

# The Recorder

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## Agencies slow to furnish vital pipeline plans

BY JOHN BRUCE • STAFF WRITER

MONTEREY — Public information gaps remain, two weeks before the Federal Energy Regulatory Commission is due to issue its final environmental impact statement for the proposed Atlantic Coast Pipeline.

Late or incomplete water quality plans and FERC’s refusal to expedite a Little Valley survey request from The Recorder — both threaten public engagement in the most important aspects of a balancing act between building a 600-mile interstate gas pipeline that would cross Bath and Highland counties, and safeguarding the environment.

The Recorder questioned agencies last week about the transparency of water quality regulation, access to Dominion’s surveys of Little Valley, and the law-enforcement “teeth” of U.S. Forest plans with respect to the proposed ACP.

Here’s what The Recorder found:

Has the Virginia Department of Environmental Quality obtained site-specific erosion and sediment control and stormwater management plans for the proposed ACP? No.

Does it intend to review the plans prior to 401 Water Quality Certification? No.

Has DEQ made the plans available to the public? No, but it will soon.

Both the proposed Mountain Valley Pipeline and ACP will submit site-specific Erosion and Sediment Control (ESC) and Stormwater Management (SWM) plans to DEQ, and the agency will make them available to the public, DEQ spokeswoman Ann Regn told The Recorder.

ACP has not yet submitted those plans to DEQ, Regn said. MVP has only submitted site-specific ESC and SWM plans for land disturbance associated with one MVP construction area (referred to as Spread 8).

“We are working on a DEQ web page to make these documents available to the public and expect to have this web page available early (this) week,” Regn said. “As each company submits its plans for additional pipeline construction areas, DEQ will continue to update our website. DEQ also plans to provide updates through our RSS news feed.”

As for whether DEQ will review plans before issuing a 401 certificate, Regn said, “The ESC and SWM plan review and the 401 certification are separate review processes that DEQ will be conducting concurrently. The 401 certification will ensure that environmental concerns not addressed by ESC and SWM are protective of state waters.”

Another gap of information has been Dominion’s specific construction plans in the extremely vulnerable environment of Little Valley, to avoid water pollution due to an abundance of karst and landslides on the canyon’s steep slopes.

This box canyon in northern Bath County, in the event of an emergency, would leave residents with no means of escape other than a dead-end road.

The Recorder filed a Freedom of Information Act Request with FERC to obtain surveys Dominion has made in Little Valley, and amended the request to seek expedited treatment.

The Recorder’s last such request from the agency took 76 days.

When FERC initially denied the request for expedited treatment, The Recorder told the agency, “The urgency of this expedited treatment request is valid and necessary to disseminate the scope and breadth of the survey work done in an area identified as being extremely vulnerable to disturbance before FERC is due to issue its final environmental impact statement July 21.”

Dominion spokesman Aaron Ruby said the Little Valley surveys were either privileged or yet to be available.

“The threatened and endangered species surveys are filed as ‘privileged’ because the project is obligated to protect the locations of rare species from the public. The wetland surveys were only recently completed and will be provided to agencies later this summer,” Ruby said.

FERC rejected The Recorder’s FOIA request for expedited treatment on July 7. If approved, the due date would have been July 10.

“Although you have asserted that you are a member of the media primarily engaged in the dissemination of information to the public,” Leonard Tao, FERC director of external affairs, said, “you have not demonstrated that the information is urgently needed to inform the public concerning some actual or alleged federal government activity. Accordingly, your request for expedited processing must be denied.”

Tao said FERC “will endeavor to process it as promptly as possible within the appropriate regulatory time frame.”

The statutory due date is July 31.

The Recorder filed the FOIA request June 28 and complied with a FERC request to narrow the geographic area in question. The newspaper asked for all surveys applying to the area between pipeline study corridor mileposts 91.3 and 93.6.

Forest plans of questionable muscle are one of many other concerns with respect to the proposed ACP.

The U.S. Forest Service has devoted countless hours to development of forest plans designed to steward forest resources for future generations.

The Recorder asked the Forest Service if forest plan standards, which likely would prohibit pipeline construction as they stand, are enforceable by law. The short answer is: not directly.

The full answer is complicated, except for a \$500 maximum fine with six months in jail for a special use permit violation.

“First, Land and Resource Management Plans (often called forest plans) are required by the National Forest Management Act of 1976,” forest spokeswoman JoBeth Brown said. “NFMA requires each National Forest to have a forest plan that outlines how the forest will be managed over a 10-15 year time period. The requirements for developing and amending Forest Plans are spelled out in our planning regulations ... Every plan must have certain components, which include standards.

“A standard is a mandatory constraint on project or activity decision making, established to help achieve the desired conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements,” she explained. “Standards guide the Forest Service in how we authorize activities on National Forest System lands. Our regulations require that projects we authorize must be consistent with forest plans. We work with proponents to develop their proposed operating plans to be consistent with the forest plan standards; or we may condition an authorization to require mitigation that will be consistent with forest plan standards.

“So, forest plan standards are not directly enforceable, but we indirectly enforce them through the terms and conditions of permits we issue for activities. Our regulations allow the Forest Service to amend its forest plans to adjust to changing circumstances.

“Sometimes proposed projects are not able to meet certain standards. When this happens, our regulations require us to: Modify the project to be consistent with the forest plan; reject the project; amend the forest plan to make the project consistent; or amend the forest plan with approval of the project to achieve consistency, which may include limiting the amendment to apply only to the project.

“In the case of ACP, one of our options is item 4 ... If we issue a final record of decision approving to amend the forest plan with approval of the project, our next step would be to implement the decision by issuing a special use permit for the proponent to conduct their activity

on National Forest System lands. Most commercial activities on National Forest System lands must have a special use permit to conduct the activities. As stated above, permitted activities must be consistent with Forest Plan standards,” Brown said.

“So in the case of ACP, we must approve amending the forest plan in order to issue a special use permit to construct, operate, and maintain the pipeline on National Forest System lands. The special use permit issued requires the permit holder to follow a construction, operation and maintenance (COM) plan which details many of the specifications the company must adhere to reduce environmental impacts. The permit also requires the permit holder to follow all federal and state laws. Violating the permit is prohibited under 36 CFR 261.10 (k): ‘Violating any term or condition of a special-use authorization, contract or approved operating plan.’

“If a violation occurs,” Brown continued, “our goal is to get the permit holder back into compliance with the specifics outlined in the COM or operating plan, and we give them opportunities to fix the deficiency. Depending on the violation, we can revoke or suspend the permit for non-compliance (with) federal, state or local laws and regulations or noncompliance with the terms and conditions of the permit. If a citation were to be issued, the federal court could implement a fine of \$500 or six months in jail or both.

“So the standard itself is not enforceable, however, the terms and conditions of the permit are enforceable,” Brown said.

“The Forest Service works with state and federal agencies, such as the Virginia Department of Environmental Quality, U.S. Fish and Wildlife Service, State Historic Preservation Office, and Army Corps of Engineers to monitor, regulate and enforce activities occurring on NFS Lands. These agencies also issue permits for uses on federal or state lands. A list of the Major Environmental Permits, Licenses, Approvals, and Consultations for the ACP and Supply Header Project can be found in Table 1.4-1 in the introduction on pages I-24 to I-30 of the ACP draft EIS,” Brown said.