Navigating Paths

Regulatory obstacles overcome for successful oil pipeline approval



THE CHALLENGE

A mid-stream oil and gas company proposed to place a pipeline across Lake Sakakawea to transport oil developed in the productive Bakken formation in North Dakota. The project required a permit from two separate branches of the Corps of Engineers under Section 404 the Clean Water Act and Section 10 of the Rivers and Harbors Act. The proposed route of the pipeline would cross a small section of U. S. Forest Service land, thereby including a third agency in the permitting process. To complicate matters even further, since multiple federal agencies were involved, approval authority for the right-of-way grant for the pipeline resided with the Bureau of Land Management (BLM)—a fourth Federal agency—as required under the Mineral Leasing Act.

In addition to mounting bureaucratic obstacles, the project faced opposition from a downstream Indian tribe and concerns regarding impacts to the aquatic environment.

After the company had been working for several years on the project with no end (or permit) in sight, frustration levels and costs were high.

THE SOLUTION

Facing seemingly endless regulatory obstacles and delays, the company called on its network of environmental firms for assistance finding someone with experience with the Corps of Engineers who could cut through the complex layering of agency authority.

That person was Modrall Sperling lawyer Joan Drake. Having worked in both the operations and regulatory sides of the Army Corps of Engineers, Joan was well-positioned to help navigate a path to gain the myriad Federal agencies' approval.

Since Joan had spent years implementing the regulations involved, she was able to collaborate with the agencies involved. After reviewing the BLM's Environmental Assessment and building a background report 404 (b) (1), the previous inter-agency impasse was resolved. She was also able to help frame responses to the BLM and the Corp regarding public comments on the project, including those from downstream tribes, community groups, and federal and state agencies.

THE RESULT

The Corps issued the permit in mid-April 2016, less than a year after Modrall Sperling had become part of the project. Joan's unique experience as a former Corps of Engineers regulator and lawyer now in private practice provides substantial value to clients in understanding and successfully navigating the Federal regulatory maze for complex and controversial projects.

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