



## ABRA Update #325 – January 28, 2022

### *Issue Highlights . . .*

- Fourth Circuit Vacates Key Two MVP Permits
- Augusta County citizen opposition kills proposed waste pit
- New members join ABRA's Board of Directors
- *In the News* – page 3

## Fourth Circuit Vacates Key Two MVP Permits

The U.S. Fourth Circuit Court of Appeals has vacated – for the second time – the approvals granted by the U.S. Forest Service (NFS) and the Bureau of Land Management (BLM) for the Mountain Valley Pipeline (MVP) to cross 3.5 miles of the Jefferson National Forest. The three-judge panel's unanimous opinion, authored by Judge Stephanie Thacker, stated:

“In sum, we conclude that the Forest Service and the BLM 1) inadequately considered the actual sedimentation and erosion impacts of the Pipeline; 2) prematurely authorized the use of the conventional bore method to construct stream crossings; and 3) failed to comply with the Forest Service's 2012 Planning Rule. Therefore, we grant the petitions for review as to those errors; deny the petitions with regard to Petitioners' remaining arguments about the predecisional review process, alternative routes, and increased collocation; vacate the decisions of the Forest Service and the BLM; and remand this matter to the agencies for further proceedings consistent with this opinion.”

The same panel (which included Chief Judge Gregory and Judge Wynn) had struck down in 2018 earlier permits for the MVP issued by the NFS and BLM. The decision was a consolidation of two cases, one against the NFS, the other against BLM. Plaintiffs in both cases were Wild Virginia, Sierra Club, Appalachian Voices, Wilderness, Preserve Craig, Save Monroe and Indian Creek Watershed Association. Arguing before the Court for the plaintiffs on October 29, 2021 was Nathan Matthews of Sierra Club.

On the judgment that the agencies inadequately considered actual sedimentation and impacts of the MVP, the Court noted the failure of data from the U.S. Geological Survey (USGS) to be considered:

“The Forest Service and the BLM erroneously failed to account for real-world data suggesting increased sedimentation along the Pipeline route. There is no evidence that the agencies reviewed the USGS water quality monitoring data from the Roanoke River, which may indicate a significant increase in sedimentation beyond that predicted in the modeling used for the supplemental EIS. At the very least, the supplemental EIS should have acknowledged this disparity and explained its impact on the agencies' reliance on the sedimentation data in the hydrological analyses.”

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A spokesperson for the MVP said that the project's developers were reviewing the decision and will be "expeditiously evaluating the project's next steps. Should the decision be appealed by MVP, it would first have to do so by asking that the three-judge panel decision be reviewed by all fifteen judges of the Fourth Circuit (en banc). Should that appeal be unsuccessful, MVP could then appeal the decision to the U.S. Supreme Court.

The MVP is also awaiting a Fourth Circuit review of a revised Biological Opinion and Incidental Take Statement issued by the U.S. Fish and Wildlife Service, as well as a permit from the Army Corps of Engineers. A decision by the Corps is anticipated to be announced in coming weeks.

For a copy of Judge Thacker's decision, click [here](#).

## **Augusta County citizen opposition kills proposed waste pit**

Strong citizen opposition to a proposed waste pit in Augusta County, has killed the project. The Houff Corporation had proposed in November to construct a 3-million-gallon open pit to store industrial food waste imported from outside the county, to be located near Churchville, VA. A January public hearing before the county's Board of Zoning Appeals (BZA) elicited strong opposition from citizens who lived near the proposed facility. Citizen concerns centered upon the impact the project would have on water quality and the unwelcome odors that would be associated with it.

On [January 25, a letter from the general manager for Houff was published in the Staunton News Leader](#) announced that the permit application submitted to the BZA for the project was being withdrawn. The company stated:

"It has become clear that though we are confident of the environmental soundness of the proposal, and of our alignment with regulations, the project has fallen short of our desire to work with the community instead of against it. To proceed further with the application would only result in strained relations between our company and the community."

Citizen action does make a difference!

## **New members join ABRA's Board of Directors**

Three new members have been elected to ABRA's Board of Directors: Ben Lockett, Appalachian Mountain Advocates; David Sligh, Wild Virginia; and Judy Rodd, Friends of Blackwater.

Continuing on the ABRA Board are Kate Boyle of Appalachian Advocates (Vice Chair), ABRA Executive Director Lewis Freeman (Secretary), Allen Johnson of the Eight-Rivers Council (Chair), Larry Thomas of West Virginia Highlands Conservancy (Treasurer), and Rick Webb of Highlanders for Responsible Development.

## ***In the News:***

### **Regional Issues**

#### **Mountain Valley Pipeline loses permit to cross through Jefferson National Forest**

- The Roanoke Times – 1/25/22

[https://roanoke.com/news/local/mountain-valley-pipeline-loses-permit-to-cross-through-jefferson-national-forest/article\\_be1c56c8-7e03-11ec-9b97-371e2dc8c6c1.html](https://roanoke.com/news/local/mountain-valley-pipeline-loses-permit-to-cross-through-jefferson-national-forest/article_be1c56c8-7e03-11ec-9b97-371e2dc8c6c1.html)

For the second time, a federal appeals court has thrown out government approvals for a natural gas pipeline to pass through the Jefferson National Forest.

Related:

- <https://www.abralliance.org/wp-content/uploads/2022/01/Court-deals-major-blow-to-MVP-EE-News-1-26-2022.pdf>

#### **Court may back Mountain Valley pipeline, despite NEPA fight**

- E&E News – 1/20/22

<https://www.eenews.net/articles/court-may-back-mountain-valley-pipeline-despite-nepa-fight/>

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit appeared skeptical of green groups' claims that energy regulators had failed to take a hard look at the environmental impact of building the Southgate extension connecting the natural gas pipeline to North Carolina.

#### **Conservation Groups Scrutinize Monongahela Timber-Harvest Proposal**

- Public News Service – 1/18/22

<https://www.publicnewsservice.org/2022-01-18/endangered-species-and-wildlife/conservation-groups-scrutinize-monongahela-timber-harvest-proposal/a77412-1>

A U.S. Forest Service timber-harvest proposal in Pocahontas County has conservation groups worried about potential harmful impacts to endangered freshwater fish species, like the candy darter. See more about this project on ABRA's [National Forest Integrity Project page](#) about the USFS's Greenbrier Southeast proposal.

#### **'Make it more environmentally sound': Citizen group takes on popular Southwest Va. trail network**

- Virginia Mercury – 1/19/22

<https://www.virginiamercury.com/2022/01/19/make-it-more-environmentally-sound-citizen-group-takes-on-popular-southwest-va-trail-network/>

State regulators, senators, trail officials and citizen activists wrangle over drainage problems.

#### **GOP senator says Youngkin would sign bill to ban Dominion Energy campaign donations**

- Richmond Times-Dispatch – 1/26/22

[https://richmond.com/news/state-and-regional/gop-senator-says-youngkin-is-ready-to-sign-bill-to-ban-dominion-energy-campaign-donations/article\\_71e3b3dc-c6e3-5a96-8fca-ab36943c20c4.html](https://richmond.com/news/state-and-regional/gop-senator-says-youngkin-is-ready-to-sign-bill-to-ban-dominion-energy-campaign-donations/article_71e3b3dc-c6e3-5a96-8fca-ab36943c20c4.html)

Related;

- <https://www.virginiamercury.com/2022/01/17/push-to-ban-political-spending-by-utilities-fueled-by-republican-anger-progressive-concern>

## The GOP offensive against climate action begins

- Virginia Mercury – 1/20/22

<https://www.virginiamercury.com/2022/01/20/the-republican-assault-on-climate-action-begins>

There are signs that Youngkin, who ran for governor as a moderate Republican, might intend to govern as a burn-the-house-down extremist when it comes to the environment.

## Union joins fight against Trump-era EPA boss

- E&E News – 1/21/22

<https://www.abralliance.org/wp-content/uploads/2022/01/Union-joins-fight-against-Trump-era-EPA-boss-EE-News-1-21-22.pdf>

Related:

- <https://apnews.com/article/climate-environment-and-nature-environment-biden-cabinet-virginia-co08aa89fcd69e8ac0e306ad062bf154>

## Big Picture:

### Idaho Is Sitting on One of the Most Important Elements on Earth

- The Atlantic – 1/24/22

<https://www.theatlantic.com/science/archive/2022/01/cobalt-clean-energy-climate-change-idaho/621321/>

A shorter version:

- <https://www.idahostatesman.com/news/business/article257678943.html>

- Also: <https://www.visualcapitalist.com/chinas-dominance-in-clean-energy-metals/>

### How FERC, courts may change pipeline industry in 2022

- E&E Energywire – 1/20/22

<https://www.eenews.net/articles/how-ferc-courts-may-change-pipeline-industry-in-2022/>

The Federal Energy Regulatory Commission, courts and states are poised to set policies in 2022 that could make long-term changes to the natural gas pipeline industry, following a year that saw cancellations of major projects.

### Biden outpaces Trump in issuing drilling permits on public lands

- The Washington Post – 1/27/22

<https://www.washingtonpost.com/climate-environment/2022/01/27/oil-gas-leasing-biden-climate/>

The widening gulf between the president's policies on oil, gas and coal extraction and his initial promises has raised questions about his climate goals

### U.S. crop insurance payouts rise sharply as climate change worsens droughts, floods

- Reuters – 1/27/22

<https://www.reuters.com/markets/commodities/us-crop-insurance-payouts-rise-sharply-climate-change-worsens-droughts-floods-2022-01-27/>

[Report](#) reinforces concerns that insuring the nation's crops will get more expensive for insurance companies, farmers and taxpayers as climate change drives more erratic weather events that disrupt agriculture.

## **Climate change fueled 3rd costliest losses ever in 2021 — less than half of that property was insured**

- Market Watch – 1/25/22

<https://www.marketwatch.com/story/climate-change-fueled-3rd-costliest-losses-ever-in-2021-less-than-half-of-that-property-was-insured-11643140439>

The insurance industry is trying to figure out how to realistically evaluate the future risks and costs of climate change. For a number of reasons, we should take note.

## **What's climate change really doing to the ocean? Ask the robots**

- Bulletin of the Atomic Scientists – 1/26/22

<https://thebulletin.org/2022/01/whats-climate-change-really-doing-to-the-ocean-ask-the-robots/>

Since the 1990s, scientists have deployed thousands of robotic floats equipped with temperature and salinity sensors in the ocean as part of an international effort called the Argo program. Interesting stuff!

## **Carbon-Negative Construction**

- Anthropocene – 1/2022

<https://www.anthropocenemagazine.org/2022/01/carbon-negative-construction/>

We all need places to live and work, but building construction contributes ~11% of global CO<sub>2</sub> and GHG emissions. A new generation of building materials aims to actively pull carbon out of the air.