



## ABRA Update #190 – July 27, 2018

### FERC Asked to Revoke ACP Construction Authority in West Virginia

The Federal Energy Regulatory Commission (FERC) has been asked to rehear its decision last month to authorize construction in West Virginia of the Atlantic Coast Pipeline. In [a motion filed with the agency on July 24](#) by the Southern Environmental Law Center (SELC) on behalf of Sierra Club, Defenders of Wildlife and the Virginia Wilderness Committee, FERC was requested to grant a rehearing and to immediately revoke the West Virginia Notice to Proceed. The motion notes that “on May 15, 2018 the Fourth Circuit Court of Appeals vacated the Fish and Wildlife Service’s Incidental Take Statement for the Atlantic Coast Pipeline. Therefore, Atlantic and Dominion are not in compliance with two mandatory conditions of the project’s Certificate Order: Environmental Condition 54 and Environmental Condition 10. Certificate Order, Appendix A, ¶¶ 10, 54. Both of these conditions require a valid incidental take statement before pipeline construction proceeds.”

The FERC request follows a motion filed by SELC for the same client group on July 5 with the Fourth Circuit Court of Appeals 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. Details of that motion were discussed in the [July 12 issue of ABRA Update](#).

### Authority for MVP to Cross Jefferson National Forest Vacated

The decision of the U.S. Forest Service to permit the Mountain Valley Pipeline to cross the Jefferson National Forest was vacated July 27 by the 4<sup>th</sup> Circuit Court of Appeals. The challenge to that decision had been brought by Sierra Club, Wild Virginia, Appalachian Voices and other groups. In its decision, the Court stated:

After careful review, we conclude that aspects of the Forest Service’s decision fail to comply with NEPA and the NFMA. As more fully explained below, we grant the petition challenging the Forest Service’s decision and vacate that decision. We also conclude that the BLM failed to acknowledge its obligations under the MLA, and therefore, we also grant the petition challenging the BLM decision and vacate that decision. We remand to the respective agencies for further proceedings consistent with this opinion.

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In analyzing the opinion, a copy of which is available [here](#), Wild Virginia said it convinced the Court on its primary claims:

- The Forest Service was arbitrary in concluding that sedimentation and erosion impacts of the pipeline could be mitigated to insignificance.
- The Forest Service violated the 2012 Forest Planning Rule, by arbitrarily concluding that amendments to the forest plan were not "directly related" to particular provisions of that rule. Specifically, the Forest Service ignored the "purpose" of the amendments, which was squarely directly related to the rule.
- BLM violated the Mineral Leasing Act by failing to demonstrate that alternative routes that would increase co-location with existing rights-of-way were impractical.

### **Legislators Urge Gov. Northam to Revoke Certifications for ACP and MVP**

A dozen members of the Virginia House of Delegates and two state Senators [wrote Governor Northam on July 26](#) urging him “to direct the Virginia Department of Environmental Quality (DEQ) to revoke and decertify the 401 certifications for both upland areas and for the Nationwide Permit 12, which would trigger a comprehensive stream-by-stream analysis under Clean Water Act Section 401” Atlantic Coast Pipeline and the Mountain Valley Pipeline. Continuing, the letter asks that “all construction activities for these two projects until those analyses are complete. Stream-by-stream analyses is a commonsense solution that environmental experts agree is the appropriate process for these circumstances.”

The legislators also expressed concern over the failure to date of the Governor to appoint or reappoint two members of the seven-member State Water Control Board whose terms expired on June 30, particularly given the scheduled meeting of the Board on August 21. Finally, the legislator’s letter voiced concern over the negative impact that the Atlantic Coast Pipeline would have on the “historic African American freedmen property in Union Hill” in Buckingham County.

The state senators signing the letter were Senator Creigh Deeds and Senator Chap Petersen. The Members of the House of Delegates signing the letter were Mark Keam, Kenneth Plum, Patrick Hope, Alfonzo Lopez, Mark Levine, Kaye Kory, Sam Rasoul, Chris Hurst, Elizabeth Guzman, Lee Carter, Jennifer Foy and Danica Roem.

### **ACP Construction in North Carolina is Given O.K. by FERC**

Construction activity in North Carolina for the Atlantic Coast Pipeline (ACP) was [formally authorized July 24](#). The action gives permission for construction activity on those construction spreads in the state for which ACP previously scheduled for 2018. Construction of the ACC has already been authorized and is underway in West Virginia, though it is now being legally challenge (see article above). A request for construction of the ACP in Virginia continues to await completion of and approval by the state Department of Environmental Quality of the stormwater and environment and sediment control plans for the project.

### **Study Released About Best Practices for Steep Slope Pipeline Construction**

A new collaborative study intended to provide guidance “in setting the highest practicable standards” for constructing natural gas pipelines through steep slopes was released earlier this month. The study, [Improving Steep-Slope Pipeline Construction to Reduce Impacts to Natural Resources](#), was facilitated by The Nature Conservancy and involved the participation of eight natural gas industry companies, including Dominion Energy and EQT Midstream Partners.

The stated intention of the project is “to provide guidance for the industry in setting the highest practicable standards” and “to serve as an industry-wide catalyst for reducing the risk of landslides, slips, and erosion that may occur during steep-slope pipeline construction, operation, and maintenance, as well as impacts from these events on habitat health and water quality.”

The stated goals of the project are to:

1. Identify the most prevalent challenges involved with pipeline construction in areas with a high risk of landslide, slip, and erosion potential.
2. Identify and communicate best practices for addressing these challenges.
3. Identify and communicate the additional needs or opportunities for further research, technological advancement, and new or modified engineering specifications to advance the understanding and use of potential new best practices for pipeline construction in steep slope areas.

ABRA is currently conducting an evaluation of the study.

## ***In the News:***

### **Local/Atlantic Coast Pipeline**

#### **FERC clears Atlantic Coast Pipeline for construction in North Carolina**

- Utility Dive – 7/29/18

<https://www.utilitydive.com/news/ferc-clears-atlantic-coast-pipeline-for-construction-in-north-carolina/528620/>

Federal regulators authorized construction of the Atlantic Coast Pipeline in North Carolina this week, concluding no additional review was required by the U.S. Fish and Wildlife Service (FWS).

#### **Pipeline traffic vexes Route 678 residents**

- The Recorder – 7/25/18

[https://www.abralliance.org/wp-content/uploads/2018/07/Pipeline-traffic-vexes-Route-678-residents-Recorder\\_20180725.pdf](https://www.abralliance.org/wp-content/uploads/2018/07/Pipeline-traffic-vexes-Route-678-residents-Recorder_20180725.pdf)

#### **CASEY: 'Under-the-radar' law, and vacancy on SCC, fuel concerns about pipeline safety inspections**

- The Roanoke Times – 7/21/18

[https://www.roanoke.com/news/dan\\_casey/casey-under-the-radar-law-and-vacancy-on-scc-fuel/article\\_d7bfa1ab-5562-589a-847a-18e9efb21761.html](https://www.roanoke.com/news/dan_casey/casey-under-the-radar-law-and-vacancy-on-scc-fuel/article_d7bfa1ab-5562-589a-847a-18e9efb21761.html)

What does the SCC know about pipeline safety, from a technical standpoint?

#### **Enviro Groups File Supreme Court of Virginia Appeal Regarding Special Use Permit for the Proposed Atlantic Coast Pipeline**

- Blue Virginia – 7/19/18

<https://bluevirginia.us/2018/07/enviro-groups-file-supreme-court-of-virginia-appeal-regarding-special-use-permit-for-the-proposed-atlantic-coast-pipeline>

#### **Nelson County Service Authority denies pipeline proposal**

- The Daily Progress – 7/19/18

[https://www.dailyprogress.com/news/local/nelson-county-service-authority-denies-pipeline-proposal/article\\_3526bd14-8bc1-11e8-bf94-47d5d79bbc86.html](https://www.dailyprogress.com/news/local/nelson-county-service-authority-denies-pipeline-proposal/article_3526bd14-8bc1-11e8-bf94-47d5d79bbc86.html)

Nelson County Service Authority’s Board of Directors voted Thursday to deny a rate and connection fee that would be used in the sale of water to Atlantic Coast Pipeline.

## **Thanks to FOIA by Wild Virginia, We Now Know That Pipeline Interests Have Deluged Virginia DEQ with Thousands of “Astroturfed,” Pro-Pipeline Postcards, Emails, etc. Spewing B.S. Talking Points**

- Blue Virginia – 7/22/18

<http://bluevirginia.us/2018/07/thanks-to-foia-by-wild-virginia-we-now-know-that-pipeline-interests-have-deluged-virginia-deq-with-thousands-of-astroturfed-pro-pipeline-postcards-emails-etc>

ACP and MVP seek to swamp actual citizen technical analysis with form letters and pre-printed postcards supporting the projects.

## **Regional/Mountain Valley Pipeline, other**

### **State lawmakers again urge Northam to act on pipelines**

- Virginia Mercury – 7/27/18

<https://www.virginiamercury.com/2018/07/27/state-lawmakers-again-urge-northam-to-act-on-pipelines/>

### **Pipeline opponents say Va. water regulatory process is broken**

- The Breeze – 7/25/18

[https://www.breezejmu.org/news/state/pipeline-opponents-say-va-water-regulatory-process-is-broken/article\\_a735807e-0695-5aad-9a76-a599de74a820.html](https://www.breezejmu.org/news/state/pipeline-opponents-say-va-water-regulatory-process-is-broken/article_a735807e-0695-5aad-9a76-a599de74a820.html)

Virginia’s water regulation process is under scrutiny following a series of problems this year that include a meeting being delayed more than two months, a website going down and struggles by the state to respond to a records request under the Freedom of Information Act.

### **Kaine, Stewart clash in heated debate**

- The Recorder – 7/25/18

[https://www.abralliance.org/wp-content/uploads/2018/07/Kaine-Stewart-clash-in-heated-debate-Recorder\\_20180725.pdf](https://www.abralliance.org/wp-content/uploads/2018/07/Kaine-Stewart-clash-in-heated-debate-Recorder_20180725.pdf)

### **Appeals court tosses major challenge to FERC eminent domain use**

- E&E News – 7/26/18

<https://www.eenews.net/stories/1060091229>

According to the 4th Circuit, the courts have no jurisdiction to hear the complaint because the landowners didn’t go through FERC’s standard administrative process for pipeline challenges.

### **Citizen group provides extra eyes on the ground for pipeline regulators**

- Energy News Network – 7/25/18

<https://energynews.us/2018/07/25/southeast/meet-the-citizen-scientists-trying-to-hold-pipeline-builders-accountable/>

Pipeline opponents are putting their money, time, and energy behind their arguments, taking it upon themselves to scrutinize pipeline construction and its effects on nearby waterways...because regulators seemingly can’t or won’t.

### **Completion of Mountain Valley Pipeline delayed to early 2019, even with long work days**

- The Roanoke Times – 7/25/18

[https://www.roanoke.com/news/virginia/completion-of-mountain-valley-pipeline-delayed-to-early-even-with/article\\_b6e66a64-3a5a-5985-bfd8-9e9fcc860d56.html](https://www.roanoke.com/news/virginia/completion-of-mountain-valley-pipeline-delayed-to-early-even-with/article_b6e66a64-3a5a-5985-bfd8-9e9fcc860d56.html)

### **Environmental regulators cite Mountain Valley Pipeline again**

- The Roanoke Times – 7/23/18

[https://www.roanoke.com/news/local/environmental-regulators-cite-mountain-valley-pipeline-again/article\\_f9fec22c-b5fc-5c15-bf75-1aaf5fbdd86e.html](https://www.roanoke.com/news/local/environmental-regulators-cite-mountain-valley-pipeline-again/article_f9fec22c-b5fc-5c15-bf75-1aaf5fbdd86e.html)

For the sixth time, environmental regulators have cited Mountain Valley Pipeline for failing to contain muddy water flowing from construction sites.

## Big Picture:

### 7 States Urge Pipeline Regulators to Pay Attention to Climate Change

- Inside Climate News – 7/26/18

<https://insideclimatenews.org/news/26072018/ferc-natural-gas-pipeline-approval-states-environmental-economic-cost-climate-change>

FERC is considering revising how it approves natural gas pipeline projects. These states want it to focus more on costs to the environment and consumers.

### FERC's Hard Look at Pipeline Construction and GHG Emissions

- The Legal Intelligencer – 7/27/18

<https://www.law.com/thelegalintelligencer/2018/07/27/fercs-hard-look-at-pipeline-construction-and-ghg-emissions/?sreturn=20180627160648>

### EPA tells energy regulators that previous offer of climate tools wasn't Trump-approved

- Think Progress – 7/27/18

<https://thinkprogress.org/epa-takes-back-offer-to-help-ferc-on-climate-change-e26819b03475/>

An Environmental Protection Agency (EPA) political appointee walked back comments made by one of her colleagues – a senior career agency employee – on how the EPA could help federal energy regulators analyze the climate impact of proposed natural gas pipelines.

### Hot summers, wildfires: Scientists say it's climate change, and they told you so

- Chicago Tribune – 7/27/18

<http://www.chicagotribune.com/news/nationworld/ct-summer-climate-change-20180727-story.html#>

"This kind of event was a 1-in-100-year event in 1900. It's become 20 times more likely." Get used to hearing that.

### How Would You Improve the Natural Gas Pipeline Process?

- WV Public Broadcasting – 7/18/18

<http://www.wvpublic.org/post/how-would-you-improve-natural-gas-pipeline-process#stream/0>

The extent to which federal regulators scrutinize new natural gas pipeline projects is an especially potent issue in Appalachia where thousands of miles of new natural gas pipelines are going in the ground.

### Trump Says Europe to Buy Boatloads of U.S. LNG. Don't Bet on It

- Bloomberg – 7/26/18

<https://www.bloomberg.com/news/articles/2018-07-26/europe-is-likely-to-disappoint-trump-as-big-buyer-of-u-s-lng>

The major LNG market touted by the administration is unlikely to appear due to lower-cost alternatives (Russia). Perhaps a re-thinking of the rush to provide gas for export is needed.

### Robo: Battery storage is starting a 'real revolution' in electric industry

- IEEFA – 7/26/18

<http://ieefa.org/robo-battery-storage-is-starting-a-real-revolution-in-electric-industry/>

In 5 to 7 years, wind-with-storage and solar-with-storage will be cheaper than gas. Why are we "locking in" to 40 more years of gas infrastructure?