



## *ABRA Update #198 – September 21, 2018*

### **Review of Reissuance of ACP Permits Requested**

Permits for the Atlantic Coast Pipeline (ACP) that were issued by the National Park Service (NPS) and the Fish and Wildlife Service (FWS) and were struck down last month by the Fourth Circuit of the U.S. Court of Appeals were reissued this past week. The Federal Energy Regulatory Commission (FERC) followed-up on September 17 by lifting the stop work order for the project that had been imposed on August 10. Construction activity on the ACP has resumed in West Virginia and North Carolina.

On September 19, in response to the FERC action, the Southern Environmental Law Center, representing the Sierra Club and the Virginia Wilderness Committee, filed with the Fourth Circuit a joint petition asking for review of the reissued permits to determine if they comply with the objections the Court had expressed in striking down the original permits.

The Fourth Circuit vacated the two permits on August 6, stating the following:

- Regarding FWS’s biological opinion on threats to endangered species, 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.”
- In striking down the NPS’s permit to allow the ACP to cross the Blue Ridge Parkway and the Appalachian Trail, the Court faulted the agency’s reading of its statutory authority and explicitly stated that the petitioners’ arguments were “a more than reasonable interpretation” of relevant statutes.
- The Court also observed that “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.”

A copy of the SELC joint petition for review of the NPS’s new permit for the ACP is available [here](#). A copy of the petition for on the new FWS biological opinion is available [here](#). Both petitions include as an attachment a copy of the new permits issued by the respective agencies.

<p><i>Volunteer for ABRA’s Pipeline CSI Program</i></p> <p><b><u>Volunteer</u></b></p>	<p><i>Submit a report to the Pipeline CSI</i></p> <p><b><u>Report</u></b></p>	<p><i>Stay informed, like us on Facebook.</i></p> 	<p><i>Support ABRA financially</i></p> <p><b><u>GiveNow</u></b></p>
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## **Court to Hear Challenges to ACP Forest Service, Water Quality Permits**

Next Friday, September 28, two important cases on the fate of the Atlantic Coast Pipeline will be argued before the Fourth Circuit of the U.S. Court of Appeals in Richmond. The first case to be argued challenges the Virginia State Water Control Board's decision on December 12, 2017 to certify that the ACP will not violate state water quality standards. The principal argument of the plaintiffs in the case, most of whom are ABRA members that are represented by Appalachian Mountain Advocates (Appalmad) and the Southern Environmental Law Center (SELC), is, [as set forth in their brief](#):

The Clean Water Act requires a state certifying a project under Section 401 of the Act to have 'reasonable assurance' that state water quality standards will not be violated. The Section 401 Certification issued by the Department of Environmental Quality (DEQ) and the Board is arbitrary and capricious because it was issued without a basis for a finding of reasonable assurance.

1. The Board invalidated its prior finding of reasonable assurance when it voted on April 12, 2018 to open a comment period on whether reliance on the U.S. Corps of Engineers' Nationwide Permit 12 was adequate to protect Virginia's water quality from impacts of pipeline crossings.
2. The Board lacked reasonable assurance because the DEQ did not assess the combined impacts on water quality likely to result from multiple areas of pipeline construction activities within individual watersheds.
3. An adequate antidegradation review was not conducted. Therefore, issuance of a 401 certification for the ACP was arbitrary and capricious.
4. There was a failure by Virginia authorities to ensure that water quality will be protected in fragile karst geology.

The second case that is scheduled for argument on September 28 challenges the U.S. Forest Service's issuance of a permit to allow the ACP to cross the Monongahela and George Washington National Forests. The plaintiffs in this case, also represented by SELC and Appalmad, [argue in their brief](#) that:

1. The Forest Service's amendments to Land Management Plans to the two affected National Forests so that the Atlantic Coast Pipeline can cross the Forest lands unlawfully bypassed applicable federal law.
2. The Forest Service refused to study pipeline routes that avoid the National Forests in violation of the National Environmental Protection Act (NEPA) and allowed a right-a-way across the Appalachian Trail without statutory authority.
3. The Forest Service dismissed landslide and erosion risks in violation of NEPA based on vague mitigation it knew to be implausible.

## Hands Across the Appalachian Trail to be Held September 22

The third Annual “Hands Across the Appalachian Trail” has been announced for Saturday, September 22, from 10:30 am to 12:30 pm at the Humpback Rocks Visitor Center, located at Milepost 5.8 on the Blue Ridge Parkway. The event is designed to highlight the necessity of protecting the Appalachian Trail from the unwanted onslaught of natural gas pipelines. Participation is free, and no registration is required.

The event is sponsored by Appalachian Voices, Sierra Club Virginia Chapter, Wild Virginia, Friends of Nelson, Allegheny Blue Ridge Alliance, CCAN, Piedmont Group Sierra Club and other groups. For more information, contact Kirk Bowers at [kirk.bowers@sierraclub.org](mailto:kirk.bowers@sierraclub.org).

*Directions: Take Interstate 64 to Exit 99 at the top of Afton Mountain. Follow signs on Route 250 to Blue Ridge Parkway. Turn right onto Blue Ridge Parkway. Travel 5.8 miles to Humpback Rocks Visitor Center and Picnic Area.*

## New Shenandoah Valley Alliance Announced

A new coalition to serve citizen and community interests in the Shenandoah Valley has been announced. The Alliance for the Shenandoah Valley is a merger of four existing community organizations: Rockingham’s Community Alliance for Preservation (CAP), Shenandoah Forum, Augusta County Alliance, and Shenandoah Valley Network. The Augusta County Alliance and the Shenandoah Valley Network are founding members of ABRA. The Alliance will serve the interests of six Shenandoah Valley counties: Augusta, Rockingham, Shenandoah, Frederick, Page and Warren.

The Alliance’s Executive Director is Kate Wofford, previously Executive Director of the Shenandoah Valley Network. Nancy Sorrells, who has been co-chair of the Augusta County Alliance, will serve as Augusta County Coordinator. Both Nancy and Kate are members of ABRA’s Board of Directors and its Steering Committee. For more on the Alliance, click [here](#).

## In the News:

### Local/Atlantic Coast Pipeline

#### FERC allows construction to resume on Atlantic Coast Pipeline

- Utility Dive – 9/18/18

<https://www.utilitydive.com/news/ferc-allows-construction-to-resume-on-atlantic-coast-pipeline/532620/>

Last week, the National Park Service issued a new right-of-way for the pipeline, and on Monday FERC sent a letter to the owners saying construction could continue.

Related:

- <http://wvmetronews.com/2018/09/18/workers-return-to-atlantic-coast-pipeline-construction/>
- <https://www.ecowatch.com/atlantic-coast-pipeline-construction-2606259760.html>

#### Do-it yourself regulatory oversight

- The Recorder – 9/20/18

[https://www.abralliance.org/wp-content/uploads/2018/09/Do-it-yourself-regulatory-oversight-Recorder-editorial\\_20180920.pdf](https://www.abralliance.org/wp-content/uploads/2018/09/Do-it-yourself-regulatory-oversight-Recorder-editorial_20180920.pdf)

With FERC and DEQ under the energy industry’s thumb, citizens groups have sprung up to plug “leaks” in the regulatory oversight process.

#### Legislators updated on two, billion-dollar pipeline projects

- WV News – 9/18/18

[https://www.wvnews.com/news/wvnews/legislators-updated-on-two-billion-dollar-pipelines-underway/article\\_fc01bd34-de73-5abf-931a-a2ff3fbb3686.html](https://www.wvnews.com/news/wvnews/legislators-updated-on-two-billion-dollar-pipelines-underway/article_fc01bd34-de73-5abf-931a-a2ff3fbb3686.html)

Pipeline cheerleaders have lots to cheer about this week.

## Opponents to appeal Atlantic Coast Pipeline construction

- Charlotte Business Journal – 9/20/18

<https://www.bizjournals.com/charlotte/news/2018/09/20/opponents-to-appeal-atlantic-coast-pipeline.html>

Groups contend that new permits were issued in a rush and under political pressure, rather than at the direction of sound science.

## Regional/Mountain Valley Pipeline, other

### Two-thirds support ‘whatever it takes’ to protect environment: WV Poll

- Wv Metro News – 9/21/18

<http://wvmetronews.com/2018/09/21/two-thirds-support-whatever-it-takes-to-protect-environment-wv-poll/>

A greater percentage of West Virginians support tougher environmental protections than in 2014. But is it a long-term trend or short-term shift reflecting recent policy changes?

### Judge issues stay in Summers County MVP case

- The Register-Herald – 9/18/18

[http://www.register-herald.com/news/judge-issues-stay-in-summers-county-mvp-case/article\\_faa1f722-37b9-580b-ab2b-ac0d66bb6619.html](http://www.register-herald.com/news/judge-issues-stay-in-summers-county-mvp-case/article_faa1f722-37b9-580b-ab2b-ac0d66bb6619.html)

### Hileman: Northam will be judged by what he does on pipelines

- The Roanoke Times – 9/17/18

[https://www.roanoke.com/opinion/commentary/hileman-northam-will-be-judged-by-what-he-does-on/article\\_222e4b9f-bc8b-5658-8d6e-034a8ac06bad.html](https://www.roanoke.com/opinion/commentary/hileman-northam-will-be-judged-by-what-he-does-on/article_222e4b9f-bc8b-5658-8d6e-034a8ac06bad.html)

### Montgomery Co. planners support plan to tap into Mountain Valley Pipeline

- The Roanoke Times – 9/21/18

[https://www.roanoke.com/news/local/montgomery\\_county/montgomery-co-planners-support-plan-to-tap-into-mountain-valley/article\\_4cb3507b-6db1-5a95-9617-e5cd14479898.html](https://www.roanoke.com/news/local/montgomery_county/montgomery-co-planners-support-plan-to-tap-into-mountain-valley/article_4cb3507b-6db1-5a95-9617-e5cd14479898.html)

he 4-2 vote from Montgomery County’s planning commission came amid overwhelming opposition from local residents who spoke out against the gate station during a public hearing Wednesday.

### Whitehead: MVP Southgate Extension a Pipeline Too Far

- Go Dan River – 9/16/18

[https://www.godanriver.com/opinion/community\\_viewpoint/whitehead-mvp-southgate-extension-a-pipeline-too-far/article\\_436e03be-b858-11e8-8bfe-fb45d120c382.html](https://www.godanriver.com/opinion/community_viewpoint/whitehead-mvp-southgate-extension-a-pipeline-too-far/article_436e03be-b858-11e8-8bfe-fb45d120c382.html)

Concerns that SVP Southgate Extension will be snuck into the goal after the play, without proper scrutiny.

## Big Picture:

### The Energy 202: Trump's EPA is targeting rules for yet another greenhouse gas

- The Washington Post – 9/21/18

[https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2018/09/21/the-energy-202-trump-s-epa-is-targeting-rules-for-yet-another-greenhouse-gas/5ba3eda31b326b7c8a8d158e/?utm\\_term=.239648a39a71](https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2018/09/21/the-energy-202-trump-s-epa-is-targeting-rules-for-yet-another-greenhouse-gas/5ba3eda31b326b7c8a8d158e/?utm_term=.239648a39a71)

Administration apparently determined to leave a scorched, desert wasteland as its legacy. In order to save business \$39 million/yr.

### Chatterjee Chairs Monthly FERC Meeting; Still No Nominee for Powelson's Seat

- Natural Gas Intelligence – 9/20/18

<http://www.naturalgasintel.com/articles/115847-chatterjee-chairs-monthly-ferc-meeting-still-no-nominee-for-powelsons-seat>

Once again...and then there were three... Questions arise about FERC’s ability to keep up with its caseload, and whether it should, with only four seats filled and Powelson’s health an issue.

## With Climate Change No Longer in the Future, Adaptation Speeds Up

- The New York Times – 9/21/18

<https://www.nytimes.com/2018/09/21/climate/climate-change-adaptation.html>

We haven't cut emissions, we won't do it fast enough. We're starting to see climate change adaptation and migration pick up. This is a small glimpse of what it looks like...*this* year.

Related:

- <https://www.sciencenewsforstudents.org/article/climate-change-sets-people-move>

## DRBC Seeks To Block Penneast From Cutting Trees Along Pipeline Route

- NJ Spotlight – 9/14/18

<http://www.njspotlight.com/stories/18/09/13/drbc-seeks-to-block-penneast-from-cutting-trees-before-final-pipeline-decision/>

Argues pre-permit cutting will endanger waterways, encourage an attitude of “we’ve come too far to stop”.

## Lawsuit filed against gas company after Massachusetts blasts

- ABC News – 9/18/18

<https://abcnews.go.com/US/wireStory/pipeline-pressure-explosions-12-times-high-57902520>

About 8,600 customers were affected by the explosions. Many had to evacuate their homes for days and may have to go without gas service for weeks.

Related:

- <https://www.forbes.com/sites/ellenrwald/2018/09/14/how-the-massachusetts-natural-gas-pipeline-disaster-will-exacerbate-an-energy-shortage/#2df3b44d7469>

## Buoyant gas industry may be blindsided by renewables

- Reuters – 9/20/18

<https://www.reuters.com/article/us-gas-industry-gastech/buoyant-gas-industry-may-be-blindsided-by-renewables-idUSKCN1MOOP3>

Plans for gas mega-projects are multiplying, but analysts warn that the tide is beginning to turn in favor of renewables plus storage.

Related:

- <https://www.reuters.com/article/column-russell-natgas/rpt-column-natural-gas-says-its-no-longer-a-transition-fuel-it-may-be-wrong-russell-idUSL3N1W64TK>

## New Report Makes The Case For Virginia Offshore Wind

- North American Wind Power – 9/20/18

<https://nawindpower.com/new-report-makes-the-case-for-virginia-offshore-wind>

Virginia's continental shelf is a veritable “Saudi Arabia” of wind energy. The only new turbines built in the state should be wind turbines.