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River groups protest open trench variance

By John Bruce – Staff Writer

The Cowpasture River Preservation Association and the Jackson River Preservation Association have jointly filed a motion complaining the Federal Energy Regulatory Commission's draft environmental impact statement on the proposed Atlantic Coast Pipeline violates the National Environmental Policy Act. The groups contend the draft EIS ignores Virginia erosion and sedimentation control law, which states "No more than 500 linear feet of trench may be opened at one time . . . and further, by failing to deny the Atlantic Coast Pipeline, LLC a variance.

The associations represent riparian landowners in the upper headwaters of James River watershed. The James River is the largest river in the Commonwealth of Virginia and supplies drinking water for the Richmond Metropolitan Area. The Cowpasture and Bullpasture Rivers receive karst waters from sinking streams like Dry Run and resurging karst springs. The Jackson River also receives karst waters from sinking streams like Back Creek and resurging karst springs.

The groups asked FERC to:

• Acknowledge the 500 Foot Open Trench Rule, is a legitimate and mandatory governing state law;

• Prohibit Dominion from claiming a variance or a waiver; and

• Establish as a condition of its certificate of convenience and necessity" that Dominion develop an Operations and Maintenance Plan that checks the condition and functionality of erosion, sedimentation and leaching control measures, including, but not limited to trench plugs or dams, trench settling, trench water resurfacing, failure of surface dykes or berms, emergence of buried springs or seeps, hazardous materials contamination in surface and ground waters, and water induced erosion and sedimentation on adjacent private or public lands beyond the pipeline right-of-way.

The Draft EIS addresses the challenges of erosion in rugged mountainous terrain with single-issue, narrowly-focused and macro-analyses, the groups argued, describing the documents as "a

compilation or catalog of attributes of soils-related attributes and issues – i.e., soils macro-classifications or types, generalities on erodibity by water and wind, a primer on soil compaction, broad-based statements on revegetation concerns, topsoil depth by county or city, surface soil pH by jurisdiction, tabular data on soil characteristics by county or city and by pipeline milepost.

"From this myopic perspective, the (draft EIS) obfuscates the fact that multiple environmental variables influence erosion in rugged mountainous terrain including: slope length (and) gradient, rock, soil and debris erodibility, rainfall intensity, frequency and duration, vegetative cover type and condition and equipment and vehicular traffic. Furthermore, these variables are in fact interrelated and cumulative.

"The (Draft EIS) is in violation of (NEPA) because it does not 'utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment.'

"Neither (Dominion) nor (FERC) have made and also made public, science-based assessments of erosion in rugged mountainous terrain. (NEPA), however, specifically directs . . . Federal agencies (to) 'utilize a systematic, interdisciplinary approach (to) insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment.' The science- and computer-based models useful and necessary for predicting erosion in rugged mountainous terrain were first developed some 30 years ago and since that time have been refined and improved through a peer reviewed process lead by the United States Department of Agriculture. The Revised Universal Soil Loss Equation (RUSLE), as an illustration, has been refined and supported through collaborative efforts of scientists at the Institute of Water Research at the Michigan State University, and with the USDA Natural Resources Conservation Service. The Water Erosion Prediction Project, sponsored by the USDA Forest Service, Rocky Mountain Research Station, Moscow Forestry Sciences Laboratory, has developed a computer-based erosion prediction model for forest land management applications. Collaborating scientists represent the U.S. Department of Agriculture's Forest Service, Agricultural Research Service, and Natural Resources Conservation Service; and the U.S, Department of the Interior's Bureau of Land Management and Geological Survey.

"The Council on Environmental Quality's NEPA regulations define significance as the degree to which the effects on the human environment are likely to be highly controversial.'

"The (draft EIS) fails to acknowledge that erosion by water of soil, debris and rock in the rugged Appalachian Mountains represents a significant environmental factor, risk and exposure. As sufficient evidence of significance, (FERC) is in receipt of scoping comments that highlight erosion and sedimentation as possibly causing significant environmental impacts including, but not limited to: scoping comments by the U.S. Environmental Protection Agency, the USFS George Washington and Monongahela National Forests, the US Fish and Wildlife Service, The Nature Conservancy, the Sierra Club, the Appalachian Mountain Advocates, Dominion Pipeline Monitoring Coalition, Highlanders for Responsible Development, and the Laurel Mountain Preservation Association just to name a few stakeholders.

"Open trench length and exposed right-of-way area are the primary water-induced erosion variables over which pipeline design, engineering and construction may possibly exercise effective mitigative measures. Granting a variance from the Virginia 500 Foot Open Trench Rule, however, exposes the natural environment, surface and ground water quality, recreation opportunities and wildlife habitats to catastrophic erosion and degradation by sedimentation.

"Because the Cowpasture and Bullpasture valleys are relatively narrow and because soil cover over foothills and on mountains is relatively shallow or nonexistent, Dominion's pipeline construction crews will be forced to excavate considerable distances of trench through bedrock with heavy duty rock-ripping equipment and by blasting. Atlantic Coast Pipeline construction crews will uncover, move and excavate a huge amount of loose material – approximately 11,000 cubic yards of ripped and crushed rock, soil and debris for every 500 linear feet of right-of-way (or 22 cubic yards per linear foot).

"The pipeline study corridor in both the Monongahela and George Washington National Forests, the Jackson River Valley, and the Cowpasture and Bullpasture River Valleys include many Allegheny Mountains with slopes that exceed 30, 50, 70 percent and steeper. Additionally, the Allegheny Mountains of West Virginia and Virginia force moist air from the Mississippi and Ohio River Valleys up into higher and cooler altitudes and thus produce significant rainfall events and particularly, in the winter and early spring months. A preliminary prediction of rain-induced erosion for the Allegheny Mountains, where the mountain bedrock is a shale with a clay/loam soil, suggests that on average an open pipeline trench and its exposed construction work area of five hundred feet (500') in length would likely deliver 2,619 pounds of rock, soil and debris per day to a nearby stream channel or 18,344 pounds per seven-day week. Catastrophic erosion in rugged mountainous terrain, therefore, becomes an extraordinary real world risk with open trench lengths over 500 feet.

"A variance from the Virginia 500 Foot Open Trench Rule, will remove an important surface and ground water safeguard against catastrophic erosion that thereby degrades environmental protections under the Endangered Species Act of 1973, the Wild and Scenic Rivers Act of 1968; the Fish and Wildlife Coordination Act of 1934; NEPA; and additionally, violates the anti-backsliding principles for water quality standards . . .

"In the 2013-14 time frame, Dominion Resources apparently made a business decision to build the Atlantic Coast Pipeline from West Virginia, through Virginia and into North Carolina and also through the Monongahela and George Washington National Forests, and some of the most rugged mountains and karst terrain in the eastern United States. Dominion Resources knew at the time of making this business decision or Dominion should have known, that the Virginia 500 Foot Open Trench Rule, was state law designed to protect the environment from erosion and sedimentation. Now Dominion Resources the supplicant argues that without a variance allowing 1,000 feet or 5,000 feet or 10,000 feet or whatever distance of open trench it Dominion chooses plus a 150 foot wide right-of-way for the Atlantic Coast Pipeline project then the construction time line will be significantly delayed or slowed. Although it may be true that building a pipeline through rugged mountainous terrain 500 feet at a time will take longer and further, that the extra time and effort to protect the environment may increase costs and decrease profitability, it is a well established principle of administrative law that: (a) self-imposed or self-created conditions

are not a sufficient reason for granting a variance, (b) economic hardship is not a sufficient reason for granting a variance . . . and (c) time delays and contractual obligations are not a sufficient reasons for granting a variance. Importantly, granting a variance ensures greater risks and exposures for the natural environment from erosion in rugged mountainous terrain.

"Prudent measures for minimizing erosion and sedimentation on the George Washington and Monongahela National Forests must by necessity also be prudent measures for minimizing erosion and sedimentation on private property owned by homesteaders, farmers, ranchers and small businesses within the Cowpasture and Jackson River Valleys, and in all counties with rugged mountainous terrain both east and west.

"The Virginia 500 Foot Open Trench Rule is in place to help minimize erosion and sedimentation according to the U.S. Forest Service (See: U.S. Forest Service Comments on the Construction, Operation, Maintenance Plan for the Proposed Atlantic Coast Pipeline Project, Dated November 10, 2016, Page 30, Comment No. 282. Unknown to the USFS a waiver was granted for the Celenses pipeline [a much smaller pipeline] replacement, and there was excessive erosion and sedimentation at this location following a heavy rain event. Such a waiver would not be granted [to the Atlantic Coast Pipeline, LLC] on National Forest Service lands. Private property owned by homesteaders, farmers, ranchers and small businesses within the Cowpasture and Jackson River Valleys merits equal protection under the law."