

DAKOTA ACCESS PIPELINE IS SHUT DOWN AND A D.C. COURT DECLINES TO STOP IT

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Earlier this week, U.S. District Judge James A. Boasberg ordered the Dakota Access pipeline to shut down and drain its oil (*Standing Rock Sioux Tribe et al. v. U.S. Army Corps of Engineers et al.*). The order gives the Dakota Access operators until August 5th to shut down the pipeline and drain it of all oil pending a review and Environmental Impact Statement ("EIS") made by the Army Corps of Engineers.

The court ruled the easement allowing the pipeline crossing beneath the Missouri River near tribal lands was never properly reviewed. Judge Boasberg acknowledged that shutting the pipeline down until a full and complete EIS is concluded is likely to disrupt the pipeline itself, as well as the North Dakotan oil industry and energy consumers. However, this inconvenience, Boasberg argued, is outweighed by the outrageousness of the Army Corps' failure to produce a proper EIS and its flagrant violation of the National Environmental Policy Act. Judge Boasberg therefore granted the tribes' request that the easement allowing the pipeline to cross beneath Lake Oahe be vacated.

A Tough Week For Pipeline Projects

The Dakota Access pipeline shutdown is the second major pipeline to be shutdown this week; on Sunday, the Atlantic Coast project was shutdown by its developers due to "legal uncertainty." The Atlantic Coast project would have run from West Virginia into North Carolina, and created more than 17,000 jobs during its construction, according to its developers. Opponents to the project were concerned with the health of both the environment and of the people living along the 600 miles of the pipeline's span, portions of which run underneath the historically iconic Appalachian Trail.

Developers of the Atlantic Coast project blame a complicated permitting process and what they see as "environmental obstructionists" for the demise of the project. Environmental activists and regional advocates argue that clean energy should be the focus of people looking to promote energy projects in the region. Former Vice President Al Gore cites the demise of the Atlantic Coast Project as an example of the power that communities across the country have to stop projects that threaten our most vulnerable citizens. Gore considers the cancellation a victory for environmental justice.

D.C. Court Declines To Stop Dakota Access Pipeline Shutdown

Late Monday, Dakota Access sought a provisional stay of Boasberg's decision shutting down the Dakota Access Pipeline pending appeal. On Tuesday, the D.C. federal judge declined to grant a provisional stay, "pending briefing and a decision by the court and, if necessary, the D.C. Circuit on a motion for stay pending appeal."

The D.C. court will set a status hearing once it receives the motion for a stay pending appeal from Dakota Access, which is expected today (Wednesday, July 8, 2020). Dakota Access claimed a provisional stay is necessary because shutting down a major pipeline requires a company to undertake "a number of expensive steps" that would take more than thirty days to complete (before the deadline given in Boasberg's order), and before it is likely to have a ruling on the pending stay motion.

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