

# Army Corps Hits Pause On Dakota Pipeline For Tribal Talks

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Law360, New York (November 14, 2016, 8:02 PM EST) -- The [U.S. Army Corps of Engineers](#) won't let construction on the Dakota Access pipeline go forward on or under its land until it conducts further talks with the [Standing Rock Sioux Tribe](#) about protecting its water supply, according to a statement Monday.

[Energy Transfer Partners](#) unit Dakota Access LLC, which is behind the \$3.8 billion Dakota Access project, has repeatedly rejected the Army Corps' calls to voluntarily halt work at Lake Oahe in North Dakota near the tribe's reservation, saying Friday it wouldn't suspend construction of a tunnel beneath Corps land at the lake unless the agency gave the company a firm date for completion of the work.

The Corps said in its statement Monday that while it had completed a review of its decision to issue a permit for the project, the Army had decided that "additional discussion and analysis are warranted in light of the history of the Great Sioux Nation's dispossessions of lands, the importance of Lake Oahe to the [Standing Rock] tribe, our government-to-government relationship and the statute governing easements through government property."

The Army asked the Standing Rock tribe to discuss possible conditions for an easement for the pipeline at the lake to "reduce the risk of a spill or rupture, hasten detection and response to any possible spill, or otherwise enhance the protection of Lake Oahe and the tribe's water supplies," according to the statement.

Because the Corps still hasn't decided whether to grant the easement, construction on or underneath the agency's land bordering Lake Oahe can't take place, the agency said.

The Corps' Omaha District Commander Col. John W. Henderson [on Wednesday](#) had issued the latest in several agency calls for Dakota Access to voluntarily halt work at Lake Oahe, seeking to reduce tensions over protests by the Standing Rock tribe and others that have sparked confrontations between demonstrators and law enforcement.

Dakota Access said in its statement Friday that it has previously told the Corps the company is willing to suspend its construction near Lake Oahe "for a reasonable time period" to help "diffuse tension and to facilitate the peaceful removal of protestors from the protest site."

However, the company said again in its statement that it will do so only "if we can agree on a date certain upon which we can complete construction," but the Corps has "steadfastly and repeatedly rejected that offer," according to the statement.

The company said it believes it has the right to drill beneath Lake Oahe under a permit issued on July 25 by the Army Corps, even though the federal government stepped in on Sept. 9 to pause work on the project while it decided whether it should revisit its permitting decision under the National Environmental Policy Act or other federal laws.

That review is now complete, but the Corps will pursue its talks with Standing Rock and "will work with the tribe on a timeline that allows for robust discussion and analysis to be completed expeditiously," according to the agency's statement Monday.

Standing Rock Sioux tribe Chairman Dave Archambault II said in a statement Monday that the decision was "not 100 percent what the tribe had hoped," but added that "it is clear President Obama is listening."

"We are encouraged and know that the peaceful prayer and demonstration at Standing Rock have powerfully

brought to light the unjust narrative suffered by tribal nations and Native Americans across the country,” Archambault said.

A representative for Dakota Access was not immediately available for comment Monday.

The Midwest Alliance for Infrastructure Now Coalition, or MAIN Coalition, said in a statement Monday that the Army Corps' decision "is yet another attempt at death by delay and is a stunning rebuke of the Army Corps of Engineers, the federal civil service, four state governments and the rule of law."

The group accused the Obama administration of pursuing its political agenda despite extensive review of the project and choosing "to further fan the flames of protest by more inaction" over the pipeline, adding that with President-elect Donald Trump set to take office, "we are hopeful that this is not the final word" on the pipeline.

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More than 400 people have been arrested since the protests in North Dakota started, including more than 140 after an Oct. 27 confrontation that saw police use armored vehicles, dogs, rubber bullets and other aggressive tactics to quell the demonstration.

Dakota Access said in its statement Friday that it “shares the Army Corps’ commitment to ensuring public safety at the protest site in North Dakota” and is working with law enforcement to protect pipeline workers and peacefully remove protestors who trespass on private land.

But the company slammed the Corps for taking more than two months to review its pipeline decision, saying the reasons for continuing the review are “unclear and reek of political interference.”

On Thursday, a [U.S. Department of Justice](#) lawyer had said the Obama administration was [within days](#) of revealing whether it would allow Dakota Access to drill beneath Lake Oahe in a D.C. federal court suit brought by the Standing Rock tribe seeking to stop the project.

Protests continued at Lake Oahe on Monday, as over 35 Native American and environmental activist groups geared up for a “day of action” on Tuesday to include protests at multiple Army Corps district headquarters offices, as well as banks backing Dakota Access.

The groups, including Indigenous Environmental Network, Honor the Earth, Greenpeace USA, the [Center for Biological Diversity](#) and the [Natural Resources Defense Council](#), have timed the protests to occur a week after Trump’s election as the next U.S. president, saying in a statement that his “presidency will threaten many of the people and things we care about most — including indigenous rights and the climate,” and calling on the Obama administration to stop the Dakota Access project.

--Additional reporting by Jimmy Hoover. Editing by Philip Shea.

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