



ABRA Update #182 – May 24, 2018

Army Corps Suspends Permit for MVP Crossing Some WV Rivers

The U.S. Army Corps of Engineers has informed the corporation building the Mountain Valley Pipeline (MP) that it was partially suspending an important permit allowing the company to build the pipeline through streams in West Virginia. The action took place after Appalachian Mountain Advocates (Appalmad) notified the Corps that MVP had admitted that it could not complete construction of several major stream crossings in the 72 hours required as a special condition for West Virginia as part of Nationwide Permit 12.

While Appalmad lawyer Derek Teaney argued in a letter to the Corps that this admission required suspension of all NWP 12 permit verifications in West Virginia until a federal court determines whether that permit is unlawful, the Corps only suspended verifications for crossings of four rivers — the Gauley, Greenbrier, Elk and Meadow Rivers—and without a commitment to wait for a court ruling before reinstating those four verifications.

Because the Corps failed to suspend all of the permit verifications covered by West Virginia's special condition, Appalmad filed a motion on May 22 with the U.S. Court of Appeals for the Fourth Circuit seeking such a suspension until the court completes its review of the permit.

ABRA Members Contest ACP's Claim It Can Proceed with Construction

The Atlantic Coast Pipeline, LLC told the Federal Energy Regulatory Commission (FERC) on May 22 that it should be able to proceed with the pipeline project notwithstanding a May 15 Order from the Fourth Circuit Court of Appeals vacating the biological opinion for the project under provision Endangered Species Act. In its Order, the Court said the take limits for endangered species set by the U.S. Fish and Wildlife Service "are so indeterminate that they undermine the Incidental Take Statement's enforcement and monitoring function under the Endangered Species Act." At this writing, the Fourth Circuit has not yet published an opinion setting forth its reasons for the May 15 Order, nor has FERC passed judgment on the [ACP proposal for how it would proceed with construction](#).

Also, on May 22, the Southern Environmental Law Center and Appalachian Mountain Advocates filed with FERC, on behalf of its respective client groups (most of whom are ABRA members), a [letter setting forth the reasons why the agency should not allow construction of the ACP to proceed](#). Noting that the Fourth Circuit has yet to issue an opinion explaining the parameters of its May 15 decision, the letter states:

"FERC also should not assume that it knows what remedy the court will order, nor FWS's response to it. For instance, FERC cannot know if FWS will have to consider additional habitat areas not assessed in the original biological opinion and incidental take statement in order to comply with the court's opinion. FERC puts itself at

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considerable risk by assuming it or Atlantic can predict what the court will order and how that will play out on the ground.

"Allowing pipeline construction to proceed outside areas Atlantic identified as used by endangered species could dangerously lock FERC and Atlantic into a pipeline route that FWS's analysis may require it to change. That is part of the reason the ESA prohibits "any irreversible or irretrievable commitment of resources" during consultation – to ensure the action agency does not wed itself to a proposal that it ultimately cannot complete. FERC should not assume that it is going to be allowed to take species or impact habitat until FWS shows it can issue a valid biological opinion and incidental take statement for this project. As it stands today, this project could not be completed as planned."

The Yellow Lance Mussel: A New Challenge for the ACP

One of the reasons cited in the SELC/Appalmad letter as to why FERC should not to permit construction of the ACP to proceed in light of the Fourth Circuit decision is the recent listing of the yellow lance mussel on the endangered species list. The letter states:

FERC is also not in compliance with Term and Condition No. 18 of the nationwide permit because it has not undertaken formal consultation for the yellow lance, an obligation we brought to FERC's attention on April 30, 2018. Yellow lance is a threatened mussel which "occurs in the ACP project area." Final Environmental Impact Statement, 4-303. "Presence of the yellow lance is assumed in Nottoway River (both crossings) in Virginia, and in Swift Creek, Tar River, Fishing Creek, and Little River in North Carolina."

So, what does a yellow lance mussel look like? Well, it is indeed yellow!



One Week Remains to Comment to Virginia DEQ on Stream Crossings

Next Wednesday, May 30, at 5 pm, is the deadline for comments to the Virginia State Water Control Board to provide input on the adequacy of the U.S. Corps of Engineers Nationwide Permit 12 in protecting streams and wetlands crossed by the Atlantic Coast Pipeline and the Mountain Valley Pipeline. Written comments may be submitted via hand-delivery to DEQ, 1111 East Main Street, Richmond, VA 23219; via postal mail to DEQ, P.O. Box 1105, Richmond, VA 23218; or via e-mail at the following email address(es) ONLY – *emails and attachments sent to other email addresses or internet sites will not be considered*:

- NWP12InfoOnMVP@deq.virginia.gov
- NWP12InfoOnACP@deq.virginia.gov

All ABRA members are urged to file their own comments and encourage their members and constituencies to do so as well. Wild Virginia has prepared an excellent guide to provide assistance: “Suggestions for Comments to DEQ Public Notice Impacts from Waterbody Crossings and Water Quality Standards,” available by clicking [here](#).

Another helpful resource is an impact table of waters potentially affected by the Atlantic Coast Pipeline. The document is published by the U.S. Army Corps of Engineers – Norfolk District and is available [here](#).

Note: As of 4 pm on May 24, the Virginia DEQ website has been down since Tuesday, May 22. Persons seeking to file comments should be aware of that and consider submitting mailed comments should the website problem persist.

FERC Extend Comment Period on Review of Policy for Pipeline Approvals

The Federal Energy Regulatory Commission (FERC) has extended the comment period for receiving input from the public on the agency’s review of its policy on certifying natural gas pipelines and related facilities. The parameters of the FERC review and the original comment deadline of June 25 was set forth in an [April 25 Federal Register Notice](#). The new deadline for comments to be filed is July 25. Further details [here](#).

In the News:

Local/Atlantic Coast Pipeline

New challenges for the disputed Atlantic Coast Pipeline

- Facing South – 5/24/18

<https://www.facingsouth.org/2018/05/new-challenges-disputed-atlantic-coast-pipeline>

Good overview of the last two weeks or so.

Pipeline developer, opponents stake out positions

- The Recorder – 5/23/18

https://www.abralliance.org/wp-content/uploads/2018/05/Pipeline-developer-opponents-stake-out-positions-Recorder_20180523.pdf

Opposition Legal team and Dominion spar over import of 4th Circuit Court decision to vacate ACP’s Incidental Take Permit for threatened and endangered species.

Related:

- <https://www.ecowatch.com/atlantic-coast-pipeline-endangered-species-2571382531.html>

Atlantic Coast Pipeline construction begins with groundbreaking in Lewis County

- WVNews – 5/23/18

https://www.wvnews.com/news/wvnews/atlantic-coast-pipeline-construction-begins-with-groundbreaking-in-lewis-county/article_ba265a2f-35a5-5102-bada-6ef2b66e39cf.html

Ceremony for a compressor station in Jane Lew marks the start of construction in WV.

Dominion Energy files documentation for full construction of ACP

- WDTV5 News – 5/22/18

<http://www.wdvt.com/content/news/Dominion-Energy-files-documentation-for-full-construction-of-ACP-483342701.html>

"We have filed our response, identifying by milepost the areas we are committing to avoid. Per FERC and USFWS, because this information contains the locations of sensitive species which are customarily treated as privileged and confidential, this information is not being released to the public," officials stated in part.

Atlantic Coast Pipeline Faces Civil Rights Complaint After Key Permit Is Blocked

- Inside Climate News – 5/18/18

<https://insideclimatenews.org/news/18052018/atlantic-coast-pipeline-natural-gas-civil-rights-environmental-justice-epa>

Opponents of the gas pipeline say state and federal agencies failed to assess the health impacts the project would have on minorities, as required under federal law.

Audio: Will Cleveland of SELC on Dominion's Sleazy Self-Dealing, \$2 Billion Cost to "Captive Customers" of Atlantic Coast Pipeline; No New Jobs or Economic Growth

- Blue Virginia – 5/19/18

<https://bluevirginia.us/2018/05/audio-will-cleveland-of-selc-on-dominions-sleazy-self-dealing-2-billion-cost-to-captive-customers-of-atlantic-coast-pipeline-no-new-jobs-or-economic-growth>

The means by which Dominion has "gamed the system" to garner support and permits for its project continue to come to light. The facts aren't flattering.

Regional/Mountain Valley Pipeline, other

New challenge to MVP project questions river crossing permit

- Charleston Gazette-Mail – 5/22/18

https://www.wvgazettemail.com/news/new-challenge-to-mvp-project-questions-river-crossing-permit/article_c9273f46-5a05-5707-be52-60142674d0d3.html

The motion for stay relates to disturbance time and flow requirements set by both the U.S. Army Corps of Engineers and WVDEP.

Another Mountain Valley Pipeline protest is off the ground in Giles County

- The Roanoke Times – 5/21/18

http://www.roanoke.com/news/local/giles_county/another-mountain-valley-pipeline-protest-is-off-the-ground-in/article_8915aad0-7255-5013-be0b-c2d0305db16a.html

"I do know that one person taking action inspires another, and another action inspires another."

Pipeline protester known as 'Nutty' has come down from her pole in Giles County

- The Roanoke Times – 5/23/18

http://www.roanoke.com/news/local/franklin_county/pipeline-protester-known-as-nutty-has-come-down-from-her/article_070coa45-229a-57e3-a852-d25ceed100a6.html

In recent weeks, Nutty had been surviving on a supply of energy bars and rainwater that she collected from a tarp covering her small living space.

Construction halted at Mountain Valley Pipeline work site following severe erosion in Franklin County

- Richmond Times-Dispatch – 5/20/18

<http://www.richmond.com/news/virginia/construction-halted-at-mountain-valley-pipeline-work-site-following-severe/2de60a02-b394-5efd-beda-f5c6f68e17c8.html>

As predicted, heavy rains resulted in massive erosion along portions of the MVP corridor that was already under construction. DEQ investigating why erosion and sediment controls did not work. "It's clearly unacceptable," Ann Regn, a spokeswoman for the Virginia DEQ, said Sunday.

Related:

- <http://www.wdbj7.com/video/?vid=483092731&vid=483092731>

DEQ apparently claims no sediment made it to any streams...what's that in the background?

Letter: Regulators bowed to pipeline company pressure

- The Roanoke Times – 5/20/18

http://www.roanoke.com/opinion/letters/letter-regulators-bowed-to-pipeline-company-pressure/article_daa12447-e91f-5922-83d7-afcef36853dc.html

Judge Gregory saw what citizens have seen for years; that regulatory agencies have abandoned their own experts and caved to pressure from pipeline proponents.

Big Picture:

NASA head: 'No reason to doubt' climate change science

- The Hill – 5/24/18

<http://thehill.com/policy/energy-environment/389168-nasa-head-no-reason-to-doubt-climate-change-science>

(Because now he's been confirmed!)

Related:

- <https://www.theatlantic.com/science/archive/2018/05/trump-nasa-climate-change-bridenstine/560642/>

FERC Takes a Step Backward on Environmental Impacts

- Natural Resources Defense Council – 5/21/18

<https://www.nrdc.org/experts/gillian-giannetti/ferc-takes-step-backward-environmental-impacts>

Good explanation of some arcane stuff. RTO article has additional useful info.

Related:

- <https://www.rtoinsider.com/ferc-ghg-emissions-gas-pipelines-richard-glick-cheryl-lafleur-92861/>

New Jersey asks appeals court to review FERC's approval of PennEast pipeline

- StateImpact: Pennsylvania – 5/22/18

<https://stateimpact.npr.org/pennsylvania/2018/05/22/new-jersey-asks-appeals-court-to-review-fercs-approval-of-penneast-pipeline/>

FERC erred in awarding Public Convenience and Necessity certificate, AG says

Climate Change Warriors' Latest Weapon of Choice Is Litigation

- Bloomberg – 5/24/18

<https://www.bloomberg.com/graphics/2018-climate-change-lawsuits/>

From California to the Philippines, activists, governments and concerned citizens are suing the biggest polluters and national governments over the effects of climate change at a break-neck pace.

Grid 'seams' still a challenge for long-distance transmission developers

- Energy News Network – 5/21/18

<https://energynews.us/2018/05/21/midwest/grid-seams-still-a-challenge-for-long-distance-transmission-developers/>

"...generation is effectively trapped within regional transmission operator boundaries, and that can deprive customers from the cheapest and most-efficient source of power." Like the cheap wind power from the Mid-West to which we should have access.

IEA: Clean Energy Tech Falling Short Of Climate Goals

- OilPrice – 5/23/18

<https://oilprice.com/Latest-Energy-News/World-News/IEA-Clean-Energy-Tech-Falling-Short-Of-Climate-Goals.html>

Last year, solar PV showed record 34-percent growth in power generation and is well on track to meet climate targets. It's the only major technology on track to change the game.

Related:

- <https://cleantechnica.com/2018/05/24/solar-becomes-3-renewable-electricity-source-in-usa-passing-up-biomass/>

Renewable energy jobs hit record high

- The Construction Specifier – 5/24/18

<https://www.constructionspecifier.com/renewable-energy-jobs-rise/>