

White House rejects pleas to shut down Dakota Access

Niina H. Farah, E&E News reporter Published: Friday, April 9, 2021

The Biden administration has decided against temporarily shutting down the Dakota Access pipeline, dealing a blow to the Standing Rock Sioux Tribe and others who called for the conduit to be drained of oil.

The Army Corps of Engineers told the U.S. District Court for the District of Columbia in a hearing this afternoon that it "continues to monitor" whether pipeline developer Energy Transfer LP is complying with pre-set conditions for remaining operational as it encroaches on federal land.

The pipe is currently carrying crude oil from the Bakken Shale play to Illinois without a key federal approval to cross beneath a human-made lake in the Dakotas.

"The Corps has not received any information that Dakota Access is not complying with those conditions," Justice Department attorney Reuben Schiffman told Judge James Boasberg in a hearing this afternoon.

The agency was not currently acting to shut down the pipeline, but could choose to take enforcement action "at any time," Schiffman said, noting that the agency expects to complete a court-ordered analysis of the pipeline in March 2022.

"There is not an artificial timeline for whether the corps takes enforcement action," Schiffman said.

Boasberg, an Obama appointee, expressed surprise that the Army Corps did not have a definitive answer for the court after asking for an additional 60 days to assess its position under the new administration.

"I would have thought there would have been a decision one way or the other at this point," he said.

Earthjustice attorney Jan Hasselman, who is representing the Standing Rock Sioux, urged the judge to issue an injunction to block oil from flowing through the pipeline.

"Despite our legal victory ... the company gets to keep the benefits of operating a pipeline that was not properly authorized while the community bears the risks. It's not right," he said.

"We are really disappointed in this news. For better or worse, the matter is back in your hands," he added.

If Boasberg issues an injunction, it will put the judge in the position of ordering a shutdown of the pipeline for a second time.

The judge first ordered the 1,172-mile pipeline drained of oil last summer after he had ruled last March that the Army Corps had violated the National Environmental Policy Act, and he ordered the agency to complete an environmental impact statement studying oil spill risks.

The U.S. Court of Appeals for the District of Columbia Circuit affirmed Boasberg's assessment but blocked the lower court from stopping operation of the pipeline in August, saying Boasberg "did not make the findings necessary for injunctive relief" (*E&E News PM*, Aug. 5, 2020).

The district court had completed a briefing on an injunction, but during today's hearing, Boasberg granted a request from the pipeline company to submit new information about the economic harms of shuttering the pipeline.

The judge gave pipeline attorney David Debold until April 19 to provide additional information to the court.

Debold noted that unlike the Army Corps, the company was seeking a rehearing before the full D.C. Circuit, known as an en banc hearing.

Boasberg asked the court for an additional briefing on whether he could rule on the injunction with an en banc hearing request pending before the D.C. Circuit.

The judge noted the only options seemed to be to decide on the injunction motion or to delay action "indefinitely."

"That's not a terribly viable option for plaintiffs," he said.

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