

Review of pipeline could be beginning of end for opponents

BISMARCK, N.D. (AP) — The Army's review of a proposal to finish the Dakota Access pipeline could be the beginning of the end for opponents who have been fighting the project for nearly a year.

But the American Indian tribe at the center of the debate, the Standing Rock Sioux, vows to keep battling the pipeline in court out of fear that an oil leak could contaminate its drinking water.

Here's a look at the steps that remain before the last section of pipe can be laid and the final options to stop it.

WHAT ARE THE LATEST DEVELOPMENTS?

On Tuesday, the acting secretary of the Army ordered a review of an earlier decision to block the last section of pipeline from being laid under a Missouri River reservoir. The move came just days after President Donald Trump issued a memo calling for reconsideration of the December decision by the Army Corps of Engineers.

Based on a discussion with the Army secretary, Robert Speer, Republican Sen. John Hoeven said Wednesday that there is no doubt in his mind that permission to finish the project will be granted.

A government assessment last summer determined that the final segment would not have a significant effect on the environment. However, then-Assistant Army Secretary for Civil Works Jo-Ellen Darcy on Dec. 4 declined to give permission for construction to begin, saying a broader environmental study was needed.

The pipeline builder, Energy Transfer Partners, called Darcy's decision politically motivated and accused then-President Barack Obama's administration of delaying the matter until he left office. Two days before he left the White House, the Corps launched an environmental study that could take up to two years.

WHAT IS THE TRIBE LIKELY TO DO?

Army attorneys have said the environmental study could be withdrawn. Should that happen, the tribe will probably challenge the move on two fronts — that the study is necessary to preserve tribal treaty rights and that it's part of the legal process for obtaining final permission to finish the pipeline, as the Army has maintained, according to tribal attorney Jan Hasselman.

The Army cannot arbitrarily change its mind because of the change in White



In this Dec. 3, 2016 file photo, law enforcement vehicles line a road leading to a blocked bridge next to the Oceti Sakowin camp where people have gathered to protest the Dakota Access oil pipeline in Cannon Ball, N.D.

House administrations, said Monte Mills, co-director of the University of Montana's Indian law clinic.

Given that the Army said in December that an environmental study was necessary, Mills said, the Army would have to explain how its new decision was consistent with the legal standards it used in December and how there's a reasonable basis for change.

Otherwise the tribe could argue the reversal was "arbitrary and capricious," in violation of federal law, he said.

But Connie Rogers, a Denver attorney who specializes in federal permits, natural resources and Indian law, said the Army does have the discretion to change its mind. Since the original environmental assessment found nothing that would require an additional study, the Army was not required by law to order the fuller review and therefore can reverse course, she said.

WHAT ABOUT TREATY RIGHTS?

The tribe says under the Fort Laramie Treaties of 1851 and 1868, the federal government is obliged to consider a tribe's welfare when making decisions affecting the tribe.

That would be one likely argument against the Corps withdrawing the environmental study that the tribe has repeatedly demanded, Hasselman said.

Tribes have effectively used old treaty rights in other high-profile court cases. For example, a landmark ruling in

Washington state in 1974 affirmed tribal fishing rights in treaties stemming from the 1850s.

"Without question, treaties, especially during modern times, have proven to be very successful legal vehicles for tribes in defense of existential threats," said Gabriel Galanda, a Seattle lawyer who represents tribes throughout the West.

When the Corps published a notice last month in the Federal Register, the agency explained that it was looking for a better understanding of how the pipeline would affect treaty rights. If the government isn't going to look at those rights now, Mills said, it will have to explain why.

LOOKING AHEAD FOR OTHER LEGAL OPTIONS

Should the Corps give permission to build the last piece of the pipeline, the tribe would immediately ask U.S. District Judge James Boasberg to temporarily ban construction while the issues are decided, Hasselman said.

The builder would probably fight that, and the tribe would have to clear "a high bar" to convince the judge.

But other options to challenge the project remain. In a lawsuit it filed last year, the tribe alleges that the government broke environmental law by approving the pipeline's crossing of numerous waterways, and "the remedy is to turn off the pipeline," Hasselman said.

BRIEFLY

U.S. puts Iran 'on notice' after missile test, won't elaborate

WASHINGTON (AP) — The White House issued a cryptic warning Wednesday that the U.S. will act against Iran unless it stops testing ballistic missiles and supporting Houthi rebels in Yemen, but declined to say what retaliatory actions the U.S. would pursue.

Michael Flynn, President Donald Trump's national security adviser, forcefully denounced Iran's behavior in his first public remarks since Trump took office. He accused Iran of threatening U.S. allies and spreading instability throughout the Middle East while faulting the Obama administration for doing too little to stop the Islamic Republic.

"As of today, we are officially putting Iran on notice," Flynn said from the White House podium.

On notice for what, Flynn didn't say. Senior Trump administration officials said they were actively considering a "range of options" including economic measures and increased support for Iran's regional adversaries. The officials, who briefed reporters on condition of anonymity, declined repeatedly to say whether military action was being considered.

The warning was an early manifestation of Trump's promise of a tougher American approach to Iran. Yet administration officials emphasized that their allegations were unrelated to Iran's obligations under the Iran nuclear deal that President Barack Obama and world leaders negotiated. Though Flynn noted Trump has criticized that deal, officials declined to say whether Trump planned to follow through on his campaign pledge to renegotiate it.

Trump threatens Mexico over 'bad hombres'

WASHINGTON (AP) — President Donald Trump threatened in a phone call with his Mexican counterpart to send U.S. troops to stop "bad hombres down there" unless the Mexican military does more to control them, according to an excerpt of a transcript of the conversation obtained by The Associated Press.

The excerpt of the call did not detail who exactly Trump considered "bad hombres," nor did it make clear the tone and context of the remark, made in a Friday morning phone call between the leaders. It also did not contain Mexican President Enrique Pena Nieto's response. Mexico denies that Trump made the threat.

Still, the excerpt offers a rare and striking look at how the new president is conducting diplomacy behind closed doors.

Trump's remarks suggest he is using the same tough and blunt talk with world leaders that he used to rally crowds in the campaign.

The phone call between the leaders was intended to patch things up between the new president and his ally. The two have had a series of public spats over Trump's determination to have Mexico pay for the planned border wall, something Mexico refuses to agree to.

"You have a bunch of bad hombres down there," Trump told Pena Nieto, according to the excerpt given to AP. "You aren't doing enough to stop them. I think your military is scared. Our military isn't, so I just might send them down to take care of it."

A Mexican media outlet published a similar account of the phone call. The report described Trump as humiliating Pena Nieto in a confrontational conversation.

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