

The Recorder

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State agency to accept pipeline comments

USFS eyes endangered species harm, old-growth removal

BY JOHN BRUCE • STAFF WRITER

MONTEREY – State and federal regulators delivered a one-two punch to drinking water, bumblebees, and other endangered mountain species last week.

Citizens were quick to retaliate.

The Virginia Department of Environmental Quality announced in a June 30 news release it is accepting public comments, including five public hearings in August, for draft water quality certifications designed to protect water quality along the routes of the proposed Atlantic Coast and Mountain Valley pipelines.

The release was remiss on information to make comments other than at public hearings, but The Recorder has included that information below.

Citizen groups promptly responded by questioning whether the agency made site-specific plans available for public review, considered necessary for fair evaluation, before accepting comments.

No response was available from the DEQ because state offices were closed from July 1 to 4.

The comment period opened July 3.

Two hearings will be for the MVP, and three for the ACP. The comment period to receive written comments on both pipelines will run through Aug. 22. The mailing address is Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, Va. 23218. The email address is brenda.winn@deq.virginia.gov.

“These hearings and the comment period are very important to helping DEQ meet its goal of protecting water quality,” DEQ director David Paylor said in the release. “The pipeline

construction is a complicated process, and we look forward to receiving valuable public input as these projects proceed.”

The ACP public hearing schedule is:

- Monday, Aug. 7 — 6 to 10 p.m., James Madison University, Festival Conference and Student Center, Grand Ballroom, 1301 Carrier Drive, Harrisonburg. Parking is in lots C11, C12, and D3.
- Thursday, Aug. 10 — 6 to 10 p.m., Longwood University, Jarman Auditorium, 201 High Street, Farmville. Parking is in Wheeler Lot, Crafts Lot, High Street Lot, Randolph Lot or other university-owned lots.
- Monday, Aug. 14 — 6 to 10 p.m., Dinwiddie High School Auditorium, 11501 Boisseau Road, Dinwiddie. Parking is only in designated areas on school property.

The MVP public hearing schedule is:

- Tuesday, Aug. 8 — 6 to 10 p.m., Radford University, Preston/Bondurant Auditorium, 801 East Main Street, Radford. Parking is only in lot A, or lots E and U.
- Wednesday, Aug. 9 — 6 to 10 p.m., Chatham High School Auditorium, 100 Cavalier Circle, Chatham. Parking is only in designated areas on school property.

“Documents on which DEQ is seeking comments are referred to as 401 certifications,” DEQ explained. “These draft certifications would place conditions on activities in upland areas that are near state waters, and that may indirectly affect state water along the pipeline routes. The certifications are in addition to the requirements imposed by the Federal Energy Regulatory Commission, by the Commonwealth of Virginia for stormwater, erosion and sediment control, and by the U.S. Army Corps of Engineers for wetlands and streams.

“The conditions address, among other matters, impacts to public water supplies, engineering and best management practices for steep slopes and slide-prone areas, environmental monitoring and inspections, development and implementation of plans and procedures for karst mitigation, spill prevention control, water quality monitoring and protection of riparian buffers.”

Information on the DEQ website is accessible at www.deq.virginia.gov by clicking on programs > water > protection requirements for pipelines.

The DEQ announcement drew heavy criticism from citizens calling for publication of site-specific erosion and sediment control and stormwater management plans on which the public needs to comment.

The absence of essential data guts the review process, and deprives citizens of their rights under the law, argued Rick Webb, coordinator of the Dominion Pipeline Monitoring Coalition.

“Dominion is gaming the system, and the McAuliffe administration’s DEQ is playing along,” Webb said. “The organizations and experts working with the DPMC have persistently expressed doubts that a project on the scale of the Atlantic Coast Pipeline, constructed across the steep Appalachian Mountains, can be built without significant long-term harm to the region’s high-quality streams, wetlands and groundwater resources.

“Although Dominion and its supporters have repeatedly claimed that the project will be built above and beyond environmental requirements, the public has yet to see site-specific erosion and sediment control and stormwater management plans for the project. We have been concerned that the Virginia DEQ will go forward with 401 Water Quality Certification for the project without the critical information these plans provide.

“Just as we feared,” he continued, “the DEQ has now initiated a public comment period without providing access to project details required for objective review.”

DEQ had assured the public it would require each pipeline developer to submit detailed, project-specific plans for every foot of land disturbance related to pipeline construction, including access roads and construction lay-down areas, Webb said, noting such plans must comply with Virginia’s regulations designed to protect water quality during and after construction.

“These plans will be reviewed by qualified professionals — either DEQ staff or third-party engineers — and will be posted for public review, (according to the) DEQ Pipeline Review website,” Webb said, “yet DEQ is initiating a public comment period, scheduling hearings, and preparing to recommend project certification to the State Water Control Board without making the promised plans available to the public.”

Moreover, Webb said, DEQ has hired a company with business ties to Dominion to review the plans. “It’s frankly hard to believe. We don’t know if the DEQ has obtained erosion and sediment control and stormwater management plans, or if it intends to review those plans prior to 401 Water Quality Certification.”

Webb said it could be that DEQ plans to review the specific plans after certification for the pipeline has been issued. “That would indeed be gaming the system,” he said.

“First, those plans provide the information needed for a meaningful analysis of water resource risks and mitigation measures. And second, once the DEQ issues a 401 Water Quality Certification, it has effectively exhausted its authority.”

Virginia’s best leverage on FERC-controlled projects is its power under Section 401 of the Clean Water Act, Webb said. “It may be the only significant authority (the state has) that supersedes FERC dictates. “We have to ask: Is the DEQ colluding with Dominion to hide site-specific ... plans from the public? Is the DEQ attempting to ensure that there is no independent, technical evaluation of the project during the all-important 401 review process? This would be ‘above and beyond’ an abdication of responsibility. As we have noted previously: When Terry McAuliffe was first elected, he promised a new level of transparency in state government. He said that Virginians ‘should never have to question who their leaders are putting first.’”

Conditions in the seven-page DEQ draft certification are generally not site-specific. They include directions such as:

- Removal of riparian buffers not directly associated with the project construction activities is prohibited. Disturbance and removal of riparian buffers from project-related upland land disturbing activities that would occur within 50 feet of any perennial, intermittent, or ephemeral surface waters shall be avoided where possible, and minimized to the maximum extent practicable if 50 feet is not possible.
- Removal of riparian buffers not associated with crossings shall not be allowed where stream bank stability under normal flow conditions would be compromised.
- The limit of disturbance (LOD) in upland areas approaching waterbody and wetland crossings shall be reduced from 125 feet to 75 feet and extended 50 feet from each side of the crossing as an additional buffer. For any upland area approaching a waterbody or wetland crossing where this reduced LOD is not possible, a written justification shall be provided to DEQ for review and approval before disturbing land in that area.
- A 100-foot buffer shall be maintained between any perennial, intermittent, or ephemeral surface waters, and all fueling, maintenance, parking, and hazardous material storage activities.
- The karst survey report (Feb. 21, 2017) shall be revised and submitted to DEQ should there be any changes in final pipeline alignments that will need more field surveys. The revised report shall be submitted to DEQ for review and approval before disturbing land.
- Dominion shall follow measures detailed in the karst terrain assessment, construction, monitoring and mitigation plan (Jan. 20, 2017).
- To further evaluate flow paths for karst features, Dominion must develop a dye-tracing plan to DEQ. The plan must determine connections associated with karst features.
- Any surface water withdrawals for hydrostatic testing may not violate water quality standards and shall be managed so that no more than 10 percent of the instantaneous flow rate from the channel is removed.
- Daily withdrawals from horizontal directional drilling or dust control may not exceed 10,000 gallons per day from nontidal waters and 2 million gallons from tidal waters per day.
- Hydrostatic test water must be released to upland areas through an energy dissipating dewatering device. The devices must accommodate the rate and volume be monitored to prevent erosion.
- All construction and installation, except as permitted by the corps, must be accomplished in such a manner that construction material or waste material will not be placed into any surface waters or karst features.

- Dominion must notify DEQ immediately, but no later than 24 hours after discovery, if blasting or landslides impacts any perennial, intermittent, or ephemeral surface waters or karst features.
- The project, including all relevant records, will be subject to inspection at reasonable hours and intervals by DEQ to determine compliance.
- Certification is subject to revocation for failure to comply with its conditions. Any direct or indirect discharge to state waters will be subject to enforcement review. The terms and conditions of the certificate will remain in effect until 180 days after all land disturbing activity associated with the construction, operation, maintenance, and repair of the pipeline, and related access roads and rights of way have achieved final stabilization.

Citizen groups have sounded alarms over what the final environmental impact statement for the Mountain Valley Pipeline means for that of the ACP, which is expected July 21.

The U.S. Forest Service announced it will accept objections through Aug. 7 on its proposed changes to the forest plan to enable building the proposed MVP. The changes, proposed in concession to FERC's final EIS, would, if approved:

- Allow removal of old-growth trees within the MVP corridor;
- Designate a 50-foot-wide right of way; and
- Amend plan standards to allow the MVP to vary from restrictions on soil and riparian corridor conditions, including removing endangered species habitat.

“We would condition the amendments so that MVP would need to implement mitigation measures to meet the original standard’s intent to protect soil and riparian areas,” the agency said in a news release. “My proposed decision would recognize forest service efforts to provide for multiple uses and to support federal policies that emphasize energy infrastructure,” forest supervisor Joby Timm said.

A White House executive order to expedite environmental review of infrastructure projects, including the proposed pipelines, states it “shall be implemented consistent with applicable law and subject to the availability of appropriations. Nothing in this order shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency,” the order states.

In his Earth Day statement April 22, the president said, “My administration is committed to keeping our air and water clean, to preserving our forests, lakes, and open spaces, and to protecting endangered species.”

For information on the U.S. Forest Service objection process, access www.fs.usda.gov/gwj.