

January 25, 2017

# Energy Update

## Presidential Actions on Pipelines and Infrastructure

### Overview

On January 24, President Trump signed an executive order and four memoranda addressing pipeline, infrastructure, and manufacturing issues. The memoranda include one directing prompt consideration of the remaining federal approvals needed by the Dakota Access Pipeline. Another memorandum invites TransCanada to resubmit its application for a Presidential border-crossing permit for the Keystone XL Pipeline. The memorandum further directs the Department of State to “reach a final permitting decision” within 60 days of receiving a new Keystone XL permit application.

A memorandum to the Secretary of Commerce requires the development of a “plan” to require “all new pipelines, as well as retrofitted, repaired, or expanded pipelines [to]...use materials and equipment [including steel] produced in the United States, to the maximum extent possible and to the extent permitted by law...”

### Keystone XL

In a [memorandum](#) to the Secretaries of State, Interior, and Army, President Trump invited “TransCanada Keystone Pipeline, L.P. (TransCanada), to promptly re-submit its application to the Department of State for a Presidential permit for the construction and operation of the Keystone XL Pipeline for the importation of petroleum from Canada to the United States.”

The memorandum further directs the Secretary of State “to reach a final permitting determination, including a final decision as to any conditions on issuance of the permit that are necessary or appropriate to serve the national interest, within 60 days of TransCanada’s submission of the permit application.”

The memorandum also:

- Directs the Secretary of State to use the Final Environmental Impact Statement (FEIS) issued by the Department in January, 2014 in conjunction with TransCanada’s prior application for a Presidential permit to meet the requirements of the National Environmental Policy Act (NEPA) and the Endangered Species Act.
- Specifies that, “[t]o the maximum extent permitted by law, any [previously issued] Federal permit or authorization...shall remain in effect until the completion of the project.”
- Waives the requirement under [Executive Order 13337](#) that the Department of State provide notice to other agencies of the decision to issue a Presidential permit.

- Directs the Secretary of the Army “to take all actions necessary and appropriate to review and approve as warranted, in an expedited manner, requests for authorization to utilize Nationwide Permit 12 under...the Clean Water Act...with respect to crossings of the ‘waters of the United States’ by the Keystone XL Pipeline, to the maximum extent permitted by law.”
- Directs the Secretary of Interior to “take all steps necessary and appropriate to review and approve as warranted, in an expedited manner, requests for approvals related to the Keystone XL Pipeline, to the maximum extent permitted by law...”
- Specifies that the memorandum does not alter any “Federal, State, or local process or condition...that is necessary to secure access from an owner of private property to construct the pipeline...”

### **Dakota Access Pipeline (DAPL)**

In a [memorandum](#) to the Secretary of the Army, President Trump directs the Secretary to “instruct” the Assistant Secretary of the Army for Civil Works and the U.S. Army Corps of Engineers (USACE) to: “review and approve in an expedited manner, to the extent permitted by law and as warranted, and with such conditions as are necessary or appropriate, requests for approvals to construct and operate the DAPL, including easements or rights-of-way to cross Federal areas...”

The memorandum also requires the Secretary of the Army to direct the USACE to:

- “...consider, to the extent permitted by law and as warranted, whether to rescind or modify the memorandum by the Assistant Secretary of the Army for Civil Works dated December 4, 2016 (Proposed Dakota Access Pipeline Crossing at Lake Oahe, North Dakota), and whether to withdraw the Notice of Intent to Prepare an Environmental Impact Statement...”
- “consider, to the extent permitted by law and as warranted, prior reviews and determinations, including the Environmental Assessment issued in July of 2016 for the DAPL, as satisfying all applicable requirements of the National Environmental Policy Act...and...the Endangered Species Act...”
- “...review and grant, to the extent permitted by law and as warranted, requests for waivers of notice periods arising from or related to USACE real estate policies and regulations...”
- “...issue, to the extent permitted by law and as warranted, any approved easements or rights-of-way...”

### **Use of U.S. Steel and U.S. Materials and Equipment in Pipelines**

This [memorandum](#) from the President directs the Secretary of Commerce to, within 180 days (July 23, 2017), “develop a plan under which all new pipelines, as well as retrofitted, repaired, or expanded pipelines, inside the borders of the United States, including portions of pipelines, use materials and equipment produced in the United States, to the maximum extent possible and to the extent permitted by law...” The memo further specifies that steel “produced in the United States” only includes steel for which “all manufacturing processes...from the initial melting stage through the application of coatings, occurred in the United States...”

## High Priority Infrastructure Projects

President Trump issued an [executive order](#) that establishes a process for designation of “high priority” infrastructure projects and establishes deadlines for “completion of environmental reviews and approvals of such projects...”

The executive order provides for designation of high priority projects based on the request of a state governor, federal department or agency head, or the Chairman of the White House Council on Environmental Quality (CEQ). Within 30 days of the request, the CEQ Chairman must “decide whether an infrastructure project qualifies...[based on] consideration of the project’s importance to the general welfare, value to the Nation, environmental benefits, and such other factors as the Chairman deems relevant.”

## Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing

In this [memorandum](#), President Trump directs the Secretary of Commerce to receive public comment on “Federal actions to streamline permitting and reduce regulatory burdens for domestic manufacturers.” After completing a 60-day public comment period the Secretary of Commerce is directed, within 60 additional days to “submit a report to the President setting forth a plan to streamline Federal permitting processes for domestic manufacturing and to reduce regulatory burdens affecting domestic manufacturers.”

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