



## *ABRA Update #146 – September 7, 2017*

### **Objections Voiced to Forest Service About Amending Forest Plans for ACP**

The U.S. Forest Service’s draft Record of Decision (ROD) to amend the Forest Plans of the Monongahela National Forest (MFN) and George Washington National Forest (GWNF) to accommodate the proposed route of the Atlantic Coast Pipeline (ACP) received strong objections from numerous commenters. The deadline for submissions of objection was September 5. The draft ROD was discussed in [ABRA Update 140](#).

The following organizations were among those who submitted comments (copies of which are available [here](#).)

- West Virginia Rivers Coalition

“The United States Forest Service (“Forest Service”) may not adopt the Environmental Impact Statement issued for this project by the Federal Energy Regulatory Commission (FERC) and must take necessary actions to meet all requirements of the National Environmental Policy Act independently of FERC’s action.”

“The environmental analyses, and the record on which the draft ROD is based, fail to provide adequate support for ROD. The record omits vital analyses and fails to meet the needs the Forest Service has described throughout its review process for this project.”

- Southern Environmental Law Center (on behalf of a group of conservation organizations)

“The Forest Service’s approach to the Atlantic Coast Pipeline changed abruptly in 2017. Documents in the record confirm that political pressure at levels above the Office of the Chief and pressure from Dominion Energy, one of the project’s proponents, forced the agency to accelerate its decision even though critical environmental information on resources, and mitigation remained incomplete. The final EIS reflects a hasty and cursory environmental review that leaves many critical questions unanswered. While we are sympathetic that political pressure and pressure from Dominion have been significant, the Forest Service may not avoid its legal responsibilities to fully account for and analyze the likely harm from the Atlantic Coast Pipeline.”

“The draft ROD is based on an incomplete EIS and other incomplete analyses and plans, its issuance is premature. The Conservation Groups object to the release of a premature draft ROD. The final EIS itself and other agency records plainly admit that the effects analyses and mitigation measures are not yet complete. Therefore, the Forest Service has not met its NEPA obligations to publicly disclose and consider impacts and alternatives *before* making a decision.”

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- Wild Virginia

“The USFS proposal to approve the Special Use Permit and plan amendments based on the flawed NEPA process, after the Service itself explained that the DEIS and the information available at that time was insufficient for its purposes and for the public, is the very definition of an arbitrary and capricious act. The Service’s compliance with NEPA and its own regulatory mandates cannot be upheld on such a basis. The only acceptable remedy for the insufficiency of the DEIS in specific aspects described below is for the USFS to issue its own revised DEIS and include the necessary information that was omitted by FERC.”

## **Landowners Sue FERC Challenging Eminent Domain Authority**

A [lawsuit was filed September 5](#) in the Federal District Court for the District of Columbia challenging the constitutionality of the granting of eminent domain powers by the Federal Energy Regulatory Commission (FERC) to interstate natural gas pipelines. The plaintiffs are Bold Alliance, Friends of Nelson and 57 landowners who would be affected by the Atlantic Coast Pipeline (ACP) or the Mountain Valley Pipeline (MVP).

The Natural Gas Act, the federal law governing the awarding by FERC of “certificates of public convenience” to build interstate natural gas pipelines, grants the right of a company receiving such a certificate to acquire property for the project through the exercise of eminent domain power if an agreement has not been reached with a landowner. The Bold Alliance, et.al. lawsuit states that the “constitutionality of the eminent domain provisions hinges on whether a certificate issued by FERC serves a public use. By its own admission, however, FERC does not consider a determination of ‘public use’ to be a necessary part of a grant of a certificate.”

The lawsuit further points out that “Congress did not delegate the power of eminent domain to private entities that have failed to obtain the necessary state and federal approvals for the construction of natural-gas pipelines.” Both the ACP and MVP lack numerous required permits that are not expected to be granted, if at all, until after the targeted date by FERC for acting on the certificate applications of either pipeline. Consequently, the plaintiffs seek a declaratory judgment that “certificate holders do not possess the power of eminent domain if their certificates are conditioned on the receipt of federal or state approvals.” Granting such conditional approvals is a common practice of FERC.

An additional 18 grounds for declaratory judgment are cited by the lawsuit, including:

- A certificate whose primary purpose would be to benefit foreign commerce violates the “takings clause” of the 5<sup>th</sup> Amendment to the Constitution;
- The delegation of eminent domain authority by FERC conditioned on subsequent approvals violates the separation of powers principles of the Constitution; and
- FERC’s refusal to provide impacted landowners access to privileged information filings by an applicant pipeline company violates the landowners’ due process rights.

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

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

#### **Landowners ask federal court to intervene before FERC approves pipeline projects**

- The Roanoke Times – 9/6/17  
[http://www.roanoke.com/business/news/landowners-ask-federal-court-to-intervene-before-ferc-approves-pipeline/article\\_f32e22bf-650d-5a2f-9941-520614274661.html](http://www.roanoke.com/business/news/landowners-ask-federal-court-to-intervene-before-ferc-approves-pipeline/article_f32e22bf-650d-5a2f-9941-520614274661.html)
- Related:
- <http://augustafreepress.com/landowners-sue-ferc-stop- eminent-domain-pipelines/>
- <http://www.naturalgasintel.com/articles/111655-coalition-seeks-to-prevent-ferc-certificates-for-acp-mvp>

#### **Kayakers 'Paddle Against the Pipeline' on the James River**

- NBC29 News – 9/4/17  
<http://www.nbc29.com/story/36287773/kayakers-paddle-against-the-pipeline-on-the-james-river>

#### **A Few Examples Dominion Energy Should Follow...but Probably Won't Unless Forced to Do So**

- Blue Virginia – 9/2/17  
<http://bluevirginia.us/2017/09/a-few-examples-dominion-energy-should-follow-but-probably-wont-unless-forced-to-do-so>  
What other utilities are doing to prepare for the future energy system.

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

#### **City officials discuss pipeline's impact on Roanoke River**

- The Roanoke Times – 9/5/17  
[http://www.roanoke.com/business/news/roanoke/roanoke-officials-discuss-fears-about-pipeline-s-potential-to-add/article\\_51407533-ad4a-5471-ab3d-f7d8cbaa9802.html](http://www.roanoke.com/business/news/roanoke/roanoke-officials-discuss-fears-about-pipeline-s-potential-to-add/article_51407533-ad4a-5471-ab3d-f7d8cbaa9802.html)

#### **Mountain Valley Pipeline highlights construction and safety risks on steep slopes in Roanoke County**

- The Roanoke Times – 9/1/17  
[http://www.roanoke.com/business/news/roanoke\\_county/mountain-valley-pipeline-highlights-construction-and-safety-risks-on-steep/article\\_5a10a265-db17-5ee4-884e-4d6bbdeb363a.html](http://www.roanoke.com/business/news/roanoke_county/mountain-valley-pipeline-highlights-construction-and-safety-risks-on-steep/article_5a10a265-db17-5ee4-884e-4d6bbdeb363a.html)  
Seems like construction of MVP is too costly, too damaging and too dangerous without the additional destruction of protected conservation easements. Hmm.

#### **Radio ads target negative impacts of pipelines on rural communities**

- Augusta Free Press – 9/7/17  
<http://augustafreepress.com/radio-ads-target-negative-impacts-pipelines-rural-communities/>  
The ads targeted poor safety standards and reduced property values.

#### **Chisholm: Who is David Paylor? The man who will decide our pipeline fate**

- Martinsville Bulletin – 9/6/17  
[http://www.martinsvillebulletin.com/opinion/columnists/chisholm-who-is-david-paylor-the-man-who-will-decide/article\\_622a9c16-931f-58a0-b7b3-3c02ad44e0e9.html](http://www.martinsvillebulletin.com/opinion/columnists/chisholm-who-is-david-paylor-the-man-who-will-decide/article_622a9c16-931f-58a0-b7b3-3c02ad44e0e9.html)  
David Paylor, Director of Virginia's Department of Environmental Quality, could be the only thing standing in between Virginia's citizens, its environment and two massive natural gas pipelines.

#### **To Understand Pipeline Economics, Follow the Money (There is NO NEED for New Natural Gas Pipelines in Virginia)**

- Blue Virginia – 9/5/17  
<http://bluevirginia.us/2017/09/to-understand-pipeline-economics-follow-the-money>  
Thomas Hadwin discusses the market and incentives that are pushing oil and gas pipeline development in the region. Need for more gas is not a major factor.

## Big Picture:

### At a moment climate change is hard to ignore, the EPA is being pointed elsewhere

- The Washington Post – 9/7/17  
[https://www.washingtonpost.com/news/politics/wp/2017/09/07/at-a-moment-climate-change-is-hard-to-ignore-the-epa-is-being-pointed-elsewhere/?utm\\_term=.35860afa1990](https://www.washingtonpost.com/news/politics/wp/2017/09/07/at-a-moment-climate-change-is-hard-to-ignore-the-epa-is-being-pointed-elsewhere/?utm_term=.35860afa1990)

### Irma and Harvey should kill any doubt that climate change is real

- The Washington Post – 9/7/17  
[https://www.washingtonpost.com/news/posteverything/wp/2017/09/07/irma-and-harvey-should-kill-any-doubt-that-climate-change-is-real/?utm\\_term=.312e5666c2e6](https://www.washingtonpost.com/news/posteverything/wp/2017/09/07/irma-and-harvey-should-kill-any-doubt-that-climate-change-is-real/?utm_term=.312e5666c2e6)

### Pipelines: Where Even Conservatives Support Eminent-Domain Abuse

- National Review – 9/1/17  
<http://www.nationalreview.com/article/451008/pipelines-eminant-domain-why-wont-virginia-conservatives-stand-dominion>  
The front line in American citizens' struggle against the abuse of eminent domain has shifted to the birthplace of the Bill of Rights.

### Landmark decision orders new environmental review

- The Recorder – 9/7/17  
[https://www.abralliance.org/wp\\_content/uploads/2017/09/Landmark\\_decision\\_orders\\_new\\_environmental\\_review-Recorder\\_20170907.pdf](https://www.abralliance.org/wp_content/uploads/2017/09/Landmark_decision_orders_new_environmental_review-Recorder_20170907.pdf)  
The decision — the first to effectively dispute FERC's greenhouse gas analysis — is expected to broadly influence other pipeline projects.

### Stop saying economic growth will rescue us from climate change

- The Week – 9/7/17  
<http://theweek.com/articles/722979/stop-saying-economic-growth-rescue-from-climate-change>  
While it is correct that greater wealth does help avert and repair damages from natural disasters, it is not *remotely* certain that future wealth will be so plentiful that it will outpace future climate damages.

### Who's Behind Fossil Fuel Extraction? It's Not Just Republicans

- TruthOut – 9/2/17  
<http://www.truth-out.org/news/item/41813-who-s-behind-fossil-fuel-extraction-it-s-not-just-republicans>  
It is becoming ever clearer that protecting the climate will require holding elected officials on both sides of the aisle accountable.

### Gas Attack

- The American Interest – 9/5/17  
<https://www.the-american-interest.com/2017/09/05/gas-attack/>  
True "Big Picture" article discussing the geopolitical pros and cons of the Russo-European energy compromise, American sanctions relating to European cooperation with Russia on energy projects and America's own interest in promoting U.S. LNG as a "solution".  
Related:  
- <https://www.geopoliticalmonitor.com/can-the-eu-shake-its-russian-energy-habit/>

### A former Trump science adviser on his "impeach" message, getting rid of coal, and embracing renewable energy

- Vox – 9/6/17  
<https://www.vox.com/energy-and-environment/2017/9/6/16253762/dan-kammen-impeach>  
Energy expert Dan Kammen weighs in on recent controversies.