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Pipeline firm wants federal approval to build in Virginia

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BY JOHN BRUCE • STAFF WRITER

MONTEREY — Atlantic Coast Pipeline LLC on Friday, Oct. 19 issued a written statement explaining it seeks federal permission to begin proposed pipeline construction in Virginia, shortly after the state Department of Environmental Quality approved its water quality plans.

Pipeline foes question the need for the project and have united to fight the pipeline company aggressively. They contend most of the payroll would go to out-of-state organized member workers, and mud would pollute drinking water sources as a result of pipeline construction. National and state treasures such as land surrounding the Blue Ridge Parkway and wildlife lands would be jeopardized. Numerous endangered species would also be threatened, opponents argue.

The Governor's Summit on Rural Prosperity in Staunton earlier this week attracted pipeline protesters who charged the state failed to safeguard the environment by approving the project.

'Transformational project'

Pipeline spokesman Aaron Ruby of managing partner Dominion Energy issued a prepared written statement saying, "The (DEQ) agency's approval allows the state's water quality certification to take effect and is the final state approval needed to begin pipeline construction in Virginia. This is a major step forward for the project and brings our region one step closer to a growing economy, a cleaner environment and greater energy security. Thousands of hardworking Virginians and local businesses across the state will soon be hard at work building this transformational project."

He continued, "The agency's process was the most sweeping and rigorous regulatory review of any energy infrastructure project in Virginia history. The agency spent more than a year reviewing site-specific environmental controls for every inch of the pipeline's path in Virginia. No other project in the state's history has received as much regulatory scrutiny or been

developed with greater attention to public safety and the environment. We've put in place some of the strongest environmental protections ever used by the industry to keep soil and sediment out of our streams and rivers during construction. These protections have proven effective in West Virginia and North Carolina, where construction has been underway for several months. With this final state approval for pipeline construction in place, we are requesting a Notice to Proceed with full construction in Virginia from the Federal Energy Regulatory Commission.

"This project is all about building a better economic and environmental future for our region. Public utilities are depending on it to meet the growing energy needs of consumers and businesses. We're eager to get to work in Virginia so we can build on the significant progress we've made in West Virginia and North Carolina," Ruby said.

Another Dominion land gambit?

In what pipeline opponents cited as another land ploy in questionable settings similar to Dominion's leveraging of Hayfields Farm, a large parcel on the Tye River in Nelson County is planned for a private land transfer to make up for the pipeline crossing a state wildlife management area.

Dominion has confirmed it has paid for the Conservation Fund to buy more than 1,000 acres fronting on the Tye and transferred the land to the Virginia Department of Game and Inland Fisheries.

Dominion pressed to route the proposed pipeline across 10 Virginia Outdoors Foundation open-space conservation easements. Of the affected landowners, most are in northern Bath County. The investor-owned utility similarly paid a third party millions to purchase the 1,034-acre Hayfields Farm, which was conveyed to the foundation.

To the contrary of critics who said conservation easements are not intended to be used as commodities, the foundation approved Dominion's application to convert the Bath easements, applying a law previously confined to much smaller land parcels. Earlier this month, the foundation asked Highland residents for input on how that land should be used.

David Slight of Wild Virginia said in a written statement there are legal problems with the DEQ approval. "DEQ does not have the authority to ignore or contradict the wording of the (State Water Control) Board's certification or its intent. The Northam administration must acknowledge and respect the board's authority and follow the law. We have already seen that DEQ's assurances of water quality protection were neither sound nor trustworthy for (the Mountain Valley Pipeline). Such a disaster must not be repeated for ACP," he said.

The pipeline is not a done deal, according to the Allegheny-Blue Ridge Alliance. The group reported there are currently five principal legal challenges to the \$6.5 billion, 600-mile pipeline project, which Dominion has admitted to ultimately supply markets not originally identified, such as South Carolina. Here's a rundown of the challenges according to the alliance:

- FERC certificate – A suit challenging the FERC certificate was filed Aug. 16 with the Fourth Circuit Court of Appeals by Southern Environmental Law Center and Appalachian Mountain Advocates (Appalmad) on behalf of a group of ABRA member organizations and other plaintiffs. This followed FERC’s refusal to reconsider its Oct. 13, 2017 approval of a certificate for the ACP in a motion filed in January by the same group of plaintiffs. In the meantime, two other challenges to FERC’s ACP decision were filed in the District of Columbia Circuit of Appeals.
- Under federal law, all cases challenging the FERC order for the ACP must be in a single circuit, so the SELC/ Appalmad suit was re-assigned to the D.C. Circuit.
- On Oct. 15, SELC and Appalmad filed a motion to transfer all ACP FERC proceedings from the D.C. Circuit to the Fourth Circuit because of the deep experience that circuit court has with the ACP issues. A decision on the requested transfer is not expected until sometime in November.
- U.S. Forest Service – The challenge to the U.S. Forest Service’s Jan. 23 issuance of a Special Use Permit for the ACP on was filed Feb. 5 with the Fourth Circuit Court of Appeals. Plaintiffs are a group of ABRA members and others, represented by SELC and Appalmad. Oral arguments on the case were heard Sept. 28 and await a decision by the court.
- Virginia Section 401 Certificate – The Dec. 12, 2017 decision by the Virginia State Water Control Board to conditionally approve a water quality certificate for the ACP, as required under Section 401 of the federal Clean Water Act was challenged in a suit filed Jan. 18 by SELC and Appalmad on behalf of a client group, most of whom were also plaintiffs in the U.S. Forest Service case. The 401 case was heard in oral argument before the Fourth Circuit on Sept. 28.
- National Park Service permit – The National Park Service ‘s December 2017 approval for the ACP to cross underneath the Blue Ridge Parkway and the Appalachian National Trail was challenged in the Fourth Circuit by the Sierra Club and the Virginia Wilderness Committee, represented by SELC. The court vacated the permit Aug. 6 and FERC issued a stop work order for the entire project Aug. 10. The stop work order was lifted Sept. 17 when the NPS issued a new permit that purported to remedy the deficiencies in the earlier permit. That permit has been re-challenged by the plaintiffs in the Fourth Circuit.
- Fish and Wildlife Service – The U.S. Fish and Wildlife Service’s biological opinion on threats to endangered species by the ACP was vacated by the Fourth Circuit Court of Appeals on May 5, but an opinion from the court explaining its order was not issued until Aug. 6, as part of the same order vacating the NPS permit. As with the NPS permit, a new biological opinion was issued by the FWS that sought to meet the court’s objections. That re-issued opinion has also been challenged by the plaintiffs in the first case, the Sierra Club and the Virginia Wilderness Committee, represented by SELC.