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Noah Perch-Ahern Interviewed for Article Concerning Standing Rock and Dakota Access Pipeline

Related Attorney(s): Noah Perch-Ahern

Related Practice(s): Environmental & Energy



PLANET EXPERTS

Glaser Weil Partner Noah Perch-Ahern was recently interviewed by *Planet Experts* to explain the legal aspects of the turmoil surrounding the Dakota Access Pipeline.

In the December 13, 2016 article, “Digging Deeper Into DAPL After Last Week’s Double Whammy,” Mr. Perch-Ahern is extensively quoted concerning the legal backdrop of the federal role in approving the pipeline. Mr. Perch-Ahern notes that, under NEPA, even if the EIS determines that the pipeline would have negative implications on the environment, the analysis is only a recommendation. He further explains that the “rationale for any decision to not follow mitigation measures would need to be documented, and would be subject to judicial review.” It’s “not that unusual for federal agencies to find justifications to avoid mitigation measures discussed in an EIS.”

The question remains whether President-elect Trump or his administration will take a new position on this issue after the administrative change. Mr. Perch-Ahern first clarifies that the U.S. Army Corps of Engineers “controls permitting decisions” and “agency decisions are supposed to be autonomous” from the President. Although Trump “could potentially fire the head of the U.S. Army Corps of Engineers” or take other “administrative or executive action to reverse the decision . . . such a reversal “would probably need to be rationalized and supported by findings that counter those already made” and “could attract a somewhat heightened form of judicial review.”

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