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540-292-4170  
May 29, 2018

Virginia Department of Environmental Quality  
Virginia State Water Control Board  
Richmond, Virginia

Dear DEQ staff and members of the State Water Control Board,  
Thank you for opening up an additional comment period on the ACP and the MVP projects in Virginia. I have spoken to the water control board and have commented to DEQ on numerous occasions in regard to the importance of water quality as it relates to the construction and operation of these two pipelines. I am particularly concerned about my county of Augusta— one of the most impacted regions on the entire ACP route. There are 189 individual stream crossings in Augusta County on the ACP. Any other pipeline project with a stream crossing would have to submit a joint permit for EACH crossing. Simply put, this has not been done. Therefore the unique attributes of each stream: its hydrology, its soil cross section, its flood history, its species, its historic resources has not been done.

However, to simplify my comments during this additional comment period, I am going to refer specifically only to those 48 non-tidal waterways and wetlands located on the Virginia portion of the ACP that were inappropriately permitted by the Virginia Marine Resources Commission on March 16, 2018. In that hearing, VMRC staff specifically stated that DEQ had looked at those crossings in great detail. As you know that is not the case. As I related to the Water Control Board at your last meeting, every agency is relying on the other agency to take the in-depth look at individual stream crossings that is required by law. The result is that no one is looking and no one is accountable. Fourteen of those 48 VMRC regulated stream crossings are in Augusta County. VMRC admitted to me that they did not visit a single one of those crossings and yet felt confident that the water quality would not be compromised by the ACP construction or operation. How could they know that without looking at the unique nature of each stream individually?

For this reason I have filed an appeal to the VMRC. A copy of that appeal is attached. Please consider this letter, and that appeal as my comments for your additional comment period. As to specific water crossings, I have included the VMRC list of state regulated waters, the permitting of which is the subject of my appeal to that agency. As those waters are a subset of all of the Commonwealth's waters that are being crossed by the ACP, please consider my specific references to specific waterways to be those 48 waterbodies.

Sincerely,



Nancy Sorrells

Co-Chair Augusta County Alliance

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April 22, 2018

Michele Guilford, Agency Secretary  
Virginia Marine Resources Commission  
2600 Washington Ave., 3<sup>rd</sup> Floor  
Newport News, Virginia 23607

To: Michel Guildford, VMRC Agency Secretary

Please consider this an appeal of the Virginia Marine Resources Commission decision to permit 48 non-tidal streams, and/or rivers with drainage areas greater than 5 square miles, and 3 tidal streams and approximately 1.6 acres of tidal wetlands along the designated Atlantic Coast Pipeline corridor in Highland, Bath, Augusta, Nelson, Buckingham, Prince Edward, Cumberland, Nottoway, Dinwiddie, Brunswick, Greensville, and Southampton Counties and the cities of Chesapeake and Suffolk. That permit hearing was held on March 16, 2018. As provided in Rule 2A:2 of the Administrative Process Act, I have 30 days from the date of service of this decision to initiate an appeal. The letter serving notice of the decision was dated March 20, 2018. As that letter stated, "In the event that this decision is served on you by mail, three days are added to the 30-day period." That would make the deadline to appeal the end of the business day on April 23, 2018.

The reason for the appeal is as follows:

1. The process by which the agency conducted this permitting review did not include adequate gathering and analysis of scientific information. As a result the board was in no way properly prepared to make a decision that supports the VMRC mission (and upholds the law in the Commonwealth of Virginia):

*The Marine Resources Commission serves as stewards of Virginia's marine and aquatic resources, and protectors of its tidal waters and homelands, for present and future generations.*

The staff report provided to the VMRC board and on which the board was supposed to draw information for its vote on the permit was flawed and inadequate. The entire report was seven pages in length. With the exception of visits to the tidal areas under review, staff apparently did not visit a single site and instead relied upon the reports of other agencies and dealt in generalities without specific examination of the 48 non-tidal crossings and river bottoms. Dominion's application and the staff's seven-page report do not sufficiently address key categories of impacts, making a complete review on March 16, 2018, an impossible task.



Further, the information given to the board in the staff report was misleading. For instance, on page 5 of the staff report, it says:

*“The U.S. Army Corps of Engineers issued its Nationwide 12 Permit on February 9, 2018, for the wetland and stream crossings associated with the project pursuant to Section 404 of the Clean Water Act. The Department of Environmental Quality (DEQ) waived the requirement for an individual Virginia Water Quality Permit, for this component of the project, since they had previously provided 401 Certification for the Nationwide 12 Permit. In addition to this approval, the State Water Control Board considered this project at hearings conducted on December 11 and 12, 2017. At the conclusion of the hearing, the Board issued a 401 water quality certificate with a delayed effective date conditioned on DEQ’s review and final approval as required by law of the Karts Mitigation Plan, Annual Standards and Specifications, Stormwater Management Plans, and Erosion and Sediment Control Plans. DEQ must also report to the board and the public on the adequacy of these plans before the 401 certificate will take effect.”*

This information is incorrect and, as such, could lead the VMRC board to inappropriate conclusions and an inappropriate action. The fact is that at the December 12, 2017, hearing the State Water Control Board specifically reserved the right to have further input and action on individual stream crossings. This point was reiterated at the SWCB’s April 12, 2018, meeting. (See the SWCB minutes for evidence of this.) Further, there is continued discussion and questions in regard to whether or not the SWCB will be able to review those additional plans and whether or not the public will also have that opportunity.

It appears that every board and agency is pointing to the other agency as the one accountable for overseeing the ACP project with the end result being that no one is accountable for the waters of Virginia and for the protection of the quality of those waters. The VMRC pipeline review of regulated waters comes under the “public trust” doctrine, meaning that the ACP may not unnecessarily monopolize the resources it impacts to the complete detriment of other public uses (e.g. fishing, swimming, drinking water). Review of those impacts, and the balancing of disparate uses of those resources, is NOT being done by anybody. And, further, the public has not been allowed to provide any meaningful input.

There were 48 non-tidal waterways and wetlands being considered by the board. The staff report’s only comment on this was as follows: “Relative to the non-tidal crossings, however, staff agrees with certain of FERC’s findings and finds that the large number of stream crossings proposed by ACP will minimally result in the temporary disruption of multiple streams and their associated aquatic habitats along the proposed route during construction.”

How could staff know that?

2. VMRC conducted few if any individual site visitations on the non-tidal waters that it was permitting. I know of no landowner from Buckingham County west to the West Virginia line who received a VMRC staff visit before the report was made. This was not because of a lack of invitation. Numerous landowners begged VMRC staffer Randal Owen to visit their properties, observe the situation on the ground, and gather information. This did not take place.

I attended the March 16, 2018, meeting in Newport News. Afterward I asked the VMRC staff person (Randal Owen) who prepared the report and made the presentation and recommendation to the board how many of the stream crossings in Augusta County he had visited. There are 14 distinct stream crossings (meaning 28 stream entries, one on each bank) and 26 distinct landowners. It took him quite a while to answer. He mumbled something about DGIF...and I asked him again how many he visited. He said "Why are you doing this to me?" I repeated my question. He said again, "Why are you doing this to me?" I repeated my question. His answer was "None."

In lieu of visitations, many affected landowners sent detailed information including hydrology reports, maps, and photographs. Those are all part of the public record. Here is what one landowner had to say about what he sent to VMRC:

(from Ron Houser, Augusta County) *"Just like it appears others have done, I wrote VMRC a letter criticizing the packet of materials they sent for adjacent landowners to review. As an Authority Having Jurisdiction (AHJ) in this state for projects of this nature, I found the packet and information provided to be a "lame" effort at best from the VMRC to solicit input from adjoining landowners on this application. In my letter to them, I also pointed out the inadequacies of their drawings. The drawings were basically unreadable, lacking all types of engineering information, and full of errors (roads named incorrectly, surveying markers not actually matching what was in the field, etc.) There was no mention of construction methods for stream crossings, etc. One area they have identified as a "designated extra work space" that extends all the way to the creek has a straight down 10-15 foot cliff to the creek. For this reason, I criticized them for allowing the use of 5 foot topos, which do not adequately reflect the topos of stream banks and bottoms, must less their steepness and erosion potential. I pointed out to them that, even though I am not a wetland "guru" by any means, that I thought they had a wetland beside Folly Mills Creek had been incorrectly surveyed and identified. They had it at 19 feet. Based on skunk cabbage, box elder and sycamore tree growth, with dark black soils, I put the width of the wetland at about 150 feet. There was no review or identification of flood plains, etc. I honestly felt like this AHJ was merely going "through the motion" of soliciting input and I told them so. I felt like the information provided by the applicant for the permit was haphazardly done at best, full of errors, and truly lacked any information you would expect for a comprehensive review by a state agency."*



Another landowner (John Cowden from Bath County) noted this: *I was sent a large package of drawings that detailed the elevation profile of (on my page) the Cowpasture River crossing. Given the scale of the drawings it was actually difficult to determine exactly where the river was located. There were absolutely no details given as to what engineering practices were to be used when crossing the Cowpasture.*

Suffice to say that there was A LOT of information sent in by dozens and dozens of landowners with impacted jurisdictional waters. The proper thing to do, especially in light of there being no on-site visitation by the permitting agency, would have been to incorporate this information into the staff report and provide it both in written format and in the hearing presentation to the VMRC board, so those members could be thoroughly educated as to the specific waters that they were voting to permit. Unfortunately, this was not done.

Not only were these informational letters not used for their intended purpose – that of helping the board make an informed decision – they were, embarrassingly enough, stamped “protest” and then tallied as either “for” or “against” the pipeline. Mr. Owen turned the public comment portion of the permitting process into a popularity contest on the ACP. His report in regard to the public comments barely reached above the level of “this many supported the pipeline” and “this many were against the pipeline.”

I have included under **EXHIBIT A**, seven landowner letters from Augusta, Nelson, and Bath Counties. As you can see, despite the fact that several of these letters presented very significant scientific information that should have been brought to the attention of the board, these were simply stamped “protest” and counted. Mass produced postcards sent by Dominion supporters appeared to carry the same weight as landowners whose private property contained state regulated waters that were going to be impacted by a 42-inch natural gas pipeline. Is that how the system is supposed to work?

3. Affected landowners were deprived of due process. When I spoke to the VMRC board, I noted that it appeared that some landowners were told by Mr. Owen that they would be notified as to the date, time, and place of the permit hearing. This never took place. I have since learned that this was not an isolated incident. Several others were told to expect further communication and never received the promised information. (EXHIBIT B is the letter from Mr. Owen to Scott Ballin explaining that he would be notified of the hearing.) These impacted landowners, then, were deprived of the opportunity to come before the VMRC and participate in the process. Mr. Ballin, specifically, communicated with Mr. Owen and the board in the days leading up to the March 16 hearing and explained that, because he was not notified of the hearing date, he was unable to rearrange his work schedule for time off for the almost five-hour drive (one way).

After the VMRC hearing was completed, I asked Mr. Owen about this apparent inconsistency between his letter to Mr. Ballin that promised a follow-up letter with the

information about the hearing and the fact that Mr. Ballin (and now I know that there were others as well) never received that subsequent information. Our interaction went like this: He hemmed and hawed and mumbled things about email, etc. Finally I said, "Are you telling me that the letters got LOST in the mail?" He said that must have been the case. I said that was funny because the original letter from you about the permit arrived and so did the follow-up letter noting that you would contact them about when a hearing was to take place. Funny that the THIRD letter would get lost....

4. VMRC ignored numerous citizen requests to hold the hearing in the western portion of the state. There were numerous requests by landowners and by the petition presented by Bold Alliance to hold at least a portion of the ACP hearing in close proximity to the affected landowners. Not only was this request not granted, it was never even acknowledged. That landowners would be forced to drive five or more hours, one way, in order to provide basic educational information to the VMRC board is not only absurd, it flies in the face of due process. It should be easy for citizens to have their say about their property, not hard. It begs the question of who the VMRC represents: the citizens of Virginia and the Commonwealth's public waters or a private corporation?
5. Without doing the research and site visits for these waterways, there is no way for the VMRC board to have been able to reach a decision that these public river bottoms would be adequately protected. I cite as evidence the legal brief filed April 17, 2018, in the U.S. Court of Appeals for the Fourth Circuit *Appalachian Voices, et al vs. Virginia State Water Control Board*. I have attached a copy of that brief for your information.

The evidence cited in this legal brief was readily available to VMRC staff and the board. Would having this knowledge have made a difference in the vote? Two of the waterways in Augusta – Back Creek in the eastern part of the county and the Calfpasture in the western part of the county – figure prominently in the legal brief. Both of these waterways have crossings that are among the 48 non-tidal waters that were being considered by the VMRC board.

Here is what the brief says about each: *"On the west side of the Blue Ridge in Augusta County, the pipeline and access roads will intersect Back Creek and its tributaries 49 times...even though aquatic life in the creek is already impaired because of sedimentation and could be 'exacerbated' by the proposed pipeline construction and maintenance."* (pg. 36)

*"In the Calfpasture River watershed, Hamilton Branch and its tributaries have 31 pipeline and access road crossings over approximately three miles, and the main channel of the Calfpasture River and its tributaries have another 40 crossings over eight miles, bringing the total number of crossings to a remarkable 71 for the watershed."* (pg. 36)



I realize that your jurisdiction is limited to just 51 of the ACP's 889 waterbody crossings in Virginia, however, in my opinion that only puts more burden on the VMRC staff and board to closely examine those specific waters. Despite Dominion's insistence that this is the most evaluated project of its kind in the history of the state, this is simply not true. VMRC is abdicating its authority to DEQ and the Army Corps of Engineers; DEQ is abdicating its authority to a Nationwide 12 blanket permit. The end result is that NO ONE is looking at individual stream and wetland crossings. No one is looking at the 189 individual stream and 48 individual wetland crossings in Augusta County and no one is looking at the 51 jurisdictional waters under review by the VMRC. No one is looking at the impacts to the Commonwealth's waters and no one is listening to the people. The Commonwealth will pay a high price for this – much higher than the \$3 per linear foot that VMRC is assessing Dominion as a "royalty assessment" to encroach on 9,149 linear feet of state-owned subaqueous land." What a bargain for Dominion. What a shame for our future generations.

Thank you for allowing this opportunity for an appeal. Please let me know what the next step in the appeal process is for this matter.

Sincerely,



Nancy Sorrells  
Augusta County Alliance

Attachments: Exhibit A Seven landowner letters that were filed with VMRC  
Exhibit B: Letter from Randal Owen, VMRC staff, to landowner Scott Ballin  
informing him that he would be notified about the ACP permit hearing.  
Legal brief filed in the Fourth Circuit Court on April 17, 2018.

Cc (by email):

Steve Bowman, VMRC Commissioner  
The Honorable Matt Strickler, Secretary of Natural Resources  
Virginia Governor Ralph Northam  
Virginia Senator Emmett Hanger  
Virginia Delegate Dickie Bell  
Virginia Senator Creigh Deeds  
U.S. Senator Tim Kaine  
U.S. Senator Mark Warner  
U.S. Congressman Bob Goodlatte