



## *ABRA Update #99 – September 30, 2016*

### **Pipeline Summit Agenda Takes Shape, Registration Now Open**

Discussions on the 2016 election results and major issues with the Mountain Valley Pipeline (MVP) and Atlantic Coast Pipeline (ACP) will headline the array of topics covered at the Saturday, November 12 Pipeline Summit at the Natural Bridge Hotel and Conference Center, Natural Bridge, VA. The event is co-sponsored by the Allegheny-Blue Ridge Alliance and Protect Our Water, Heritage, Rights (POWHR) coalition and is open to persons affiliated with members of either organization and other invitees.

The Summit will commence at 10 am with a plenary session featuring three panel discussions:

- **ACP and MVP: where we are, where we're headed**  
A discussion of the current issues, status and outlook for the Mountain Valley Pipeline and Atlantic Coast Pipeline - *Greg Buppert, Senior Attorney, Southern Environmental Law Center; Joe Lovett, Executive Director, Appalachian Mountain Advocates; Rick Webb, Program Coordinator, Dominion Pipeline Monitoring Coalition.*
- **The impact of the 2016 election results**  
A review of the results of the November 8th elections and their consequences at the federal and state level in 2017 and beyond. – *Michael Dunn, Chairman & CEO, Dunn Associates; Angie Rosser, Executive Director, West Virginia Rivers Coalition; Hope Taylor, Executive Director, North Carolina for Clean Water.*
- **The need for property rights reform**  
Discussion of property rights threats posed by the imminent domain power granted by FERC to pipeline companies and the recent challenge to environmental easements. – *Larry Shapiro, Associate Director for Program Development, Rockefeller Family Fund; Kate Wofford, Executive Director, Shenandoah Valley Network.*



**Buppert**



**Rosser**



**Shapiro**



**Wofford**



**Dunn**



**Taylor**



**Lovett**

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In the News – *Dan Shaffer, [dshaffer@abralliance.org](mailto:dshaffer@abralliance.org)*

Following lunch, the Summit will continue with a series of breakout sessions and then a wrap-up plenary session ending at 4 pm. Additional speakers and breakout sessions topics will be announced next week in Update.

There is a \$10 charge – payable at the meeting - for beverages and lunch (sandwiches and salads, with vegetarian, vegan and gluten-free preferences available).

**To register for the Summit**, [click here](#). For those wishing accommodations at the Natural Bridge Hotel for the preceding evening (November 11), a rate of \$79 is available. For hotel reservations, call [800.533.1410 x 0](tel:800.533.1410) or 7803 and make a reservation under Code: Allegheny-Blue Ridge Alliance for Friday, November 11, 2016.

## **McAuliffe Reiterates “I Don’t Have the Authority” About the ACP**

Virginia Governor Terry McAuliffe has once again stated that he has no authority regarding proposed natural gas pipelines. In a September 28 broadcast of the “Ask the Governor” radio show on WTOP, a Washington, DC station, McAuliffe said:

"I as governor do not have the right to call down to the [Department of Environmental Quality] and say 'Well I don't like this'. . . I cannot deny an air and water permit as governor. I don't have the authority. It's done by statute. If you don't like the regs and they get approved, then you need to talk to the legislature to change the law." ([remarks on pipelines at minute 21.52 in the broadcast](#))

The Governor and officials in his administration have been repeatedly told that Virginia has the authority and responsibility to evaluate the environmental prudence of a projects like natural gas pipelines and issue a permit under [Section 401 of the Clean Water Act](#). That provision of law states, in part:

Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title.

\* \* \*

If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

The Dominion Pipeline Monitoring Coalition reminded the Governor of these statutory provisions in a [September 9 letter](#). Dominion Resources has also acknowledged this by filing a permit application with the Virginia Department of Environmental Quality and in [related correspondence two weeks ago](#). How could the Governor think otherwise?

## Buckingham Compressor Station Hearing Draws a Packed House



*More than 100 people attended the September 26 public hearing in Buckingham, VA regarding the proposed compressor station for the Atlantic Coast Pipeline.*

A standing room crowd attended a public hearing before the Buckingham County Planning Commission on September 26 to present testimony regarding a special use permit application for a compressor station in the county to serve the Atlantic Coast Pipeline. Because the property that has been purchased for the compressor station is zoned agricultural, a special use permit is required. Slightly over half of the 54 persons signing up to speak were able to be heard, necessitating the scheduling of a continuation of the hearing on Monday, October 17 at 6 pm. Of those who spoke, no one voiced support for the project. The Planning Commission expects to develop a recommendation for the Buckingham County Board of Supervisors at its October 24 regular meeting. ABRA members Friends of Buckingham (FoB) and Yogaville (YES) provided the leadership to assemble the strong opposition to the ACP permit application.

In a [September 19 letter](#) to the Buckingham County Zoning and Planning Administrator, Appalachian Mountain Advocates (Appalmad) challenged the legitimacy of the ACP permit application. Writing on behalf of the Virginia Chapter of the Sierra Club, the Chesapeake Climate Action Network, FoB and YES, Appalmad said:

1. The proposed compressor station is legally ineligible for a special use permit in the County's Agricultural District (A-1);
2. The permit application lacks a "detailed and in-depth" discussion of the project's relationship with the County's Comprehensive Plan; and
3. County officials should review their obligations under Virginia's State and Local Government Conflict of Interest Act (COIA), noting that "any County official or employee with a 'personal interest' in Dominion or its many subsidiaries is subject to recusal under the COIA."

## PA Supreme Court Strikes Down State Eminent Domain Law for Oil & Gas

The Pennsylvania Supreme Court declared unconstitutional a 2012 law (Act 13) that authorizes the taking of real property for the storage of natural gas. The [September 28 decision](#) may have major implications for the constitutionality of Sunoco's use of eminent domain for building its Mariner East Pipeline (spanning PA, WV & OH). The Supreme Court wrote, among other things, that:

"The Commonwealth does not claim, nor can it do so reasonably, that the public is the 'primary and paramount' beneficiary when private property is taken in this manner. Instead, it advances the proposition that allowing such takings would somehow advance the development of infrastructure in the Commonwealth. Such a projected benefit is speculative, and, in any event, would be merely an incidental one and not the primary purpose for allowing these type of takings."

In conclusion on this point, the Court wrote:

"Section 3241 of Act 13, which facially permits any private corporation empowered to transport, sell, or store natural gas or manufactured gas in Pennsylvania to seize subsurface lands of a private property owner for the purpose of storing natural gas therein, violates the Fifth Amendment to the United States Constitution and Article I, Section 10 of the Pennsylvania Constitution by permitting a taking of private property for a private purpose."

The Court also hinted that it may not consider public utilities per se to have the power of eminent domain:

"The Commonwealth Court and Appellees strive mightily to read the language of Section 3241(a) as restricting this taking power to only those corporations which qualify, statutorily, to be public utilities. Ostensibly they do so to establish that the conferral of this power should then be considered beyond constitutional challenge, because public utilities have long been permitted the right to exercise powers of eminent domain conferred on them by the Commonwealth in furtherance of the overall public good."

The PA Supreme Court's decision applies only to Pennsylvania, but the questions raised will no doubt be addressed elsewhere.

### *In the News:*

## Local/Atlantic Coast Pipeline

### **Op-ed: The Atlantic Coast Pipeline and the Consequences for Virginia**

- AltDaily – 9/27/16

<http://altdaily.com/op-ed-the-atlantic-coast-pipeline-and-the-consequences-for-virginia/>

### **Op-ed: Pipeline test case significant**

- The Daily Progress – 9/29/16

[http://www.dailyprogress.com/opinion/opinion-editorial-pipeline-test-case-significant/article\\_def51a88-8647-11e6-9cc6-23b76b3f0c32.html](http://www.dailyprogress.com/opinion/opinion-editorial-pipeline-test-case-significant/article_def51a88-8647-11e6-9cc6-23b76b3f0c32.html)

What level of activity and loss-of-use constitutes a "taking" of private property? We may soon find out.

## **McAuliffe says he lacks authority to stop Atlantic Coast Pipeline**

- Richmond Times-Dispatch – 9/28/16

[http://www.richmond.com/news/virginia/article\\_1b46c564-81d9-5e0a-bf83-eeed6a4a1be2.html](http://www.richmond.com/news/virginia/article_1b46c564-81d9-5e0a-bf83-eeed6a4a1be2.html)

Maybe, maybe not...but he DOES have the authority to direct relevant agencies to do their jobs to the letter!

Related:

- <http://bluevirginia.us/2016/09/video-gov-mcauliffe-asked-atlantic-coast-pipeline-answers-leave-much-desired>

**Join The Picket Line To Tell Gov. McAuliffe:  
"Yes, You Can Stop Reckless Fossil Fuel Plans"**

## **Pipeline protesters are real**

- News Leader – 9/25/16

<http://www.newsleader.com/story/opinion/readers/2016/09/25/pipeline-protesters-real/91077862/>

So are the dangers and injustice associated with Dominion's pet project

Related:

- <http://wydaily.com/2016/09/26/activists-gather-in-historic-jamestowne-to-protest-two-pipelines/>

## **Concern for the New Generation calls for community veto of natural gas station**

- Augusta Free Press – 9/22/16

<http://augustafreepress.com/concern-new-generation-calls-community-veto-natural-gas-station/>

Related:

- <http://wvtf.org/post/atlantic-coast-pipeline-sparks-protest-buckingham>

## **Opponents slam pipeline plans**

- The Rocky Mount Telegram – 9/23/16

<http://www.rockymounttelegram.com/News/2016/09/23/Opponents-slam-planned-pipeline.html>

Local opposition building in North Carolina

## **Staunton City Council weighs in on Atlantic Coast Pipeline**

- News Leader – 9/23/16

<http://www.whsv.com/content/news/Staunton-394525811.html>

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

### **Mountain Valley Pipeline seeking easement in Franklin County's planned 550-acre business park**

- Roanoke Times – 9/28/16

[http://www.roanoke.com/news/local/franklin\\_county/mountain-valley-pipeline-seeking-easement-in-franklin-county-s-planned/article\\_52df8100-7aaf-5a84-bd09-975666e708fc.html](http://www.roanoke.com/news/local/franklin_county/mountain-valley-pipeline-seeking-easement-in-franklin-county-s-planned/article_52df8100-7aaf-5a84-bd09-975666e708fc.html)

### **Forum on natural gas pipelines at Roanoke College on Oct. 12**

- Roanoke Times – 9/27/16

[http://www.roanoke.com/community/sosalem/forum-on-natural-gas-pipelines-at-roanoke-college-on-oct/article\\_0309fed6-8033-11e6-a672-8fae7fbcobaa.html](http://www.roanoke.com/community/sosalem/forum-on-natural-gas-pipelines-at-roanoke-college-on-oct/article_0309fed6-8033-11e6-a672-8fae7fbcobaa.html)

### **Editorial: Why pipeline opponents shouldn't count on FERC**

- Roanoke Times – 9/25/16

[http://www.roanoke.com/opinion/editorials/editorial-why-pipeline-opponents-shouldn-t-count-on-ferc/article\\_49bccc92-9d77-5f6d-9283-127b6cb95531.html](http://www.roanoke.com/opinion/editorials/editorial-why-pipeline-opponents-shouldn-t-count-on-ferc/article_49bccc92-9d77-5f6d-9283-127b6cb95531.html)

### **McAuliffe attracts heat from pipeline foes but kudos from clean energy sector during Roanoke visit**

- Roanoke Times – 9/22/16

[http://www.roanoke.com/business/news/mcauliffe-attracts-heat-from-pipeline-foes-but-kudos-from-clean/article\\_473410cb-9cfo-556f-8068-afd93374e1e9.html](http://www.roanoke.com/business/news/mcauliffe-attracts-heat-from-pipeline-foes-but-kudos-from-clean/article_473410cb-9cfo-556f-8068-afd93374e1e9.html)

Governor still claims to have zero power in approving or challenging pipeline projects

Related:

- <http://www.nbc29.com/story/33161570/pipeline-protestors-direct-anger-toward-mcauliffe-during-visit>

## Big Picture:

### Power Companies Funding Legal Efforts To Overturn Clean Power Plan In Court

- Republic Report – 9/27/16

<https://www.republicreport.org/2016/clean-power-plan-companies/>

Many utilities publicly supporting Clean Power Plan, fighting it in the shadows through a little-known non-profit

### Pipeline Projects Abound, But Not All Are Proceeding Full Steam Ahead

- Construction Equipment Guide – 9/29/16

<http://www.constructionequipmentguide.com/pipeline-projects-abound-but-not-all-proceeding-full-steam-ahead/30889>

Surprisingly, the ACP is not even mentioned

### FERC Urged To Halt Review Of Outdated PennEast Pipeline Application Due To Out-of-Time Route Changes, Far-Reaching Threats To Water, Land, Air Quality

- PR News Wire – 9/26/16

<http://www.prnewswire.com/news-releases/ferc-urged-to-halt-review-of-outdated-penneast-pipeline-application-due-to-out-of-time-route-changes-far-reaching-threats-to-water-land-air-quality-300333867.html>

PennEast recently filed 33 route changes with FERC...after public comment period on DEIS expired!

Related:

- <http://timesleader.com/news/589955/penneast-pipeline-files-33-route-changes-with-ferc>
- <http://www.mycentraljersey.com/story/opinion/editorials/2016/09/26/penneast-changes-need-scrutiny/91126990/>

### 'Eyes wide open': Despite climate risks, utilities bet big on natural gas

- Utility Dive – 9/27/16

<http://www.utilitydive.com/news/eyes-wide-open-despite-climate-risks-utilities-bet-big-on-natural-gas/426869/>

Scientists say the U.S. can't build much more fossil fuel infrastructure if it wants to meet the Paris climate goals. So why are utilities going all-in on gas?

Related;

- <http://www.bloomberg.com/news/articles/2016-09-26/dte-energy-to-buy-u-s-shale-gas-pipelines-for-1-3-billion>

### Confused about Dakota Access controversy? This primer will get you up to speed.

- InForum – 9/24/16

<http://www.inforum.com/news/4122538-confused-about-dakota-access-controversy-primer-will-get-you-speed>

Good summary of issues

Related:

- <http://www.naturalgasintel.com/articles/107888-obama-administration-sets-two-month-review-process-on-tribal-input-for-pipelines>
- <http://www.chronicletimes.com/story/2341366.html>

### Environmental Groups Want Congress to Investigate FERC 'Bias'

- Natural Gas Intelligence – 9/22/16

[http://www.abralliance.org/wp-content/uploads/2016/09/NGI\\_Environmental-groups-want-congress-to-investigate-ferc-bias-20160922.pdf](http://www.abralliance.org/wp-content/uploads/2016/09/NGI_Environmental-groups-want-congress-to-investigate-ferc-bias-20160922.pdf)

Calls for FERC process reform getting exposure and gaining traction

Related:

- <http://www.huntingtonnews.net/142189>

### 18 Reasons Why We Must Invest in America's Infrastructure

- EcoWatch – 9/29/16

<http://www.ecowatch.com/investing-infrastructure-2022913911.html>

### Recalculating the Climate Math

- New Republic – 9/22/16

<https://newrepublic.com/article/136987/recalculating-climate-math>

Continued fossil fuel development is a path to disaster