

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DIRECT TESTIMONY OF CAROLYN RAFFENSPERGER

Q. Please state your name.

A. My name is Carolyn Raffensperger.

Q. Please state your employment history.

A. I am the executive director of the Science and Environmental Health Network and have served in that capacity since December 1994. I worked for the Illinois Chapter of the Sierra Club from 1983 until 1991. Before that I worked as an archaeologist for a large dam project and for a pipeline in the desert southwest. I currently hold an adjunct faculty position in the graduate environmental studies program at Goucher College in Baltimore, Maryland. In addition, my family and I own a farm in North Dakota.

Q. Is your curriculum vitae attached as Exhibit SEHN-CR-2?

A. Yes.

Q. Please state your educational background.

A. I have a B.A. in Anthropology from Wheaton College in Wheaton, Illinois, an M.A. in archaeology from Northwestern University in Evanston, Illinois and a J.D. from Chicago-Kent College of Law in Chicago, Illinois.

Q. What is your specialty within the law?

A. I specialize in public health and environmental law with a focus on the law of future generations.

Q. Have you reviewed the impact of the proposed Dakota Access Pipeline on future generations?

A. Yes.

Q. Please define future generations.

A. Future generations are the descendants of present generations. They include present generations, especially children as well as generations yet to come. Considering future generations gives us an opportunity to consider the long-term impacts of decisions such as siting a crude oil pipeline.

Q. What is the time frame that should be considered for present generations to fulfill their responsibilities to future generations in decisions of the magnitude of siting a crude oil pipeline?

A. Assuming we are the first generation for purposes of projects such as the Dakota Access pipeline, 25 to 150 years would include the second through the seventh generation. However, decision makers should consider the impact over the life span of the project. Since the pipeline has no known end, the impacts must be considered essentially in perpetuity. That is, Dakota Access and its parent company

Energy Transfer Partners, have no plans and no intention of removing the pipeline after it is no longer used, therefore decision-makers must evaluate the likelihood of spills, contamination of water and soil and the impact of the use of fossil fuels on climate over a very long time span. There are many projects that leave a scarred and contaminated land for 10,000 generations and end up costing the state or federal government a great deal of money to remediate. Mountain top removal, Bakken oil drilling and spills, gold mining and tar sands all leave expensive legacies to future generations. In order to prevent a toxic legacy, decision-makers should consider the impact of their decisions through at least the 7th generation, or 150 years.

Q. Please summarize the likely impacts on future generations you see from the construction, operation and abandonment of the pipeline.

A. There are two main impacts. The first is economic. The second is environmental. They are related. Most of the economic costs will be born by generations to come while the paltry economic benefits accrue to a private corporation and to a small group of this generation. Most of the costs associated with the pipeline will be environmental, especially the costs to the state, counties and municipalities for cleaning up spills, ruptures, leaks,

explosions. That is, the benefits are all most all privately accrued whereas the long term costs are almost all born by the public

Q. Please summarize the specific environmental impacts on future generations from the construction, operation and abandonment of the pipeline.

A. Without having a prepared Environmental Impact Statement, it is difficult to do more than summarize broad brushstrokes of the environmental impacts resulting from the pipeline, if sited. However, past experience with pipelines suggest some categories of predictable and probable impacts. The first probable impact is water pollution from spills or leaks. Since the pipeline is crossing numerous waterways, including drinking water sources, any leak jeopardizes the essential public good of clean water. The second probable impact is disturbance and loss of topsoil. Soil will be more subject to erosion during construction and subject to contamination during operation. Both erosion and contamination have long-term consequences for future generations in the loss of agricultural production and the corollary of water contamination. The third probable impact is climate change. Building a costly pipeline that is difficult, if not impossible to undo, locks us into a filthy, polluting, climate-damaging fuel. If we don't build the pipeline we are

more likely to be nimble, source cleaner energy and not guarantee harm to climate. Finally, the fourth probable impact is loss of wildlife from contamination of water and climate change. Contamination of water from a pipeline spill will harm fish, waterfowl and other wildlife dependent on wetlands, rivers and lakes.

Q. Please describe the economic impacts on future generations if the pipeline is sited.

A. The primary economic impacts on future generations will be the costs of responding to and cleaning up spills and water contamination of crude oil in Iowa's soils and water as well as the cost of a chaotic climate. Other costs will be associated with a chaotic climate that will bring drought and floods that will threaten the basic necessities of life including drinking water and agriculture.

Q. Why do you think that future generations will bear these costs?

A. There are four reasons future generations will bear these costs. First, Iowa only requires a $250,000 bond of Dakota Access. This is a totally insufficient amount of money to pay for even a minor leak, much less a worst-case scenario rupture or explosion in a major waterway or a drinking water source. Second, Energy Transfer Partners, Dakota Access' parent company self-insures for environmental liabilities.

(see page 25 of Energy Transfer Partners' 2014 annual report which is Dakota Access Exhibit DRD-2.) Third, Dakota Access is a subsidiary of a larger parent company. Dakota Access was created to protect the larger company's assets from liability. This means that it is likely that Energy Transfer Partners assets would not be used for cleanup or remediation of a spill. In the event of a major leak, it is most likely that Dakota Access would go bankrupt rather than have enough funds to remediate the site or compensate private landowners and the state. Since this is the first crude oil pipeline ETP or its affiliates have attempted to site, the risks are higher for environmental problems. ETP and the brand new company lack any experience in the regulation, management or transportation of crude oil, which they acknowledge as being a hazardous material bearing an inherent risk. (See Dakota Access Exhibit DRD-2 pg. 46.) Even corporations with a long history of transporting crude oil have leaks and problems. As described above, it also means the financial risks of a corporation going bankrupt and leaving the mess to the state and counties to pay to clean up is quite high. Fourth, counties and their drainage districts are generally covered by insurance. However the insurance does not cover the cost of "pollutants" such as nitrates or crude oil. This means that counties could be sued by downstream municipalities but

not be covered by insurance, as is currently the case in the lawsuit of the Des Moines Waterworks against counties upstream. In the absence of insurance on the part of counties, the self-insuring nature of Dakota Access, the deficient bond requirements of the state, taxpayers will have to bear the cost of a spill.

Q. Are you aware of any legal provisions protecting the citizens of Iowa from bearing the economic costs resulting from the construction, operation or abandonment of the Dakota Access Pipeline?

A. Yes. The Iowa Constitution specifies: *"Credit not to be loaned. SECTION 1, ARTICLE VII. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the state shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the state."* If Iowa proceeds with the pipeline knowing that the pipeline will in all likelihood leak and that it has not required a sufficient surety bond or insurance, then it will be a violation of the above constitutional provision which prevents the state from giving its credit to a corporation.

Q. Do you know of any crude oil pipeline that has been in place for 10 years or longer that has not leaked at some point in time?

A. I do not know of any pipeline that has not leaked eventually. Given that the time frame Dakota Access proposes for this pipeline to be in place is indefinite, with no plans to remove it, a leak is inevitable. According to the federal Pipeline and Hazardous Materials Safety Administration there have been over 2,000 pipeline spills since 1995 in the United States.

Q. In your opinion do the federal government's regulations adequately protect future generations?

A. No they do not. In fact, a lawsuit was filed recently by the National Wildlife Federation to compel the Department of Transportation to draft regulations under the federal Oil Pollution Act that would require spill response plans for worst case spills in navigable waters of the United States. These include at least two of the rivers the Dakota Access Pipeline will cross. Pipeline companies have not been required to either draft or follow spill response plans. This means pipeline companies have been allowed to transport hazardous crude oil on or under waterways without being prepared for worst-case scenarios. The worst-case scenario is one that has a significant impact on future generation by

forcing them to bear the cost of contaminated water, soil, and loss of species.

Q. Is Dakota Access fiscally able to pay for the costs of compliance or clean-up in a stricter environmental regulatory environment?

A. By its own admission, Dakota Access may not have financial resources to pay for cleanup, respond to spills or otherwise comply with environmental laws. It says on page 44-45 of Energy Transfer Partner's 2014 annual report which, is Dakota Access Exhibit DRD-2 "*We may incur substantial environmental costs and liabilities because of the underlying risk inherent to our operations. Although we have established financial reserves for our estimated environmental remediation liabilities, additional contamination or conditions may be discovered, resulting in increased remediation costs, liabilities for natural resource damages that could substantially increase our costs for site remediation projects. Accordingly, we cannot assure you that our current reserves are adequate to cover all future liabilities, even for currently known contamination.*"

Q. Does this conclude your prepared testimony?

A. It does. Thank you.