



ABRA Update #188 – July 12, 2018

Court of Appeals Asked to Halt ACP Construction

A motion was filed July 5 with the U.S. Court of Appeals, Fourth Circuit, asking that construction activity on the Atlantic Coast Pipeline (ACP) be halted until the Fish and Wildlife Service (FWS) complies with the Court's May 15 order vacating the FWS's Incidental Take Statement for the ACP. The motion was filed by the Southern Environmental Law Center on behalf of the Defenders of Wildlife, Sierra Club and Virginia Wildlife Committee.

The 4th Circuit's Order had stated:

" . . . we conclude, for reasons to be more fully explained in a forthcoming opinion, that the limits set by the agency are so indeterminate that they undermine the Incidental Take Statement's enforcement and monitoring function under the Endangered Species Act. Accordingly, we VACATE the Fish and Wildlife Service's Incidental Take Statement."

While it has been over 7 weeks since the Order was issued, the 4th Circuit has yet to issue an opinion explaining the reasons for its decision and the actions that FWS should take.

The SELC motion argues that notwithstanding the May 15 4th Circuit Order, ACP "is racing ahead with construction, including within habitat of endangered species. An injunction is necessary to stop the potential take of species and to prevent foreclosure of reasonable and prudent alternatives that FWS may require to satisfy its ESA obligations, following the Court's opinion. An injunction will ensure FWS can appropriately respond to this Court's instructions and will prevent unnecessary, imminent, and irreparable harm."

One of the pieces of evidence submitted to the Court with the SELC motion was [an incident report filed by the West Virginia Rivers Coalition](#) based in part on surveillance by the ABRA/CSI Pipeline Air Force.

SELC, on behalf of the same three clients, on June 11 requested that the Federal Energy Regulatory Commission revoke its May 11 authorization for construction of the ACP in West Virginia given the 4th Circuit Order. On July 10 FERC responded to that request by issuing a "tolling order" deferring a decision until a later date.

A copy of the SELC motion filed with the 4th Circuit is available [here](#). The ACP and the FWS filed on July 11 their respective responses to the SELC motion. A decision from the court is anticipated soon.

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Virginia DEQ Initiatives Enforcement Action Against the MVP

The Virginia Department of Environmental Quality (DEQ) issued on July 10 a Notice of Violation (NOV) against the Mountain Valley Pipeline. In announcing the Notice, DEQ said:

The alleged violations include failure to take corrective actions within required timeframes, failure to install (and improperly installed) best management practices in accordance with approved erosion and sediment control plans, release of sediment off the right-of-way, and sediment deposited in surface waters. These issues are located in Craig, Franklin, Giles, Montgomery, Pittsylvania and/or Roanoke counties.

The issuance of an NOV is the first step toward generating enforcement action by DEQ. The NOV requires MVP representatives to contact DEQ within 10 days to discuss how to remedy the situation and how they will prevent future violations. Enforcement actions are frequently resolved with payment of civil charges and required actions to correct the violations.

A copy of the DEQ NOV is available [here](#).

Virginia Supreme Court Again Upholds State Pipeline Surveying Law

Another challenge to Virginia's statute authorizing natural gas pipeline companies survey a landowner's property without that owner's permission was rebuffed again last week. The 6-1 decision handed down on July 5 arose in the case of a Nelson County, VA landowner, Barr vs. Atlantic Coast Pipeline, LLC (ACP, LLC).

In affirming the trial court's decision in favor of ACP, LLC, the Supreme Court explained that its decision dealt with Virginia Code § 56-49.01(A) which "allows a natural gas company to gain access to private property for the purpose of conducting surveys and other activities that are only necessary for the selection of the most advantageous route." The Court said it was "whether the trial court in this case misapplied Code § 56-49.01 and, if so, whether a natural gas company's subsequent entry onto the property to conduct activities authorized by the trial court results in an illegal taking of private property without compensation under Article I, § 11 of the Constitution of Virginia." A copy of the decision is available [here](#). For more, see the story below: "Virginia Supreme Court upholds pipeline survey law, but with dissent" from the *Richmond Times Dispatch*.

In the News:

Local/Atlantic Coast Pipeline

Gov. Northam: These natural gas pipelines aren't being done 'right'

- News Leader – 7/12/18

<https://www.newsleader.com/story/opinion/columnists/2018/07/12/gov-northam-these-natural-gas-pipelines-arent-being-done-right-atlantic-coast-pipeline-dominion/778700002/>

Dominion has a long history of disregard for the law. Dominion and EQT have multiple "Notices of Violations" from Virginia and West Virginia.

Pipeline equipment moved from Staunton Tractor lot ahead of zoning appeal hearing

- News Leader – 7/10/18

<https://www.newsleader.com/story/news/2018/07/10/dominion-equipment-moved-staunton-tractor-lot-ahead-bza-hearing/772683002/>

Dominion increased political spending while pushing for law

- The Virginian-Pilot – 7/10/18

https://pilotonline.com/news/nation-world/virginia/article_efe671b1-37cd-5fc3-8f6e-981490df023f.html

The spending came during a period when the company successfully pushed through legislation that could lead to substantial increases to electric bills.

Virginia Supreme Court upholds pipeline survey law, but with dissent

- Richmond Times-Dispatch – 7/5/18

https://www.richmond.com/news/virginia/government-politics/general-assembly/virginia-supreme-court-upholds-pipeline-survey-law-but-with-dissent/article_c9df380f-0ae8-55be-ao10-45195bcd69d3.html

Justice Arthur Kelsey's 23-page dissent contends the ruling turns private property rights upside down.

Federal Court Asked To Halt ACP Construction

- Dominion Pipeline Monitoring Coalition – 7/6/18

<http://pipelineupdate.org/2018/07/06/federal-court-asked-to-halt-acp-construction/>

Little public input in decision to route pipeline through WV state forest

- WV Gazette-Mail – 7/30/18

https://www.wvgazettemail.com/news/little-public-input-in-decision-to-route-pipeline-through-wv/article_17d8d866-253b-5c76-9557-b59d9b8d3079.html

Regional/Mountain Valley Pipeline, other

DEQ issues Notice of Violation to Mountain Valley Pipeline

- WFIR News Talk Radio – 7/10/18

<https://wfirmnews.com/news/deq-issues-notice-of-violation-to-mountain-valley-pipeline>

The Virginia Department of Environmental Quality has issued a “notice of violation” to Mountain Valley Pipeline LLC for alleged violations of several state regulations regarding stormwater management, erosion and sediment control.

Related:

- <https://www.wsls.com/news/virginia/deq-mvp-broke-the-law-has-inadequate-erosion-controls>

Roanoke County asks MVP for reimbursement as construction resumes

- NBC 10 News – 7/9/18

<https://www.wsls.com/news/virginia/roanoke/roanoke-county-asks-mvp-for-reimbursement-as-construction-resumes>

Roanoke County leaders said Monday that they want the company to reimburse them for police involvement around the extended protests. MVP officials said Monday that there's no agreement for the company to pay any local governments for this activity.

Army Corps Reinstates MVP Permit in West Virginia; Court Stay Still in Effect

- Natural Gas Intelligence – 7/5/18

<http://www.naturalgasintel.com/articles/114953-army-corps-reinstates-mvp-permit-in-west-virginia-court-stay-still-in-effect>

In a letter dated Tuesday, the Army Corps cited the less impactful but more time-consuming dry-ditch crossing method proposed for the Elk, Gauley, Greenbrier and Meadow river crossings in its determination to reinstate the NWP 12 with modifications.

Complaints to DEQ halt pipeline construction

- The Franklin News-Post – 7/5/18

https://www.thefranklinnews.com/news/complaints-to-deq-halt-pipeline-construction/article_a9d1554e-8071-11e8-9366-9b2d9b5c2dd8.html

“...if they can't make a fence to keep cows out, then how they can build a pipeline?”

Big Picture:

The Russian pipeline to Germany that Trump is so mad about, explained

- The Washington Post – 7/11/18

https://www.washingtonpost.com/news/worldviews/wp/2018/07/11/the-russian-pipeline-to-germany-that-trump-is-so-mad-about-explained/?noredirect=on&utm_term=.c16d9a2485fe

Why NordStream II is such a big problem for Trump, for Europe and possibly NATO.

Kavanaugh's record: Climate regs, pipelines, LNG and more

- E&E News – 7/10/18

<https://www.eenews.net/stories/1060088635>

President Trump has selected a Washington, D.C., insider as his pick to replace the retiring Justice Anthony Kennedy on the Supreme Court.

Related:

- <https://www.utilitydive.com/news/kavanaugh-pick-threatens-epa-policies-ferc-authority-lawyers-say/527552/>

Federal appeals court dismisses pipeline case that charged FERC with bias

- State Impact: Pennsylvania – 7/11/18

<https://stateimpact.npr.org/pennsylvania/2018/07/11/federal-appeals-court-dismisses-pipeline-case-that-charged-ferc-with-bias/>

PG&E to replace 3 gas plants with world's biggest battery projects

- Utility Dive – 7/3/18

<https://www.utilitydive.com/news/pge-to-replace-3-gas-plants-with-worlds-biggest-battery-projects/526991/>

"Storage at this scale is likely now cheaper than the total cost to run the gas plants."