

Feds Gain Ground In Energy Permit Turf War With States

By **Keith Goldberg**

Law360 (August 28, 2026, 6:06 PM EDT) -- A federal judge's endorsement earlier this month of the Trump administration's restart of a pipeline over California's objections will likely embolden the federal government to override state opposition to energy project development, but the ruling won't be the last word on the legality of such moves.

In denying California's bid to block the reopening of a Sable Offshore Corp. oil pipeline, U.S. District Judge Stephen V. Wilson on Aug. 19 backed the Trump administration's broad view of its authority under the Cold War-era Defense Production Act, saying the statute allows for the preemption of state laws — in this instance, the California energy and environmental laws that had impeded the pipeline restart.

California immediately appealed Judge Wilson's decision to the Ninth Circuit, saying it will "fight back against attempts to interfere with our sovereign authority."

Legal experts told Law360 that they can't recall any federal appellate court ever addressing the use of the DPA to preempt state laws that regulate energy infrastructure projects.

"It's an unsettled issue," said energy law professor James Coleman of the University of Minnesota Law School. "I don't have any expectation that this is going to go one way or the other in the Ninth Circuit."

Sable's pipeline had been closed since a 2015 oil spill, and a **2020 consent decree** inked by former owner Plains All American Pipeline LP required California fire officials to sign off on any reopening plan.

Judge Wilson said in his order that the DPA gives the president broad authority to incentivize domestic production of materials for national defense, rejecting California's claim that Congress never intended the DPA to preempt state law in such a manner.

While the DPA explicitly authorizes the president to compel private parties to allocate resources in the name of national security interests, it "also implicitly provides authority to preempt state law," Judge Wilson said in his order.

Experts say that's a broad view of the statute that, if upheld by higher courts, could allow the federal government to override state permitting authority over a wide swath of energy infrastructure, such as pipelines, power lines and power plants.

"We could see this as a validation of the administration's efforts to expand opportunities for energy companies ... and similar companies, and whether it's an existing project that has been stalled or a greenfield project that is stalled, to start to issue these DPA orders to expand capacity for energy," said Alex Hastings, who leads the government contracts practice at Morgan Lewis & Bockius LLP.

Indeed, the Trump administration has hinted that its Sable action won't be a one-off.

"Energy security is national security," Associate Attorney General Stanley E. Woodward Jr. said in an Aug. 21 statement applauding Judge Wilson's ruling. "And the Department of Justice will continue unleashing American energy to support an affordable and reliable supply of energy necessary for our national and economic security."

The question is whether this view of the DPA can withstand scrutiny from the Ninth Circuit, experts say. No court has ever read the statute as broadly as Judge Wilson to preempt all but a small handful of state claims, according to Patrick Jacobi, a former senior attorney for the U.S. Department of Justice's Energy and Natural Resources Division.

"The federal government is entitled to no deference for its novel interpretation following the Supreme Court's 2024 *Loper Bright Enterprises v. Raimondo* decision," said Jacobi, now a senior attorney at the Ridgeline Center for Law and Policy. "This should be a straightforward statutory interpretation case in the Ninth Circuit."

Experts say the Ninth Circuit may also have to resolve some tension between Judge Wilson's order and one from another Central District of California judge in a related dispute over the Sable pipeline system.

In dismissing without prejudice a lawsuit lodged by Sable against Santa Barbara County, California, over the denial of permits for the pipeline system, U.S. District Judge Dolly M. Gee said July 14 that the company didn't provide any evidence of existing contracts or orders that would have to take a back seat to contracts prioritized under the DPA order. Therefore, Sable can't claim the permit denials prevent them from complying with the order or the DPA, Judge Gee said.

"The DPA authorizes the president ... to require acceptance and performance of contracts which he deems necessary or appropriate to promote the national defense in preference to other contracts." Judge Gee wrote, citing the Federal Circuit's 1994 decision in *Hercules Inc. v. United States*, which the U.S. Supreme Court affirmed in 1996. "To the extent plaintiffs argue other contracts or orders are not required, this interpretation of federal law appears to be an erroneous conclusion of law and is not grounded in the language of the DPA or the DPA order."

Meanwhile, Judge Wilson said his order wasn't undermined by *Hercules*, saying that decision is "limited to 'liability arising as a consequence of' [contract] re-prioritization or allocation." Judge Wilson also said that to the extent *Hercules* holds that the DPA's limited immunity provision "never applies to tort liability under any circumstances, that holding is inconsistent with the text of the statute, and the court disagrees with it."

"Notwithstanding the procedural and factual distinctions between the cases, there is tension between Judge Gee's and Judge Wilson's assessments of the scope of the Defense Production Act and its preemptive effect," Jacobi said.

It's worth noting that Judge Gee didn't ultimately decide whether the DPA overrides state law or local

permitting decisions. And Coleman, of the University of Minnesota, said he isn't certain that the two judges have expressed divergent views of the statute or that their rulings are inconsistent.

"But Judge Wilson certainly sees a stronger conflict between the state action before him and the DPA order," Coleman said.

California's opening brief in the Ninth Circuit is due Sept. 18. The federal government's response is due Oct. 16.

But even if the Trump administration's broad view of its DPA powers survives appellate scrutiny, that won't completely push states to the sidelines when it comes to permitting and regulating energy projects, experts say.

Coleman said states can still bring lawsuits alleging violations of federal law, and they still retain permitting authority under federal statutes such as the Clean Water Act.

Broad use of the DPA would be "a tool in the toolbox," Coleman said. "It's not a silver bullet that's going to get you through all state permitting challenges."

--Editing by Alanna Weissman and Kelly Duncan.