



ABRA Update #192 – August 9, 2018

Court Vacates Key Permits for ACP

A key permit for the Atlantic Coast Pipeline (ACP) was [vacated on August 6 by the U.S. Court of Appeals, Fourth Circuit in a unanimous decision \(3-0\)](#). The Court declared that the National Park Service’s (NPS) permit authorizing the ACP to cross under the Blue Ridge Parkway (BRP) and Appalachian National Trail (ANT) was arrived at with improper justification and should be deemed invalid. In the same opinion, the Court explained the reasons for its May 15 decision to vacate the Fish and Wildlife Service’s (FWS) biological opinion on threats to endangered species. As with the NPS decision, the Court faulted the NPS for not providing valid reasons why the ACP’s crossing of the BRP and ANT were consistent with the agency’s own standards.

The ruling was on a case brought by the Southern Environmental Law Center (SELC) on behalf of Defenders of Wildlife, Sierra Club and Virginia Wilderness.

In explaining its May 15 Order vacating the FWS’s Incidental Take Statement (ITS) regarding on threatened species protected by provisions of the Endangered Species Act, the Court said:

We find that FWS has failed to create proper habitat surrogates, failed to explain why numeric limits are not practical, and failed to create enforceable take limits for the Clubshell, the Rusty Patched Bumble Bee, the Madison Cave Isopod, the Indiana Bat, and the Northern Long-Eared Bat. Because FWS’s vague and unenforceable take limits are arbitrary and capricious, we vacated the ITS pending the issuance of this opinion.

The Court’s opinion on the NPS permit for the ACP to be tunneled underneath the BRP and ANT faulted the NPS’s reading of its statutory authority and explicitly stated that the petitioners’ arguments were “a more than reasonable interpretation” of relevant statutes.

One of the more interesting parts of the Court’s opinion was in a footnote on page 40:

As noted previously, FERC’s authorization for ACP to begin construction is conditioned on the existence of valid authorizations from both FWS and NPS. Absent such authorizations, ACP, should it continue to proceed with construction, would violate FERC’s certificate of public convenience and necessity.

On August 6, SELC and Appalachian Mountain Advocates, on behalf of their respective client groups (most of whom are ABRA members) [wrote the Federal Energy Regulatory Commission \(FERC\) urging the agency to issue a stop work order](#) for all aspects of the Atlantic Coast Pipeline:

<p>Volunteer for ABRA’s Pipeline CSI Program</p> <p><u>Volunteer</u></p>	<p>Submit a report to the Pipeline CSI</p> <p><u>Report</u></p>	<p>Stay informed, like us on Facebook.</p> 	<p>Support ABRA financially</p> <p><u>GiveNow</u></p>
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As a result of the Court’s decision today, Atlantic is no longer in compliance with mandatory conditions of its Certificate of Public Convenience and Necessity, and the Commission must halt all construction activities. Environmental Condition 10 of the Certificate Order, 161 FERC ¶ 61,042, p. 137 (Oct. 13, 2017), requires that Atlantic “receive all applicable authorizations required under federal law” before it can “receive written authorization” to commence construction. The Fourth Circuit has now vacated a right-of-way permit from the National Park Service and the Incidental Take Statement from the U.S. Fish and Wildlife Service. Both of these permits are mandatory authorizations required under federal law.

[Dominion Energy responded on August 7 with a letter to FERC](#) saying that it expected “that the NPS will promptly re-issue the permit, with the appropriate explanation to address the concerns raised by the Court.” Continuing, the company wrote:

Atlantic does not expect the NPS to require any additional information or engage in any further public proceedings before taking action on remand. In addition, no NEPA (National Environmental Policy Act) review (or related evaluation of alternatives) is required, as the NPS finding of a Categorical Exclusion is unaffected by the Court’s decision.

At this writing, FERC has not reacted to the 4th Circuit Opinion.

State Water Control Board to Meet August 21

The Virginia State Water Control Board’s (SWCB) next regular meeting is scheduled for Tuesday, August 21, beginning at 9:30 am, at the Pocahontas Building, First Floor House Committee Room, 900 East Main Street, Richmond, VA 23219. The [tentative meeting agenda](#) includes the following items at the end of the meeting:

VII. Mountain Valley Pipeline/Atlantic Coast Pipeline Reports Nationwide Permit 12 Comment Period Update in Response to April 12 Requests from Board

VIII. Other Business Future Meetings (September 20 and December 13)

IX. Public Forum

ADJOURN

A summary of the more than 13,000 comments filed with the Virginia Department of Environmental Quality on the adequacy of the U.S. Army Corps of Engineers’ Nationwide Permit 12 for the ACP is being prepared for the SWCB’s review and is to be made available to the public. At this writing, the summary is not available. It is also not known what action, if any, will be taken by the SWCB in response to the comments that were submitted.

Comment for Virginia Compressor Station Opens

A five-week comment period on a draft permit for air emissions from the proposed ACP compressor station in Buckingham has been announced. The comment period opened August 8 and will close on September 11. Further details, including a link to the draft permit, are available [here](#). The agency plans on holding a public hearing on the proposal on September 11 at the Buckingham County Middle School. No action on the draft permit will be taken until sometime after the close of the comment period.

In the News:

Local/Atlantic Coast Pipeline

Federal Court Throws Out Another Key ACP Permit; ACP faces same problems plaguing now-halted MVP

- Southern Environmental Law Center – 8/6/18

<https://www.southernenvironment.org/news-and-press/press-releases/federal-court-throws-out-another-key-acp-permit>

ACP is now lacking two key federal permits that are required for FERC's certificate of Public Convenience and Necessity...the main permit authorizing construction of the project.

Related:

- <https://www.virginiamercury.com/2018/08/06/fourth-circuit-strikes-again-atlantic-coast-pipeline-permit-vacated/>

Court ruling won't stop ACP work

- The Robesonian – 8/6/18

<https://www.robsonian.com/news/114117/court-ruling-wont-stop-acp-work>

ACP spokesman Aaron Ruby vows that construction will continue, oozes confidence that new permits will be received quickly.

Court of legal, and public, opinion counts

- The Recorder – 8/9/18

<https://www.abralliance.org/wp-content/uploads/2018/08/Court-of-legal-and-public-opinion-counts-Recorder20180809.pdf>

Project owners feel confident they'll be able to get back to the drawing board and secure the permits they need to proceed. The MVP is at a standstill until that happens. The ACP should be, too.

Private pilots, drone operators to patrol Atlantic Coast Pipeline for violations

- The News & Observer – 8/3/18

<https://www.newsobserver.com/news/business/article215991435.html>

The initiative is known as the North Carolina Pipeline Watch.

Why is an energy company asking for permission to destroy a masterpiece?

- The Washington Post – 8/7/18

https://www.washingtonpost.com/blogs/all-opinions-are-local/wp/2018/08/07/dominion-we-have-to-destroy-the-picasso-to-save-the-picasso/?noredirect=on&utm_term=.8a25cce767cf

Regional/Mountain Valley Pipeline, other

Mountain Valley Pipeline responds to stop work order

- NBC 10 News – 8/6/18

https://www.wsls.com/news/virginia/mountain-valley-pipeline-responds-to-stop-work-order?_vfz=medium%3Dsharebar

Developer says it is confident that the U.S. Forest Service and Bureau of Land Management made the right decisions initially, and that they will be able to satisfy the Fourth Circuit Court's requirements in short order.

Limited work continues on Mountain Valley Pipeline following stop-work order

- The Roanoke Times – 8/6/18

https://www.roanoke.com/news/local/limited-work-continues-on-mountain-valley-pipeline-following-stop-work/article_3ca7f5a9-a065-5d42-bde2-d7de8136192f.html?utm_medium=social&utm_source=facebook&utm_campaign=user-share

Under rules imposed by the Virginia Department of Environmental Quality, the company has seven days to make sure that appropriate erosion and sediment control measures are in place at the soon-to-be dormant construction areas.

Landowners swamped by erosion denied injunction against Mountain Valley Pipeline

- The Roanoke Times – 8/8/18

https://www.roanoke.com/news/local/franklin_county/landowners-swamped-by-erosion-denied-injunction-against-mountain-valley-pipeline/article_1045a0d1-f0b7-5922-99e6-ec0fd6e8f4ab.html

Wendell and Mary Flora, Glenn and Linda Frith and Michael and Frances Hurt claim their land was swamped in mid-May, when heavy rains left nearby Cahas Mountain Road covered with about 8 inches of mud.

Editorial: Pipeline opponents and the governor are talking two different languages

- The Roanoke Times – 8/9/18

https://www.roanoke.com/opinion/editorials/editorial-pipeline-opponents-and-the-governor-are-talking-two-different/article_859e665f-a9f2-5085-86ec-0748a4ad5df5.html

Argument: It's not *Northam* that needs to be convinced that the ACP and MVP aren't needed. It's the business community.

Big Picture:

Report: Trump to nominate DOE policy head McNamee to FERC

- Utility Dive – 8/8/18

<https://www.utilitydive.com/news/report-trump-to-nominate-doe-policy-head-mcnamee-to-ferc/529701/>

McNamee helped roll out the DOE's ill-fated coal and nuclear bailout plan that was unanimously rejected by FERC in January. That DOE bailout plan was a litmus test for potential nominees, according to Politico.

Corporations Increase Green Energy Purchases, Overshadowing Trump's Environmental Policies

- Forbes – 8/9/18

<https://www.forbes.com/sites/kensilverstein/2018/08/09/corporations-increase-green-energy-purchases-overshadowing-trumps-environmental-policies/#251a67b73498>

"Corporations, generally, view the Trump administration as an aberration..."

Oil pipeline inspection industry 'going wrong' as surveys fail to prevent spills

- Climate Home News – 8/7/18

<http://www.climatechangenews.com/2018/08/07/oil-pipeline-inspection-industry-going-wrong-surveys-fail-prevent-spills/>

According to industry insiders and a prominent accident investigator, oil pipeline inspection companies may be overstating their ability to find pipeline defects.

FERC Waives New York's Authority, Clearing Path for Northern Access Project

- Natural Gas Intelligence – 8/7/18

<http://www.naturalgasintel.com/articles/115346-ferc-waives-new-yorks-authority-clearing-path-for-northern-access-project>

While the project still faces an uphill battle, the order clears a path toward construction, which had been on hold without the Section 401 Water Quality Certification. The New York Department of Environmental Conservation denied the WQC early last year.

Scientists Have Uncovered a Disturbing Climate Change Precedent

- The Atlantic – 8/6/18

<https://www.theatlantic.com/science/archive/2018/08/earths-scorching-hot-history/566762/>

During the rise of mammals, Earth's temperatures spiked in a scary way that the planet may experience again soon.

Solar Geoengineering May Be Our Last Resort for Climate Change. What If It Doesn't Work?

- New York magazine – 8/8/18

<http://nymag.com/daily/intelligencer/2018/08/solar-geoengineering-climate-change.html>

Related:

- <https://www.vox.com/2018/8/8/17662208/volcanoes-geoengineering-climate-change-food-crops>

Clean energy is catching up to natural gas

- Vox – 8/8/18

<https://www.vox.com/energy-and-environment/2018/7/13/17551878/natural-gas-markets-renewable-energy>

The natural gas “bridge” to sustainability may be shorter than expected.