

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5197

September Term, 2019

1:16-cv-01534-JEB

Filed On: August 5, 2020

Standing Rock Sioux Tribe, et al.,

Appellees

v.

United States Army Corps of Engineers,

Appellee

Dakota Access LLC,

Appellant

Consolidated with 20-5201

BEFORE: Henderson, Tatel, and Griffith, Circuit Judges

ORDER

Upon consideration of the emergency motions for stay pending appeal, the opposition thereto, and the replies; the motions for leave to participate as amicus, the oppositions thereto, and the filings by amici and movant-amici in support of a stay; and the administrative stay entered on July 14, 2020, it is

ORDERED that the administrative stay entered on July 14, 2020 be dissolved. It is

FURTHER ORDERED that, to the extent the district court issued an injunction by ordering Dakota Access LLC to shut down the Dakota Access Pipeline and empty it of oil by August 5, 2020, the injunction be stayed. The district court did not make the findings necessary for injunctive relief. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 158 (2010) (explaining that, before issuing an injunction in a National Environmental Policy Act case, “a court must determine that an injunction should issue under the traditional four-factor test”). It is

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FURTHER ORDERED that appellants' motion for stay of the district court's order vacating the Mineral Leasing Act easement authorizing the Dakota Access Pipeline to cross the Missouri River at Lake Oahe be denied. At this juncture, appellants have failed to make a strong showing of likely success on their claims that the district court erred in directing the Corps to prepare an environmental impact statement, *see Nat'l Parks Conservation Ass'n v. Semonite*, 916 F.3d 1075, 1087 (D.C. Cir.), *amended on rehearing*, 925 F.3d 500 (D.C. Cir. 2019), or that the district court abused its discretion in refusing to remand without vacatur pending the statement's completion, *see Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146 (D.C. Cir. 1993). It is

FURTHER ORDERED that this panel retain jurisdiction over any further motions for stay pending appeal. We expect appellants to clarify their positions before the district court as to whether the Corps intends to allow the continued operation of the pipeline notwithstanding vacatur of the easement and for the district court to consider additional relief if necessary. It is

FURTHER ORDERED that the motions for leave to participate as amicus be denied without prejudice. The court will entertain motions to participate as amicus that are accompanied by merits briefs. It is

FURTHER ORDERED, on the court's own motion, that these consolidated cases be expedited. *See D.C. Circuit Handbook of Practice and Internal Procedures* 34 (2019). The Clerk is directed to calendar this case for argument on the first appropriate date following the completion of briefing. The parties will be informed later of the date of oral argument and the composition of the merits panel. It is

FURTHER ORDERED that, because it appears that these consolidated cases present potential problems of duplicative briefing, the following briefing format and schedule will apply in these consolidated cases:

Appellants' Briefs
(up to two briefs, not to exceed
19,500 words in the aggregate,
to be divided as appellants see fit)

August 26, 2020

Appendix

August 26, 2020

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Briefs of Amici Curiae Supporting
Appellants, if any

September 2, 2020

Appellees' Joint Brief
(not to exceed 19,500 words)

September 16, 2020

Briefs of Amici Curiae Supporting
Appellees, if any

September 23, 2020

Appellants' Reply Briefs
(up to two briefs, not to exceed
9,750 words in the aggregate,
to be divided as appellants see fit)

September 30, 2020

All issues and arguments must be raised by appellants in the opening brief. The court ordinarily will not consider issues and arguments raised for the first time in the reply brief. The parties are reminded that the court looks with extreme disfavor on repetitious submissions.

To enhance the clarity of their briefs, the parties are urged to limit the use of abbreviations, including acronyms. While acronyms may be used for entities and statutes with widely recognized initials, briefs should not contain acronyms that are not widely known. *See D.C. Circuit Handbook of Practice and Internal Procedures* 43 (2019); Notice Regarding Use of Acronyms (D.C. Cir. Jan. 26, 2010).

Parties are strongly encouraged to hand deliver the paper copies of their briefs to the Clerk's office on the date due. Filing by mail may delay the processing of the brief. Additionally, counsel are reminded that if filing by mail, they must use a class of mail that is at least as expeditious as first-class mail. *See Fed. R. App. P. 25(a)*. All briefs and appendices must contain the date that the case is scheduled for oral argument at the top of the cover. *See D.C. Cir. Rule 28(a)(8)*.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Scott H. Atchue

Deputy Clerk

United States Court of Appeals

District of Columbia Circuit
Washington, D.C. 20001-2866

Mark J. Langer
Clerk

(202) 216-7300

NOTICE TO COUNSEL:

SCHEDULING ORAL ARGUMENT

The court has entered an order setting a briefing schedule in a case in which you are counsel of record. Once a briefing order has been entered, the case may be set for oral argument.

You will be notified by separate order of the date and time of oral argument. Once a case has been calendared, the Clerk's Office cannot change the argument date, and ordinarily the court will not reschedule it. Any request to reschedule must be made by motion, which will be presented to a panel of the court for disposition. The court disfavors motions to postpone oral argument and will grant such a motion only upon a showing of "extraordinary cause." See D.C. Cir. Rule 34(g).

If you are the arguing counsel, and you will be unavailable to appear for oral argument on a date in the future, so advise the Clerk's Office by letter, filed electronically. The notification should be filed as soon as possible and updated if a potential scheduling conflict arises later, or if there is any change in availability. To the extent possible, the Clerk's Office will endeavor to schedule oral argument to avoid conflicts that have been brought to the court's attention in advance. See D.C. Circuit Handbook of Practice and Internal Procedures at IX.A.1, XI.A.

Counsel must notify the court when serious settlement negotiations are underway, when settlement of the case becomes likely, and when settlement is reached. Such notice allows for more efficient allocation of judicial resources. Additionally, counsel should promptly notify the court if settlement negotiations are terminated. Notice must be given in an appropriate motion or by letter to the Clerk at the earliest possible moment. See, e.g., D.C. Circuit Handbook of Practice and Internal Procedures at X.D., XI.A.

Rev. March 2017