

Bank of America's Investment in the Dakota Pipeline – A Wake-up Call for Stakeholders

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At 6:05 am on October 24, 2016 Robert Davidson¹, a large depositor and investor in Bank of America (BoA), watched the news of the protest surrounding the Dakota pipeline and the sudden focus by protestors and media on the banks financing the project. As Susan Sarandon instructed through her megaphone that all BoA depositors empty their bank accounts in order to pressure the bank to divest from the Dakota pipelineⁱ, Mr. Davidson felt outrage at the power of individuals to destabilize corporations. “After all,” he thought, “what did Susan Sarandon know about banking and pipelines?”

But watching protesters fight so vigorously for a cause they believed in made Mr. Davidson anxious. On the one hand, he felt growing concerns for his investments with BoA and wondered whether he should pull out before the protests garnered momentum. On the other, he could not escape feeling captivated by protesters' passion for protecting society from corporate abuse. Emotions ran high that morning – both on television and in Mr. Davidson's kitchen – and he left for work wondering if protesters' drastic demands were justified, and, if so, whether he should begin to transition his assets to a more “responsible” institution. However, Mr. Davidson knew that he could not rely only on the morning's story; there were many facts and facets to consider before he could make an enlightened decision.

The Dakota Pipeline Project

The Dakota pipeline was a \$3.8B project spearheaded by Dakota Access, LLC, a joint venture involving Phillips 66, Energy Transfer Partners, Sunoco Logistics, Enbridge, and Marathon Oil. The pipeline would enable oil prospectors to access an estimated 7.4 billion barrels of untapped oilⁱⁱ, and transport it through South Dakota and Iowa to Southern Illinois – a 1,172 mile stretch under the Missouri Riverⁱⁱⁱ. With the pipeline in place, roughly 470,000 barrels per day would be redirected to markets across the U.S. (see Exhibit 1).

¹ Name has been disguised to increase anonymity

Crude Oil Transportation, Environmental Safety, and Economic Considerations

Crude oil pipelines as well as gas pipelines grid the U.S. with over 160,000 miles and 1,500,000 miles of pipes, respectively^{iv} (see Exhibit 2 and Exhibit 3). A main argument supporting the shift of crude oil transportation to pipelines was the safety of pipelines compared to trucks and railways. According to the Canadian Energy Pipeline Association, 70% of crude oil and petroleum products were shipped by pipeline, 23% via tankers/barge over water, 4% via trucks and only 3% via rail. Rail was considered the safest mode of transportation until 2013, when major accidents became more frequent^v. The most memorable accident was the Quebec train wreck of 2016, which resulted in over 1.5 million gallons of crude oil being spilled on land and 47 dead. According to the U.S. Pipeline and Hazardous Materials Safety Administration (PHMSA) data, rail incidents outnumbered pipelines two-to-one over the period 2004 to 2012.^{vi} Although rail incidents did happen more often, the International Energy Agency pointed out that pipelines in the U.S. spilled three times more crude oil than rail, a point which was made especially salient by the Kalamazoo disaster^{vii}.

There was also the issue of pollution. TransCanada President Alex Pourboix was quoted saying that "For every mile you move a barrel of oil by rail, you emit three times the [greenhouse gases] that you do by moving it by pipeline and you have an order of magnitude higher risk of having some sort of incident, leak or spill."^{viii} Supporters further argued that the pipeline would free up trucks and rail containers for other commodities currently constrained by oil's high demand capacity, all the while providing an efficient and more economical mode of transportation for crude oil^{ix}. The developers also claimed the pipeline would generate an economic boom. Specifically, Energy Transfer Partners expected the project would add approximately 10,000 construction jobs and generate over \$155 million in sales and income taxes^x. Lastly, developers were appealing to policy makers, claiming that the pipeline would foster the U.S.' energy independence by decreasing its reliance on foreign oil. Still, despite the pipelines' touted benefits, communities were less than enthusiastic about the prospect of a pipeline in their proximity.

Health Concerns

In a 2015 speech to the senate, Senator Barbara Boxer (D-CA) explained that the tar sand oil – such as that to be transported in the Dakota pipeline – contained toxic levels of sulfur, nickel, nitrogen and lead. Senator Boxer voiced the opinion of many who worried about the potential environmental disasters that could result from pipe ruptures, leaks, and explosions.^{xi} It was reported that in geographical areas in close proximity to the pipeline respiratory diseases such as emphysema, bronchitis, and asthma were expected to rise significantly^{xii}. In the first fifteen years of this century, approximately 75 people died or suffered serious injuries from a pipeline accident each year, representing roughly 0.15% of all work place accidents in the U.S.^{xiii}

Fourteen hundred pipeline spills occurred between 2010 and 2013, most of which were discovered by local residents.^{xiv}

Community Rallies Against the Project

The uproar surrounding the Dakota pipeline project was spearheaded by the Standing Rock Sioux Tribe Indian Reservation. The Standing Rock Sioux Tribe attempted to stand by its right to self-government as a sovereign nation under the treaties of 1851 and 1868 with the U.S. government. The treaties included jurisdiction over all reservation lands, rights-of-way, waterways, and streams running through the reservation, and provided the Sioux tribe with a strong rhetoric against the pipeline's trespassing. However according to the tribe's history summary^{xv}, the Dawes Act and the Allotment Act of March 2, 1889 opened up the reservations throughout the United States to settlement by non-Indian entities, against the tribe's perceived rights. The issue of jurisdiction had resurfaced in light of the pipeline project, which used those treaties to access and cross reservation land.

Standing Rock Sioux Chairman, David Archambault II, firmly opposed the Dakota pipeline. The Sioux tribe claimed the pipeline would run under their land. Furthermore, they were concerned that leaks or spills might infiltrate the community's drinking water supply with dangerous toxins. For Archambault II, the pipeline project revived the bigger issue of Native Americans' rights: "We are getting short-changed [again]", said Archambault on behalf of the Native Americans. "What we're opposed to is paying for all the benefits that this country receives."^{xvi}

But the Sioux tribe did not stand alone. Several petitions were filed online against the Dakota pipeline, on websites such as www.change.org and www.sumofus.org, where some 400,000 supporters were protesting against the pipeline construction in an ongoing petition^{xvii}. Non-government organizations such as People Over Pipelines, Modern Day Warriors, and the Unitarian Universalist social action working group were a few of the many grass root protesters that joined the voices of cities, environmental groups, labor unions and associations that made their way into mass media stories that decried the pipeline project.

Targeting the Banks

Traditionally, social protests targeted government officials. In the case of the Dakota pipeline, however, activists were also targeting the corporations' signatories to the pipeline's funding. This created strong reputational pressure on the group of banks that signed to invest in the Dakota Access venture. In total, 17 banks from around the world provided financing for the project, including Citibank, BoA, and Wells Fargo^{xviii}. With its \$350 million commitment to the project, BoA was not the only target of activists, although it had been singled out in some petitions and had been targeted by shareholder activists in the past regarding similar environmental issues. Robert Davidson was thinking that if a massive customer pullout

occurred at BoA, it could be disastrous for BoA shareholder value (see Exhibit 4). He still remembered Wells Fargo's sales practice scandal (August 2016), where new customer account openings fell by 44%, while account closures rose 3% from the previous year^{xix}. What would a comparable drop in customers amount to for BoA?

Bank of America's Social Responsibility and Actions: What next?

BoA's recent emphasis had been to do "business with honesty and integrity"^{xx}. In 2014, the wealth management divisions of BoA became the first to sign the United Nations-supported Principles for Responsible Investment (see Exhibit 5), a set of principles focused on integrating sustainability in the Bank's investment practices. BoA had also pledged to be carbon neutral by 2020^{xxi}, all the while reducing its greenhouse gas emissions, paper usage, and water consumption. Furthermore, BoA was an early signatory to the Equator Principles (Exhibit 4, right columns). The Equator Principles was a risk management framework adopted by financial institutions for determining, assessing and managing environmental and social risks in projects valued over US \$100 million^{xxii}. The Army Corps of Engineers had determined that the Dakota pipeline met the Equator Principles standards, yet communities kept raising concerns that seemed at odds with these Principles. BoA had made significant efforts toward social responsibility and sustainability in the past decade. Would the Dakota pipeline compromise BoA's social risk management approach and commitment to its depositors and investors?

A Wake-up Call

Amidst the talks surrounding the Dakota pipeline, it was easy to be swayed across arguments. The social protests were making it clear that in this digital era, stakeholders could voice their opinions and gain significant power against firms. Awakened by the passion of protesters, Robert Davidson was determined to review the information he had collected about BoA's investment in the pipeline – specifically how it affected and was affected by BoA's various stakeholders, and how it related to BoA's ethical and social responsibility commitments. Mr. Davidson felt it was necessary to analyze these issues before he could decide, like customers called on by protesters, whether to remain a large depositor and investor of BoA or transition his investments to another institution, but the pressure and visibility of the protesters was giving urgency to the issue.

ⁱ http://www.cnn.com/2016/11/03/entertainment/susan-sarandon-dakota-pipeline-petition/?iid=ob_lockedrail_bottommedium (accessed November 20, 2017)

ⁱⁱ According to a U.S. Geological Survey: Source?

ⁱⁱⁱ <http://www.cnn.com/2016/09/07/us/dakota-access-pipeline-visual-guide/index.html> (accessed November 20, 2017)

^{iv}

http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/national_transportation_statistics/html/table_01_10.html (accessed November 20, 2017)

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- ^v <http://www.forbes.com/sites/jamesconca/2014/04/26/pick-your-poison-for-crude-pipeline-rail-truck-or-boat/#357148585777> (accessed November 20, 2017)
- ^{vi} <https://thinkprogress.org/data-oil-trains-spill-more-often-but-pipelines-spill-bigger-9533009d4aba#.3scc9dctt> (accessed November 20, 2017)
- ^{vii} http://www.iea.org/publications/freepublications/publication/MTOMR2013_free.pdf (accessed November 20, 2017)
- ^{viii} <http://www.cbc.ca/news/canada/calgary/pipelines-cleaner-than-rail-transport-says-transcanada-exec-1.1405165> (accessed November 20, 2017)
- ^{ix} <http://www.pipeline101.com/why-do-we-need-pipelines/crude-oil-pipelines> (accessed November 20, 2017)
- ^{xi} <http://www.facethefactsusa.org/facts/pipelines-moving-energy-and-chemicals-how-safely> (accessed November 20, 2017)
- ^{xii} <http://lawstreetmedia.com/issues/energy-and-environment/keystone-xl-pipeline-economic-benefit-environmental-disaster/> (accessed November 20, 2017)
- ^{xiii} <http://www.facethefactsusa.org/facts/pipelines-moving-energy-and-chemicals-how-safely> (accessed November 20, 2017)
- ^{xiv} <http://www.facethefactsusa.org/facts/pipelines-moving-energy-and-chemicals-how-safely> (accessed November 20, 2017)
- ^{xv} www.standingrock.org (accessed November 20, 2017)
- ^{xvi} <http://www.cnn.com/2016/09/07/us/dakota-access-pipeline-visual-guide/index.html> (accessed November 20, 2017)
- ^{xvii} <https://www.change.org/search?q=Dakota%20pipeline> (accessed November 20, 2017)
- ^{xviii} http://www.democracynow.org/2016/9/9/who_is_funding_the_dakota_access (accessed November 20, 2017)
- ^{xx} <http://about.bankofamerica.com/assets/pdf/Bank-of-America-2015-ESG-Report.pdf> (accessed November 20, 2017)
- ^{xxi} <http://newsroom.bankofamerica.com/press-releases/environment/bank-america-commits-carbon-neutrality-and-100-percent-renewable-electric> (accessed November 20, 2017)
- ^{xxii} <http://www.equator-principles.com/> (accessed November 20, 2017)