

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