The Roanoke Times

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Appeal attacks pipeline need

By Laurence Hammack

WASHINGTON -- The good of the Mountain Valley Pipeline -- a steady supply of needed natural gas -- met the bad Monday, when opponents told a federal appeals court there’s really no public need for a project that is already polluting Southwest Virginia.

In a sweeping attack, a coalition of environmental groups asked the U.S. Circuit Court of Appeals for the District of Columbia to reverse a federal agency’s approval of the 303-mile pipeline.

When the Federal Energy Regulatory Commission green-lighte d the pipeline in October 2017, it voted 2-1 that its public benefits will outweigh any adverse impacts.

But in finding there was a market demand for the natural gas, FERC relied entirely on contracts between the pipeline’s owners and its shippers, which are all part of the same corporate structure.

The complex affiliations of Mountain Valley Pipeline LLC were not the result of “arms-length negotiations” that would have demonstrated a true market based on public need, the court was told by Ben Luckett of Appalachian Mountain Advocates, a nonprofit law firm that represented pipeline opponents during Monday’s oral arguments.

Attorneys for FERC and Mountain Valley countered that the partners would never have invested in the $4.6 billion venture unless they were convinced it was worth the risk — an argument that seemed to resonate with the three-judge panel hearing the case.

“They’re putting skin in the game, which tends to show they are using their best judgment about future demand,” Judge Gregory Katsas said in one of several questions put to Luckett.

And the pipeline’s capacity is fully subscribed to the Mountain Valley shippers, is it not? asked Judge David Tatel.

Yes, Luckett responded, but 80 percent of the end users — the homeowners, businesses or power plants that will actually burn the gas — have yet to be identified and are based solely on speculation.

That may be so, Judge David Sentelle interjected, but the Mountain Valley shippers “are purchasers. They are buyers. They are creating a demand for the gas that is passing through the pipeline.”

In past decisions, the D.C. Circuit generally has been reluctant to second-guess FERC’s judgment.

A written decision is expected within three to six months.

Of more than a dozen claims raised by Appalachian Mountain Advocates, the three judges devoted most of their questions to FERC’s reliance on so-called precedent agreements to identify market demand.

One such agreement involves RGC Midstream, which has a 1 percent ownership in the pipeline and is helping to pay for its construction. Its parent company, RGC Resources, has another subsidiary — Roanoke Gas Co. — which as a shipper will pay a fee to Mountain Valley for the transportation of the fuel it will then sell to its customers.

Challenging the government’s reliance on such agreements was seen by some as a long shot.

“We do not expect the D.C. Circuit will ultimately rule against FERC given the court’s deference to the agency’s expertise on issues that fall under its jurisdiction,” Height Capital Markets, an investment banking research firm that has been monitoring the project, stated Monday in its weekly update.

“However, an unfavorable decision here risks further delays and cost increases for the beleaguered project.”

Since it began work on the pipeline a year ago, Mountain Valley has been warned repeatedly by environmental regulators in West Virginia and Virginia that it is violating standards meant to limit erosion and sedimentation.

A lawsuit filed by Virginia’s Department of Environmental Quality accuses construction crews of breaking the rules more than 300 times in the six counties — Giles, Craig, Montgomery, Roanoke, Franklin and Pittsylvania — through which the pipeline will pass.

Mountain Valley has also lost two permits awarded by federal agencies following FERC’s initial approval of the pipeline.

In separate legal challenges, environmental groups have said that the U.S. Forest Service did not properly address erosion controls when it allowed the pipeline to cross through the Jefferson National Forest, and that the Army Corps of Engineers failed to follow state-imposed conditions meant to reduce sedimentation during work in streams and wetlands.

The 4th U.S. Circuit Court of Appeals threw out those permits in July and October. Mountain Valley has said it hopes to obtain new authorizations in time to complete the project by the end of this year.

In challenging FERC’s approval in the D.C. Circuit, Appalachian Voices and 23 other organizations and individuals cited a number of environmental concerns raised by burrowing a 42-inch diameter steel pipe along steep mountainsides and through pristine waters.

Other than the question of public need, the only other claim mentioned during Monday’s 30-minute session was the assertion that FERC had failed to adequately consider the impact of greenhouse gases to be released from the burning of natural gas provided by the pipeline.

Lawyers for FERC and Mountain Valley said that questions about where the gas eventually will wind up made it difficult to gauge its impact on climate change.

“The tools for that simply don’t exist,” said Lona Perry, a U.S. deputy solicitor who made arguments on behalf of FERC.

“But why?” Tatel later asked when an attorney for Mountain Valley raised the same defense. “You didn’t have any doubt that all this [gas] will be burned, correct?”

The Roanoke Times

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Criminal investigation focused on MVP

By Laurence Hammack

The Mountain Valley Pipeline is under criminal investigation into possible violations of the Clean Water Act and other federal laws, one of the companies building the project has confirmed.

EQM Midstream Partners, the lead company in the joint venture, made the disclosure in an annual report filed Thursday with the U.S. Securities and Exchange

Since construction of the buried natural gas pipeline through Southwest Virginia started last year, crews have repeatedly run afoul of regulations meant to keep muddy runoff from contaminating nearby streams and rivers.

Although Mountain Valley has been named in enforcement actions brought by the Virginia Department of Environmental Quality, and in a lawsuit filed by Attorney General Mark Herring, this week’s filing is the first confirmation of a criminal investigation.

On Jan. 7, EQM received a letter from the U.S. attorney’s office in Roanoke stating that it and the Environmental Protection Agency were looking into criminal and civil violations related to pipeline construction, according to the SEC filing.

About a month later, a grand jury subpoena was issued “requesting certain documents related to the MVP from August 1, 2018 to the present,” EQM reported in the filing.

“The MVP Joint Venture is complying with the letter and subpoena but cannot predict whether any action will ultimately be brought by the U.S. Attorney’s Office or what the outcome of such an action would be,” it said.

A spokesman at EPA headquarters in Washington, D.C., said the agency does not comment on potential or ongoing investigations. Brian McGinn, a spokesman for the U.S. attorney’s office, also declined to comment, citing a similar policy of neither confirming nor denying the existence of an ongoing investigation.

Last month, two attorneys told The Roanoke Times that they had asked the EPA in November to investigate what they called “a substantial body of evidence” gathered by Preserve Bent Mountain, an organization they represent.

Photographs and other documentation from construction sites indicate that work in streams and wetlands continued well past Oct. 5, 2018, when a permit for such activity was suspended by the U.S. Army Corps of Engineers, Charlie Williams and Tom Bondurant said at the time.

It was not clear Friday if their request prompted the investigation mentioned by EQM in its SEC filing. Bondurant declined to comment.

Chainsaw crews began cutting trees in February 2018, clearing a 125-foot wide swath for the 303-mile pipeline through West Virginia and Southwest Virginia. By spring, heavy equipment had moved in to grade land along steep mountainsides and dig trenches for the 42-inch diameter steel pipe.

Herring’s lawsuit, filed on behalf of DEQ and the State Water Control Board, alleges more than 300 violations of erosion and sediment control measures, beginning as early as May 2018.

The criminal probe appears to be focused on events that began later in what is expected to be a two-year construction period for the $4.6 billion project.

In their January letter to Mountain Valley, federal prosecutors directed the five companies that comprise the joint venture — along with their contractors, suppliers and other entities involved with construction — to preserve any relevant documents dating back to Sept. 1.

The grand jury subpoena, which came a month later, was for documents going back to Aug. 1.

Environmental groups and other pipeline opponents were saying last summer that the worst environmental damage was yet to come, when Mountain Valley would begin blasting bedrock and digging trenches along the bottoms of streams to bury the pipe.

A lawsuit filed by the Sierra Club and others challenged a permit issued by the Army Corps of Engineers that allowed stream crossings in West Virginia.

The 4th U.S. Circuit Court of Appeals vacated the permit Oct. 2. Based on that ruling, a second Army Corps permit that covered Southwest Virginia was suspended three days later.

If Mountain Valley continued to work in streams and wetlands after losing its authorization from the Army Corps, that could constitute a criminal violation, Bondurant, a former federal prosecutor, said earlier.

Publicly traded companies are required by law to report any legal proceedings that might affect their operations to the SEC, which is responsible for protecting investors and maintaining public trust in U.S. markets.

In past filings, EQM has documented a number of lawsuits, most of them filed by environmental groups against regulatory agencies that granted permits or certifications to Mountain Valley.

Thursday’s filing marked the first time a criminal investigation was mentioned.

On the same day, executives with EQM held a teleconference to discuss 2018 year-end results with financial analysts. They talked about the loss of several permits due to legal challenges, but did not bring up the criminal investigation.

Despite all the regulatory and legal difficulties to date, company officials said the project is still on schedule to be completed by the end of the year, when it will begin to transport natural gas to customers in the Mid-Atlantic and Southeastern regions of the country.

The Roanoke Times

FEB. 20, 2019

Court upholds federal agency’s approval of pipeline

By Laurence Hammack

An appellate court made short work Tuesday of a sweeping challenge of the federal government’s approval of the Mountain Valley Pipeline, dismissing 16 claims made by opponents.

“None of the challenges succeeds,” a three-judge panel of the U.S. Circuit Court of Appeals for the District of Columbia wrote in a five-page order.

In perhaps the most comprehensive legal attack on the controversial pipeline, opponents had hoped to find a fatal flaw in the key approval it received from the Federal Energy Regulatory Commission in October 2017.

The determination by FERC that there was a public need for the natural gas to be transported through the 303-mile pipeline opened the gate for a series of other approvals by state and federal agencies.

Although several of the permits have since been suspended, Mountain Valley construction crews have been able to continue work over the past year with FERC’s ultimate authority intact.

“It is unfortunate the Court failed to give substantive consideration to our many concerns,” several members of community groups who were part of the legal challenge said Tuesday in a joint statement.

“We are disappointed but undeterred.”

The court’s brief order comes less than three weeks after it heard oral arguments in a consolidated case brought by a total of 24 environmental organizations, community groups and individuals.

A central theme was the question of whether there was a public need for the gas from the pipeline, and whether FERC had sufficient evidence on which to base its certificate of public convenience and necessity.

In finding there was a market demand, FERC relied entirely on contracts between the pipeline’s owners and shippers, which are all part of the same corporate structure.

“The fact that Mountain Valley’s precedent agreements are with corporate affiliates does not render FERC’s decision to rely on those agreements arbitrary or capricious; the certificate order reasonably explained that ‘an affiliated shipper’s need for new capacity and its obligation to pay for such a service under a binding contract are not lessened just because it is affiliated with the project sponsor,” lawyers for the agency wrote in court papers.

Critics had argued that the arrangement amounted to “the left hand doing business with the right hand” and did not represent a true market demand.

FERC’s approval allowed Mountain Valley to use eminent domain — a legal power usually held by governmental bodies — to take private land it needed to build its pipeline across steep mountains and through pristine streams.

The appeals court was unconvinced by several arguments that FERC’s delegation of eminent domain to a private venture like Mountain Valley was improper.

Also unsuccessful was the claim that the agency failed to adequately consider the greenhouse gas emissions linked to the pipeline, as required by the National Environmental Policy Act.

Lawyers for FERC and Mountain Valley argued that questions about where the gas will ultimately wind up made it difficult to gauge its impact on climate change.

Although maintaining FERC’s approval Tuesday was a victory for Mountain Valley, the company still must maneuver the rest of a regulatory and legal obstacle course before it can meet its goal of completing the pipeline by the end of the year.

Virginia’s State Water Control Board is scheduled to meet March 1 to discuss whether it should revoke a water quality certification it awarded to the project in December 2017, before construction began to cause widespread problems with erosion and sediment-laden water contaminating nearby streams.

The Roanoke Times

March 31, 2019

Despite problems, MVP work continues

By Laurence Hammack

Last September, torrential rains swept muddy water from a pipeline construction zone into the nearby United Methodist Church in Lindside, West Virginia, washing out the gravel parking lot and leaving a layer of muck in the basement.

In other places along the 303-mile route of the Mountain Valley Pipeline, large rocks rolled off the construction right of way, tumbling more than 100 feet downhill. “This has been an ongoing issue,” regulators wrote in a July 2018 report that also documented problems with erosion control measures and mudslides.

And in February, a contractor working on a Pittsylvania County stretch of the pipeline submitted paperwork stating that erosion maintenance repairs had been made, when in fact they had not.

Those cases — along with scores of instances in which sediment-laden water flowed unchecked from work zones into nearby streams or onto adjacent private property — are listed in weekly environmental compliance monitoring reports filed with the Federal Energy Regulatory Commission.

Yet more than a year after construction of the natural gas pipeline began, FERC has not issued a single “serious violation” notice against the project.

Normally, the finding of a serious violation would initiate formal enforcement action by the agency, which could include a civil penalty or a stop-work order. FERC has imposed no fines against Mountain Valley. In fact, since 2005, the agency has fined just one natural gas pipeline company for violations during construction.

FERC does not keep records of how many stop-work orders have been imposed, spokeswoman Tamara Young-Allen said.

Pipeline opponents, who for the past year have been asking state and federal agencies to address widespread environmental damage caused by construction, said FERC’s lack of action is part of a broken system in which the regulators are too cozy with the industries they regulate.

“It’s obvious there needs to be an overhaul at FERC,” said Jason Shelton, one of the organizers of Mountain Valley Watch, a citizens group that has been monitoring work along the pipeline’s path through the New River and Roanoke valleys.

Although it did not explain in detail its reasons, FERC said the agency defines a serious violation as a compliance failure or activities that cause “substantial harm or are a serious threat to a sensitive area or species.” Such determinations are made on a case-by-case basis.

“FERC staff has determined that the incidents involving the slips/slides/flooding that you referenced along certain Mountain Valley construction spreads were not serious violations of the Commission’s orders,” Young-Allen wrote in an email to The Roanoke Times.

A slip is the movement of a largely intact mass of land down a slope, usually caused by erosion. A slide is more serious, and involves the breakup of earth, rock and water that can sweep whatever lies in its path farther downhill.

As for the false report, Young-Allen said it was Mountain Valley officials who brought the matter to FERC’s attention. According to a weekly compliance report filed by a FERC monitor, a contractor who was not named turned in “punch list items as complete when the items were not completed. The items were erosion control maintenance and minor rill erosion repairs.”

Mountain Valley’s environmental inspector met with construction workers to discuss the matter, and a plan was developed for crew members to write their initials next to completed items and include photographs in future reports.

Although the incident violated regulations, FERC determined it had been addressed adequately and took no further action.

That’s not good enough for pipeline opponents, who say they are met with silence whenever they make reports of streams choked by sediment, mudslides that start on steep slopes stripped of vegetation and saturated by rainfall, and construction crews willing to bend — if not break — the rules.

“The MVP inspector’s false punch list is only the one they were caught on,” said Russell Chisholm, co-chair of the Protect Our Water Heritage Rights (POWHR) coalition, one of many community groups that formed to fight the pipeline.

“This calls the whole project into question.”

**Who’s watching the pipeline?**

During the course of construction, which began last year, inspectors from the Virginia Department of Environmental Quality and the West Virginia Department of Environmental Protection have issued notices of violation, warning the developers of the interstate project that their efforts to curb muddy runoff failed more than 300 times.

Two-thirds of the pipeline is being built through West Virginia, starting in Wetzel County. The buried pipeline will enter Virginia in Giles County, running another 100-some miles before connecting with an existing pipeline in Pittsylvania County.

The state agencies have issued no fines. However, Virginia’s DEQ and State Water Control Board filed a lawsuit in December against Mountain Valley, seeking unspecified damages and court-ordered compliance.

Project-wide oversight falls to FERC, which in October 2017 granted perhaps the most important approval for the $4.6 billion private venture when it found there was a public need for the natural gas to be shipped at high pressure through the 42-inch diameter steel pipe.

Although it has found no serious violations in more than 4,000 reports filed by its compliance monitors, FERC has documented plenty of problems.

From the project’s inception last year through March 9, the most recent period covered by weekly reports, there have been 1,564 so-called communication reports. A communication report involves an issue that is corrected after discussions with FERC officials, pipeline workers and other parties.

A more serious situation is called a problem area, of which there have been 36 so far. A problem area is something that is considered neither acceptable nor an outright violation.

The next level of severity is a noncompliance report, which documents a violation of regulations or an activity that results in damages to resources or places sensitive resources at risk. FERC compliance monitors have filed 45 noncompliance reports, most of them involving erosion and sedimentation issues.

So why have there been no serious violations?

Some point to a system they say is designed to benefit the natural gas industry, at the expense of the communities through which the pipelines will pass.

FERC’s monitoring is conducted by nine inspectors from Cardno Inc., a private company through which it contracts. Each compliance monitor is assigned to an approximately 30-mile long “spread” of the serpentine construction zone. Reports filed by the monitors state they are “responsible for reviewing Mountain Valley’s construction and documenting compliance with the FERC Certificate.”

The program is paid for by Mountain Valley.

“Private inspection companies … have no motivation to shut down a project to protect the environment — they operate to facilitate project completion,” POWHR said in a statement. “Even the most thorough and dedicated inspectors risk having their hand slapped or losing their job for not toeing the MVP line.”

It was not known how much Mountain Valley pays for the monitoring. Company officials referred all questions to FERC. Young-Allen said details about third-party contracts such as the one with Cardno are considered privileged by the commission and not subject to public release.

Environmental compliance contractors are selected by FERC, she said, and work under the agency’s supervision.

**‘It’s a mess’**

In 2005, Congress made changes to the Natural Gas Act that gave FERC additional enforcement power over natural gas pipelines under construction.

Since then, there has been just one case brought under the law that resulted in a civil penalty. In January, FERC fined Algonquin Gas Transmission $400,000 after its investigation found the company violated environmental regulations when it entered wetlands to retrieve a drill stem that broke during an expansion of its pipeline in New York state.

“There is some reason to think that this is an increasing area of enforcement focus, not just an outlier,” FERC’s former director of investigations wrote in a blog posted to the website of the Washington, D.C., law firm of Akin Gump, where he now specializes in environmental compliance matters.

While environmental groups have criticized FERC in the past for lax enforcement, that’s not necessarily the case, David Applebaum said in the post and a subsequent interview.

“It’s not as if FERC has not cared about compliance,” he said, explaining that past problems have sometimes been resolved by different offices within the 1,500-employee agency and did not always result in formal enforcement actions. And in some instances, a case is handled by a state agency.

Companies are usually eager to correct problems rather than tempt fines by tangling with regulators. “The fundamental goal is to try to work with FERC and other governmental agencies to get their projects up and running,” Applebaum said.

FERC may be sending a warning to pipeline companies about tougher enforcement to come, he said, pointing to two investigations opened last year involving the Rover Pipeline, a now-completed 713-mile transmission line that runs through Michigan, Ohio and parts of West Virginia and Pennsylvania.

The alleged violations involve the demolition of a historic building designated for protection and spills of diesel fuel on protected wetlands, according to a summary from FERC.

Still, approving natural gas pipelines and monitoring their construction is just one of FERC’s duties. The commission also regulates the interstate transmission of electricity and oil, reviews mergers and acquisitions of energy companies and monitors energy markets, among other things.

The agency’s 2018 Enforcement Report does not list pipeline construction projects among its top priorities.

While individual violations may not seem significant, they should be viewed in the context of massive construction projects spread over several states that can take years to complete, said Maya van Rossum, the leader of the Delaware Riverkeeper Network, which follows FERC closely.

“Because we have at a minimum, dozens and dozens and dozens, if not hundreds, of these types of violations along a pipeline’s life history,” she said. “So that should be enough to inspire FERC to act.

“It’s a mess, truthfully.”

**No stop to the work**

Not long after bulldozers started to plow a path for the Mountain Valley Pipeline last spring, critics began their refrain: “Stop work now.”

Organizations, individuals and elected officials have asked both FERC and DEQ to order an immediate stop to construction, based on environmental damage in the six Southwest Virginia counties through which the pipeline is passing: Giles, Craig, Montgomery, Roanoke, Franklin and Pittsylvania.

Last summer, FERC issued a stop-work order that lasted about a month. It was not based on a violation by Mountain Valley. Rather, the pause in construction came after the 4th U.S. Circuit Court of Appeals threw out a permit for the pipeline to pass through the Jefferson National Forest, ruling that the Forest Service failed to take into account concerns with erosion and sediment control measures.

In lifting most of the ban Aug. 29, FERC said that leaving the pipeline partially completed would cause even more environmental damage.

DEQ officials also announced two lulls in construction last summer. But those were voluntary, short-term agreements reached with Mountain Valley to correct widespread runoff problems, including one case that left a state road in Franklin County closed by a layer of mud nearly a foot deep.

A state law passed on an emergency basis last year allows DEQ to issue a stop work order if there is a “substantial adverse impact” to state waters, or if one is likely.

“Mr. Paylor, you are the person who can issue the ‘stop work’ order,” Del. Chris Hurst, D-Blacksburg, wrote in a March 18 letter to DEQ Director David Paylor. “That much is clear from the plain reading of the legislation passed in 2018.”

Hurst asked Paylor for a written explanation of why the state had not ordered a stop to construction, which according to its own lawsuit has violated regulations more than 300 times.

He received a response on March 25. “The whole tone of the letter was ‘We’d love to but we can’t,’ ” Hurst said, “which I think underscores the impotence of DEQ” to enforce a statute that lawmakers crafted with the pipeline in mind.

DEQ officials say Mountain Valley has corrected the violations listed in the lawsuit, meaning they no longer constitute a substantial adverse impact. And even if some still did, any stop-work order would be limited to where the problem occurred. There’s no authority for the state to stop work on the entire Virginia portion of the pipeline, they say.

Opponents have fared no better with FERC, which has recorded a number of stop-work requests on its website.

In recent months, work on the pipeline has been slowed by winter weather. About 260 construction workers were on the job in Virginia at the end of March, and Mountain Valley “expects to ramp up steadily through the spring, with full-scale construction planned for summer,” spokeswoman Natalie Cox said.

At the peak of construction last summer, about 2,500 workers were employed in Virginia. Pipeline supporters say the economic benefits that come from those jobs will continue once the pipeline is shipping natural gas, which will in turn help lure new industries to the area.

Before it can resume all work, Mountain Valley must regain two permits struck down last year by the 4th Circuit, one it needs to pass through the national forest and the other to cross more than 500 streams and wetlands in Southwest Virginia.

The company says it expects to have the permits restored in time to complete the project by the end of the year.

As for the church in Lindside, which is just across the West Virginia line from Giles County, Mountain Valley “bent over backwards” to make sure that all the damages caused by the flooding were repaired, said Marshall Judy, chairman of the church’s board of trustees.

The company hired a flood restoration company to clean out the basement, and has fixed the air-conditioning system, cabinets and parking lot.

“It cost them a good bit of money,” Judy said, “but they did what they said they would do and they did it very well.”

The Roanoke Times

June 16, 2019

Delays raise new questions for Mountain Valley Pipeline

By Laurence Hammack

BOONES MILL -- Of the two types of steel pipe that snake through their land, Anne and Steve Bernard are not sure which scares them more.

One they can't see: the portion of the Mountain Valley Pipeline that construction crews buried last summer. The other is in plain sight: an approximately 120-foot-long section of the pipe floating in water that fills a trench.

As the Bernards recently stood near the pipeway's path -- which passes about 150 feet from their Franklin County home and a studio behind it where the two artists work -- Anne recalled what happened the last week of July 2018.

"They came in with a storm of machinery and they dug the trench in two days and then they dropped the pipe in it," she said. "They were in such a hurry."

The next day, the Bernards saw where the buried 42-inch diameter pipe extended to a part of the trench that had filled with water in a low-lying pasture, before work crews had a chance to cover the pipe with dirt. "I called MVP and said, '˜Your pipe is floating here,'" Anne Bernard said.

Nearly a year later, the section of pipe remains suspended ' as do key parts of a $4.6 billion project to build a 303-mile pipeline to transport newly drilled natural gas from northern West Virginia, through the New River and Roanoke valleys, to connect with an existing pipeline near the North Carolina line.

A Mountain Valley spokeswoman said June 6 that the company still hopes to finish the project by the end of the year.

But delays in construction, caused in large part by legal challenges from environmental groups opposed to plowing such a large pipeline across rugged mountain slopes and through clear-running streams, have raised questions that were not anticipated when the project was announced five years ago.

The welded joints that link the 40-foot pipe sections could weaken over time, especially when the unburied part of the line tips upward in standing water the way it does on the Bernard property, opponents say. That could increase the chance of a rupture and explosion once the line is shipping natural gas under high pressure.

And the longer that sections of the pipe remain stored above the ground, exposed to the elements before they are buried, the greater the chance that a protective coating could be degraded to the point that it contaminates the surrounding water, critics fear.

Natalie Cox, a spokeswoman for the joint venture of five energy companies building the pipeline, said Mountain Valley is using a pipeline coating designed for wet conditions. And the company will employ several different methods to ensure that the joints are sound before and after the pipe is buried, she said.

So far, the pipeline's impact on water has mostly been from sediment washed by storm water from construction sites into nearby streams. But the Bernards wonder what will happen once the work is done, and natural gas begins to flow so close to their home.

"I can see what's going on right here. I know that it's in water," Steve Bernard said as he looked at the pipe floating in a trench the width of a two-lane road. "Where it's buried, is it still in water? I don't know."

"We can't see the ghost," he said of water that may be tainted. "But we know it's there.

"We're scared to death."

**Domino effects of a stop-work order**

The 5.5-acre piece of property off Grassy Hill Road, where the Bernards have lived since 1980, shows the piecemeal work on the Mountain Valley Pipeline.

Last summer, workers showed up and began to dig a trench, about eight feet deep, through a pasture that was known to flood. After one heavy rainfall, "I saw actual waves in the field," Anne Bernard said. "I said, 'Steve, look at the waves in the field.''"

The work began shortly after a federal appeals court threw out a U.S. Forest Service permit allowing the pipeline to cross through the Jefferson National Forest, some 80 miles to the west. The decision was based on improper measures to control erosion and sedimentation in the forest, but its impact soon became much broader.

One week later, just after construction started on the Bernards' property, the Federal Energy Regulatory Commission, the lead agency overseeing pipeline construction, issued a stop-work order for the entire project.

FERC's suspension prevented a special Mountain Valley team that deals with stream crossings from burying a section of the pipeline that approached Teels Creek on the Bernards' property, Cox wrote in an email.

The stop-work order was lifted in large part in late August, but the team was not able to return to the area before Oct. 2, when a second ruling from the 4th U.S. Circuit Court of Appeals came down. In that case, the court vacated a U.S. Army Corps of Engineers permit that allowed stream crossings in West Virginia, citing Mountain Valley's inability to cross major rivers within the required 72 hours.

Three days later, a separate permit covering stream crossings in Virginia was suspended by the Corps, which said it would "await clarity on this issue."

Mountain Valley has yet to receive a new Corps approval, known as a Nationwide Permit 12, and it could be several more months before it does.

What all that means for the Bernards it that a section of the pipeline on their land, originally planned for completion last year, is still in a state of flux. They worry that stress from the floating portion of the heavy pipe will weaken joints that were welded on parts of the pipeline that are now buried.

They have a valid concern, according to pipeline expert Rick Kuprewicz, a chemical engineer who worked for years in the gas industry and now consults on safety issues as president of Accufacts Inc. in Redmond, Washington.

"It's fairly unusual" for a portion of a pipe to remain in water, unburied, for nearly a year, Kuprewicz said.

"Before they put it in service, they want to be darn sure the pipe is sound," he said of Mountain Valley.

Cox, the spokeswoman for the pipeline company, wrote in an email that the welds are protected by a fusion-bonded epoxy coating that is designed for use in wet conditions. The welds are inspected by eye and X-ray, she said, and the coating is tested immediately before the pipe is covered with dirt.

After the pipeline is finished but before it ships any gas, hydrostatic testing ' which involves pumping large amounts of water through it ' is performed to make sure the line can withstand the required pressure, Cox wrote.

Other planned steps include a caliber tool survey, which is used to map the interior of the pipe to look for any abnormalities, and continuous remote monitoring once the line is operating.

Mountain Valley Watch, a citizens group monitoring work on the pipeline, has found about a dozen cases similar to what has happened on the Bernards' property, in which a pipe has been submerged in water for an extended time, according to Roberta Bondurant, a volunteer with the effort and co-chair of the Protect Our Water Heritage Rights (POWHR) coalition.

While some of the cases have been for a week to 10 days, Bondurant said, most have lasted for months. The groups are concerned about "the potential for corrosion of pipes in water, on ground and underground," she said.

**Questions about the coating**

As she walked along the pipeline's route through her land, Anne Bernard ran her finger along a section of pipe that had been sitting next to a trench since last summer, when work was first suspended.

A powdery substance came off on her finger, as if she had rubbed it across a blackboard.

It was not clear what the powder was. But since last summer, Tina Smusz, a retired physician and assistant professor of medicine from Montgomery County, has been raising concerns about the coating material used to protect the pipe from corrosion, which has been identified in documents filed with FERC as 3M Scotchkote Fusion Bonded Epoxy 6233.

Smusz points to the product's safety data sheet, which says the coating contains carcinogens. She says those toxins can be released in the environment in two ways: When the pipe is stored above the ground for longer that the manufacturer's recommendation of one year, its coating can degrade in a process called chalking, which releases harmful toxins into the air.

And when the pipe is buried, Smusz wrote in a letter to FERC in January, the harmful chemicals can leach into nearby groundwater. "Chalking jeopardizes the health of citizens with household water sources originating near or downstream from the [pipeline] right-of-way," Smusz wrote.

Smusz has also outlined her concerns in letters to the state health commissioner and the Department of Environmental Quality. Her views are shared by the Natural Resources Defense Council. In a blog post last October, council senior advocate Amy Mall also warned of an increased risk of explosions if the coating is not properly maintained.

Mountain Valley, however, says the coating will not be degraded by water. "This type of coating is routinely used on the interior of pipes that are used for the transport of drinking water," Cox wrote in an email.

Emails and calls to the coating's maker, 3M Manufacturing Co. in St. Paul, Minnesota, were not returned.

But in a March 21 letter to FERC, DEQ director David Paylor and State Health Commissioner Norman Oliver said that citizen concerns prompted them to contact the company, the Environmental Protection Agency and the National Sanitation Foundation. "To date, these organizations have not shared or identified any specific short-term or long-term risk" with the coating, Paylor and Oliver wrote. "To date, neither VDH nor DEQ has found a specific environmental or public health risk with use of the coating material."

Nonetheless, they asked FERC for additional information and for "your view of risks to the potable drinking water supplies."

FERC spokeswoman Tamara Young-Allen said last week that the commission does not regulate pipeline coatings, and had not responded to the letter. She referred questions to the U.S. Pipeline and Hazardous Materials Safety Administration.

A representative for that federal agency wrote in an email in November that it had determined that Mountain Valley "followed recommended storage procedures and found no evidence of degradation of the pipeline's protective coating."

He did not respond to questions about whether there have been any documented cases of contamination by the coating with other pipelines. Asked again about the matter last week, he said that additional inspections by PHMSA may be conducted.

The Pipeline Safety Trust, an independent nonprofit organization, is not aware of any studies that document groundwater contamination from the coating, according to the group's executive director, Carl Weimer.

Mountain Valley has acknowledged that leaving the pipeline exposed for too long can cause problems for its coating.

"As it sits in the sun, it ages or oxides and actually becomes thinner," Robert Cooper, head of the construction project, testified in Roanoke's federal court. If that happened, he said, the coating would have to be reapplied or the pipes restacked with the opposite side facing the sun. "It's kind of like turning over when you're sunbathing," he explained.

At the time of Cooper's testimony in January 2018, Mountain Valley was arguing that it needed immediate possession of nearly 300 properties through eminent domain, the legal tactic the pipeline turned to after landowners in its path refused to sell easements.

Judge Elizabeth Dillon gave the company control of the land it wanted. But its plan at the time, to finish work on the pipeline by the end of 2018, did not happen.

**Waiting for the ramp-up**

Construction of the Mountain Valley Pipeline is still emerging from a winter lull, when cold weather largely limited work to controlling erosion and sedimentation along the 125-foot-wide right of way that runs through six Virginia counties.

About 400 people are currently working on the project in Virginia, Cox said. Construction is expected to ramp up this month, and more than 2,000 workers are expected by later in the summer.

But while Mountain Valley is allowed to dig trenches and bury the pipe in areas away from water bodies, it still lacks permission from the Army Corps to cross more than 1,000 streams and wetlands in its path.

After the Nationwide Permit 12 was suspended last October, the West Virginia Department of Environmental Protection modified some of its conditions, including doing away with a 72-hour time limit to cross major rivers under certain circumstances -- a requirement the 4th Circuit had ruled was improperly overlooked by the Army Corps.

On April 24, the Department of Environmental Protection submitted modifications that must now be approved by the EPA and the Army Corps before a new permit can be issued. A review by the EPA is still underway, a spokeswoman said.

The Army Corps must also approve the changes. After that, the Corps has a goal of deciding on Nationwide Permit applications within 60 days. "But we cannot predict how long the process may take on any specific project since each is unique," said Chuck Minsker, a spokesman for the agency.

Even before Mountain Valley lost its stream-crossing permit, the company said last August that it would not complete the pipeline until the end of 2019 -- one year later than its earlier projection. The delay came after FERC issued a stop-work order based on the 4th Circuit's decision to throw out the permit to cross the Jefferson National Forest.

Even though it must now regain two key permits, Mountain Valley says it still hopes to finish the pipeline this year. But two partners in the joint venture and a financial analyst following the project say it will likely be next year before the company can sort out its regulatory problems and complete the job.

**'Wiped out'**

Although opponents still hope to stop the pipeline, the damage has already been done for Carolyn and Ian Reilly.

The Reillys decided last year to cease operations at their Four Corners Farm in Franklin County, which has been cut up by the pipeline. Like the Bernards, the Reillys can see a section of the pipe in the water that fills a trench on their land.

After moving from the farm last fall -- Carolyn Reilly declined to say where they went, other than they are still in the region -- the Reillys recently talked about their decision to give up a biological livestock operation they started eight years ago.

While her parents and farm co-owners Betty and Dave Werner continue to live near the property, Carolyn Reilly said it became clear that its mission of land stewardship and restorative-based agriculture was no longer possible in the path of an industrial giant.

"A lot of blood, sweat and tears have been poured out on this land. We had steadily developed and grew our small family farm business," Ian Reilly said.

"Now? So much of our family's effort was wiped out almost overnight."

The Roanoke Times

June 23, 2019

Pipeline opponents, spurned by state, ask federal agency to stop work

By Laurence Hammack

It's hard to count how many times Virginia environmental regulators have been asked to stop work on the Mountain Valley Pipeline.

Since construction of the natural gas pipeline began last year -- and was quickly followed by problems with storm runoff clogging nearby streams with sediment -- state lawmakers, advocacy groups and individuals have asked the Department of Environmental Quality to halt work on the project time and time again.

What is easier to count is the number of stop-work orders issued by DEQ on any construction project since 2002: Zero.

The last time DEQ formally stopped work was in July 2001, when it said a Newport News company was causing a "massive disturbance of the wetlands ecosystem" on a 43-acre tract near an industrial park in the city. An agency spokesman said at the time that it was the first such order in more than decade.

Stop-work orders are "as rare as the ivory-billed woodpecker," said David Sligh, conservation director of Wild Virginia, referring to a critically endangered species that is close to extinction.

Frustrated by DEQ's lack of action on repeated requests to stop Mountain Valley from causing additional pollution, Wild Virginia and other environmental groups are taking a different tack.

A complaint filed late Friday with the Federal Energy Regulatory Commission, the lead agency overseeing construction of the 303-mile pipeline, asks that it rescind its earlier approval of the project. The 24-page filing also asks for a stop-work order.

FERC temporarily ceased work on the $5 billion project last August, after a federal appeals court threw out a permit for the pipeline to pass through the Jefferson National Forest. The suspension was lifted in large part later in the same month.

Since then, FERC -- like DEQ -- has declined to issue a stop-work order, despite repeated requests from environmental groups and people living along a pipeline route where there have been repeated violations of erosion and sediment control measures.

But the complaint filed Friday is different from the countless requests made to FERC previously, which were sent to the commission's executive secretary and often received no response. Sligh said Wild Virginia's action goes to the commissioners of FERC, who are appointed by the president, for a formal decision.

The process includes a 20-day public comment period, and allows other parties to intervene.

In a letter Saturday to the State Water Control Board, Sligh asked its members to join in his request.

Last December, the board voted to start a process to consider revoking a water quality certification it gave to Mountain Valley in 2017, shortly after the project was approved by FERC. But the board soon reversed course, saying it lacked the authority to stop a pipeline that was largely governed by the federal government.

"We are calling on you to intervene in this action and join us in calling for revocation and suspension by FERC ' to tell FERC it should act where you felt you were unable to do so," Sligh wrote in a letter to the board's seven members, who are appointed by the governor.

**Water board to meet**

The water board is scheduled to meet Thursday in Richmond, and Sligh asked that the matter be added to its agenda.

Joining in the complaint were the Indian Creek Watershed Association, Preserve Craig and two people who live along the pipeline's route through the two Virginias -- Betty Werner of Franklin County and Neal Laferriere of West Virginia.

For the most part, the complaint cites issues that have been raised before: The lack of a permit from the U.S. Forest Service for the pipeline to cross the national forest, the court-ordered loss of a second set of permits for more than 1,000 stream and wetland crossings, and the violation of environmental regulations "on hundreds of occasions and on a project-wide basis."

A lawsuit against Mountain Valley, filed by Virginia's DEQ and the water board, accuses the company of breaking the rules more than 300 times. In a consent order filed by the West Virginia Department of Environmental Protection, the company has agreed to pay a $266,000 fine for violations in that state.

The findings by regulators show that "MVP is not serious about protections but is focused solely on ramming this project through with little regard for anyone else's interests," Wild Virginia said in a news release Saturday about its action.

Because the complaint was filed after 5 p.m. Friday, Mountain Valley and FERC could not be reached for comment.

In the past, Mountain Valley has stressed its commitment to environmental stewardship, saying that many of the violations "were the result of unprecedented rainfall through the spring and summer of 2018."

The company had planned to finish the pipeline by the end of the year.

But in a filing last week with the U.S. Securities and Exchange Commission, its lead partner said regulatory challenges have pushed the date back to mid-2020. In the same filing, EQM Midstream said the project's cost was expected to rise from $4.6 billion to as much as $5 billion.

**Local governments' authority**

Since May 30, The Roanoke Times has asked DEQ several times how many stop-work orders it has issued in recent years for construction projects of any kind. On Friday, spokeswoman Ann Regn confirmed that the last time was in 2001, involving a development project in Newport News.

DEQ believed the developer was doing unauthorized work in a wetland without the proper permits, she said. Construction was ordered to stop, sparking a legal battle that ended with a consent decree in which the company agreed to restore an area where it had dug trenches and filled wetlands.

In other cases, "developers may stop and they have stopped their projects to come into compliance in response to warning letters and notices of violations from DEQ," Regn wrote in an email.

Last summer, after heavy rains and widespread runoff, Mountain Valley agreed to suspend construction in some areas until problems could be corrected. But that was not a formal stop work order like the one pipeline opponents want, and problems with erosion soon resumed.

Regn said that local governments have authority to cease work on projects they oversee. For example, Franklin County officials issued two stop-work orders last year after a new development at Smith Mountain Lake ran into repeated problems with runoff.

Sligh, a former environmental engineer with DEQ, said the agency's general approach is to encourage compliance through measures less drastic than a stop-work order.

While that may be a sound tactic in many cases, Sligh said Mountain Valley is a "prime example" of a project that has repeatedly violated state environmental regulations.

"What you're doing is responding rather than working out front to prevent," he said. "And that to me is a flawed approach."

**Legislative efforts**

Two times this year, Del. Chris Hurst, D-Blacksburg, has asked DEQ to issue a formal stop-work order against Mountain Valley. His most recent letter, sent to director David Paylor on May 23, was signed by 20 other state lawmakers.

Other representatives from the region included Del. Sam Rasoul, D-Roanoke, Sen. John Edwards, D-Roanoke and Sen. Creigh Deeds, D-Bath. "I'm thankful to be one of many, many, many people," who have joined the pipeline fight, Hurst said.

Hurst first asked DEQ to suspend work under its authority from a state law passed in 2018 that was aimed at Mountain Valley and a similar project to the east, the Atlantic Coast Pipeline. His second request was based on older law.

"I appreciate that the construction of the MVP is a concern of great importance to you, your constituents, and all Virginians," Paylor wrote in a June 12 reply to Hurst.

However, he wrote, there are limits to a law that gives DEQ the power to order an immediate stop to construction if there is a "substantial adverse impact" to streams or wetlands, or if such an effect is likely to occur. "The law narrows both the area on which work can be stopped and the period of time" for the suspension, he wrote. DEQ officials have said they cannot stop work on the entire project, but instead are limited to problem areas. And once corrective action is taken, they say, any stop-work order must be lifted.

"With the exception of some very limited circumstances where private property owners have not allowed DEQ and/or MVP to access their property, MVP has corrected the violations," the letter stated.

As for the state's lawsuit against Mountain Valley, "the 300 violations that are repeatedly mentioned are not ongoing violations," Paylor wrote. "A significant portion of these pose little to no threat to water quality and instead represent instances where the time frame for routine maintenance was exceeded."

Paylor also said that many of the complaints made by citizens are not violations of law. "Turbid or muddy water leaving the site after it has been treated by an approved and properly maintained control structure is not a violation," he wrote.

Deeds, who sponsored the 2018 law that gave DEQ enhanced stop-work power, said it was weakened during the legislative process. Nonetheless, Deeds believes the agency had the authority to stop work previously, before he introduced the bill at DEQ's request.

"They have a right to protect Virginia's natural resources," he said. "Why else do we have a Department of Environmental Quality?"

The Roanoke Times

July 12, 2019

Regulators ask MVP about the safety of pipe’s coating

By Laurence Hammack

A federal agency is asking Mountain Valley Pipeline officials about the safety of a protective coating on the 42-inch diameter steel pipe being buried through West Virginia and Southwest Virginia.

Delays in construction of the natural gas pipeline have led to some sections of pipe being stored above ground for more than a year, generating concerns that the coating could degrade over time and contaminate nearby air, soil and water.

In a letter Wednesday to Mountain Valley's corporate attorney, the Federal Energy Regulatory Commission requested "toxicological, environmental and health information" on a coating used to prevent corrosion of the pipe.

Tina Smusz, a retired physician from Montgomery County, has been sounding the alarm on what she calls "serious unanswered questions" about the coating, 3M Scotchkote Fusion Bonded Epoxy 6233.

"The health and lives of citizens in Virginia and West Virginia, and those yet to be born, depend on your conscientious oversight of energy projects," Smusz wrote in a Jan. 23 letter to FERC.

In March, State Health Commissioner Norman Oliver and Department of Environmental Quality director David Paylor wrote a joint letter to the commission, citing concerns from the public in requesting information about any hazards posed by the coating.

That in turn led FERC, the lead agency overseeing construction of the 303-mile pipeline, to ask Mountain Valley for a report on "the toxicity of the FBE [fusion-bonded epoxy] from all potential exposure pathways."

Concerns about the coating are twofold: Exposure to the elements could cause the substance to break down in a process called "chalking," releasing harmful toxins into the air. And once the pipe is buried, some say, the material could leach into nearby ground water and be spread to streams or private wells.

Smusz has cited the product's safety data sheet, which says the coating contains carcinogens.

But according to its maker, 3M Manufacturing Co., the coating is safe if applied properly and allowed to fully cure. Under those circumstances, "it is expected to resist degradation and have negligible water solubility under normal environmental conditions," the company said in an email.

"We are not aware of any evidence to suggest that chalking is harmful to human health," the email stated.

Chalking occurs when the coating is exposed to the sun for extended periods, the company said. Polymer products released in the process are "in low quantities and have low water solubility and therefore not thought to enter the environment in amounts capable of producing an adverse human health effect," it said.

Natalie Cox, a spokeswoman for Mountain Valley, said fusion-bonded epoxy coatings have been used since the 1960s for a variety of purposes, including to line the interior of pipes in public drinking water systems to guard against corrosion.

The coating has been studied extensively, she wrote in an email, "and MVP is unaware of any evidence supporting claims of risk to human health or the environment."

Cox said it is normal for the coating to change over time from a shiny green to a chalk-like whitish-green color.

A representative of the U.S. Pipeline and Hazardous Materials Safety Administration has said that its inspections found that Mountain Valley "followed recommended storage procedures and found no evidence of degradation of the pipeline's protective coating."

But questions raised by FERC and pipeline opponents come as legal challenges continue to delay work on Mountain Valley and a similar project to the east, the Atlantic Coast Pipeline.

William Limpert, a retired environmental regulator from Bath County, has raised concerns similar to Smusz's about Atlantic Coast's use of the same kind of coating. Last week, FERC requested information from the developers of that pipeline, which include Richmond-based Dominion Energy.

Mountain Valley was given 20 days from Wednesday's letter to respond.

Smusz said she hopes regulators will not just rely on what the companies say. "Why would FERC trust information provided by MVP and Dominion ' companies which have billions of dollars to lose if it is proven that this coating leaches toxins into our environment?" she said.

Questions about the pipeline coating are just one of many challenges made by critics since plans for the projects were announced five years ago.

Opponents have asked regulatory agencies to stop work on Mountain Valley, which, according to a lawsuit by DEQ and the State Water Control Board, has violated regulations meant to curb erosion and sedimentation more than 300 times.

The $5 billion project also has lost two sets of key permits ' one to cross more than 1,000 streams and wetlands and the other to pass through the Jefferson National Forest ' after legal challenges filed by environmental groups.

Work began in February 2018, and Mountain Valley officials say they expect to regain the suspended permits in time to complete the pipeline by the middle of next year.

The Roanoke Times

Aug. 7, 2019

Stop-work order does not go far enough, MVP opponents say

By Laurence Hammack

A stop-work order on a 2-mile section of the Mountain Valley Pipeline doesn't stop the widespread environmental problems along the remaining 301 miles of the project, opponents said Tuesday.

Less than a week after the Virginia Department of Environmental Quality ordered work to cease on a section of the pipeline in eastern Montgomery County, a citizens group monitoring construction called yet again for a full stop-work order.

"There are too many unresolved questions to allow this project to continue with impunity," said Russell Chisholm, lead coordinator for the Mountain Valley Watch and co-chair of the Protect Our Water, Heritage, Rights coalition.

Chisholm and others who spoke at a news conference asked why DEQ ordered Mountain Valley to stop work Friday because of violations of erosion and sediment control measures ' problems that have occurred repeatedly since work began last year.

The most recent lapses ' which included a work site near U.S. 11/460 with nothing to curb runoff ' marked the first time DEQ inspectors found an imminent and substantial risk to water quality, the standard set by a state law that allowed them to stop work on the natural gas pipeline until the problems are corrected.

Details of the violation remained unclear Tuesday. A report from a Thursday inspection that led to the stop-work order the next day was not released by DEQ.

Mountain Valley spokeswoman Natalie Cox said a construction crew with the joint venture reported "an incident regarding erosion and sediment control measures" to DEQ that led to the inspection and stop-work order.

"MVP changed the sequence of its work to address a potentially escalating environmental issue in another location on its right-of-way," Cox wrote in an email. "While the resequencing was well-intended, there were misjudgments about the overall environmental risk in the area that contributed to the incident, and for this there is no excuse."

Cox's email did not explain what the "escalating environmental issue" was, or what the sequential change in work involved.

The stop-work order states that Mountain Valley failed to construct and maintain environmental protections, "and/or the erosion and sediment control measures that have been installed are not functioning effectively."

It was the first time DEQ has formally ceased work on the pipeline, and the first stop-work order issued by the agency for any construction project since 2001.

Height Capital Markets, an investment banking firm that has been following the project, said in a report this week that it expected Mountain Valley to make corrections and DEQ to then lift its stop-work order within a month or two.

The company will work closely with DEQ to resolve the problems, Cox said. "In this case, the work failed to meet our expectations, and more importantly, the expectations of our regulatory agencies and our other stakeholders," she said.

No additional delays in the project are expected because of the stop-work order, according to the Height report.

In a statement last week, DEQ Director David Paylor said the agency was "appalled that construction priorities and deadline pressures would ever rise above the proper and appropriate use of erosion control measures."

Cox did not respond to Paylor's comments.

But the CEO of EQM Midstream Partners, the lead company in the joint venture, said recently that continuing to build the pipeline was the best way to guard against more regulatory delays and cost increases.

"I don't want to lose sight of the fact that this is a 50- to 80-year investment that's going to be incredibly valuable to this company," Thomas Karam said in an April teleconference to discuss first quarter results with financial analysts. "With each month that we construct it, we take more budget risks and timing risks off the table."

Legal challenges from environmental groups last year led to the loss of two sets of key federal permits: one for the pipeline to pass through the Jefferson National Forest and the other for it to cross more than 1,000 streams and wetlands.

However, Karam said Mountain Valley expected to have the permits restored in time to complete the $5 billion project next year.

"Once you get past the headlines, we remain exceedingly confident and bullish about MVP," he said.

Opponents who spoke at Tuesday's news conference said the "breakneck pace of construction" has picked up in recent weeks, with Mountain Valley crews working through heavy rainfalls and for long hours that include 7:30 a.m. starts, even on Sundays.

They also pointed to high levels of turbidity that made the Roanoke River run a dark shade of brown on two occasions in July in Montgomery and Roanoke counties, not far from the pipeline construction site.

"Anybody who lives on this river knows that it doesn't look like this," local environmental advocate Diana Christopulos said.

DEQ spokeswomen Ann Regn confirmed that gauges showed turbidity levels were higher than those observed in the past. But "we can't provide definitive conclusions about the sources of the elevated turbidity at this time," she said last week.

Some have raised concerns that sediment released from pipeline construction could reach streams and rivers in amounts high enough to contaminate drinking water supplies in the nearby Spring Hollow Reservoir.

The Western Virginia Water Authority draws water from the Roanoke River to fill the reservoir on an as-needed basis to serve the Roanoke Valley.

Sarah Baumgardner, a spokeswoman for the authority, said it limited its pumping from the river during heavy rains for four days in July, which is normal procedure.

The 3.2 billion gallon reservoir was nearly full, Baumgarder said in a July 23 email. "We can pump turbid water from the river to the reservoir if necessary, but we have the luxury of being more selective when the reservoir is nearly full," she said.

The city of Salem, which takes its water from a nearby spot on the river, also noticed muddy water in July. But it encountered no problems in drawing in the water it needed for treatment, spokesman Mike Stevens said.

As work on the pipeline has ramped up this summer, drawing more than 2,000 construction workers to Southwest Virginia, Mountain Valley has found a way across some of the streams in its path.

In requests made to the Federal Energy Regulatory Commission, the company has obtained permission to cross about 35 streams and wetlands in Virginia and West Virginia by boring under them, as opposed to using what's called an open-cut dry method.

Permits for the open-cut process, which entails damning a waterway temporarily and digging a trench along the exposed bottom to bury the 42-inch diameter pipe, were suspended last year, after a federal appeals court threw out an approval by the U.S. Army Corps of Engineers for environmental reasons.

Conventional boring is not covered by the so-called Nationwide Permit 12, according to FERC.

Using this method is not possible for all the stream and wetland crossings, Cox said. "The type of terrain and the actual construction workspace, among other things, are evaluated in order to determine which types of crossings can be used," she wrote in an email.

Some environmental groups have asked FERC not to allow conventional boring, calling it an "end run" around the Nationwide Permit that bypasses full scrutiny.

Pipeline expert Rick Kuprewicz said that boring, which is generally more expensive and less environmentally damaging than the open-cut method, can have some advantages for companies when their first choice of stream crossings is blocked.

"This is a multimillion dollar, 42-inch diameter pipeline project," Kuprewicz said of Mountain Valley.

"The time value of money takes a life of its own, so there's a lot of pressure to get these projects operational as soon as possible."

The Roanoke Times

Sept. 6, 2019

MVP foes mark 1 year in trees

By Laurence Hammack

ELLISTON — Along a 303-mile corridor of land stripped bare for a natural gas pipeline, the only trees left standing are here, on a steep mountainside in Montgomery County.

And it is here, not coincidentally, that opponents of the Mountain Valley Pipeline are stationed high above the ground in a white pine and a chestnut oak.

Meant to block construction of the deeply divisive project, the tree-sit marked its one-year anniversary Thursday in a patch of forest that has remained largely untouched as developers build the massive pipeline from northern West Virginia through Southwest Virginia to connect with a pipeline near the North Carolina line.

From her vantage point in the woods, pipeline opponent Lucy Branham had no doubt that the two protesters, who sat in tree stands about 50 feet above her head, were making a difference in the fight.

“All you have to do is look across the road,” Branham said, pointing to a spot on the other side of Yellow Finch Lane where a 125-foot wide easement for the pipeline had been cleared, right up to the edge of the occupied trees.

“And here we have a beautiful, functioning forest,” she said.

Neither of the masked tree-sitters — who are subject to a pending court action by Mountain Valley to have them removed — was willing to be identified.

But they talked Thursday about why they are willing to live in 4-by-8-foot tree stands to block a pipeline that they say will change the planet’s climate with its reliance on a fossil fuel, pollute the steep slopes and pristine streams it bisects with sediment washed from construction sites, and mar the landscape in other ways.

“The world’s on fire, and I think it’s a pretty terrible idea to continue the construction and the conditions that are making it that way,” the man in the white pine said.

Since Sept. 5, 2018, a variety of protesters have taken turns sitting in tree stands built on a piece of private land condemned for the pipeline. Supporters in a ground camp send up food, water and supplies in plastic buckets suspended by ropes, while keeping their eyes peeled for anyone who might try to broach the blockade.

A tangle of colored string stretching between trees and a barrier of wooden pallets makes any ascent to the tree-sits, already challenging on account of the steep slope, even more difficult.

Although Mountain Valley is unable to cut the occupied trees and ones near them without risking the lives of the tree-sitters and possibly others, the joint venture of energy companies has been busy digging trenches and burying the 42-inch diameter pipe in other locations.

About 238 miles of pipe have already been laid, it said in a court document filed last week, and the only trees that have not been felled are on a 500-foot stretch of the construction zone where the tree-sitters continue to sit.

Since tree-cutting began in February 2018, other opponents have sat in trees, chained themselves to construction equipment and blocked work in other ways. All have been removed or left on their own, and more than 50 people have been arrested in the two Virginias.

**Legal challenges**

Mountain Valley wants to remove the Yellow Finch tree-sitters with the help of the courts, but so far the company has been left out on a legal limb.

In December, the company filed a request for a preliminary injunction in federal court, which would have enabled U.S. Marshals to extract the protesters by means that were not explained. In early August, U.S. District Court Judge Elizabeth Dillon denied the request, made as part of an eminent domain proceeding through which Mountain Valley gained control of the land where the dispute has played out.

Because the tree-sitters had no ownership interest in the land, Dillon ruled, they could not be included in the case.

Mountain Valley then turned to state court, where it sought a similar preliminary injunction in Montgomery County Circuit Court.

Shortly before an Aug. 15 hearing, attorneys for the tree-sitters had the case moved back to federal court. They cited technical grounds, saying that the company and those it sued — the current tree-sitters, previous occupants of the stands and a group of ground-team supporters — were from different states.

But once the case was back before Dillon, the attorneys admitted they had no case for what’s called a “diversity of citizenship” transfer to federal court.

Lawyers for Mountain Valley contended they had been ambushed in an attempt to stall their effort to have the tree-sitters removed.

Attorney Wade Massie asked that the case be moved back to state court — and that the tree-sitters’ attorneys be made to pay the legal bill that he and a co-counsel ran up preparing for a hearing that was called off at the last minute.

Dillon ordered that $7,155 in Mountain Valley’s legal costs be paid by attorneys Tammy Belinsky of Floyd County, Terry Frank of Richmond and Sandra Freeman of Denver. She also transferred the case back to Montgomery County, where a Sept. 12 hearing has been scheduled.

Belinsky, Frank and Freeman argued in court papers that they were pressed for time and had difficulty sorting through Mountain Valley’s complex corporate structure, which they likened to a “Russian nesting doll.”

When the case comes back up in court, the company could face another challenge.

On Aug. 15, the same day that Mountain Valley would have sought removal of the tree-sitters in state court had the case not been transferred, the company told federal regulators that it was suspending construction on parts of the pipeline.

The voluntary suspension came three days after a coalition of environmental groups filed a legal challenge arguing that endangered and threatened species would be harmed by continued construction, which has caused large amounts of sediment to be washed by rainwater into their habitats.

Mountain Valley agreed not to work in the watersheds of streams populated by the Roanoke logperch and the candy darter, two endangered species of fish. That includes the area where the tree-sitters are stationed.

But the suspension has not deterred Mountain Valley’s efforts to remove the protesters.

“As related to potential interference with endangered species, removal of the opponents and any tree felling would be coordinated with the agencies under the terms of the voluntary suspension,” company spokeswomen Natalie Cox wrote in an email.

The company says it plans to complete the pipeline by mid-2020, when it will begin to deliver natural gas to markets up and down the East Coast.

**Over budget, behind schedule**

The man in the white pine wouldn’t say how long he has been there.

How long would he stay?

“As long as it takes,” he said.

Mountain Valley has already tried to order the tree-sitters down, with no success. If an injunction is granted, it’s not clear how police would remove the protesters if they continued to refuse to come down.

In the past, authorities have used mechanized lifts to remove people in trees or atop construction equipment. But getting the wheeled devices from Yellow Finch Lane up the steep slope seems all but impossible.

“Gosh, you know, that’s a great question,” the tree-sitter said when asked how he might be removed. “I imagine they’re befuddling over that as we speak.”

While acknowledging that the tree-sits might eventually come down, and the Mountain Valley Pipeline might be completed, some opponents hope their resistance will at least cause the next developer to think twice about such a project.

“I absolutely don’t think any resistance to injustice is in vain,” Branham said.

Construction of the $5 billion project is running over budget and behind schedule, in large part due to legal challenges of federal permits filed by the Sierra Club and other environmental groups.

Approvals for the pipeline to pass through the Jefferson National Forest and cross more than 1,000 streams and wetlands have been suspended, and opponents are now asking for a complete stop of work while they challenge another permit that deals with the pipeline’s threat to endangered species.

Other opponents have spoken at public hearings and participated in the regulatory process.

But to the protester sitting Thursday in the chestnut oak, direct actions like hers are needed if the pipeline is to be stopped.

“I think that direct action should be done in concert with other tactics,” she said, “but without direct action, there’s no muscle behind the other tactics.”

The Roanoke Times

Oct. 21, 2019

Project entering dormant season

By Laurence Hammack

Winter is coming early for the Mountain Valley Pipeline.

Although construction is winding down for the season, it’s not just because of the coming freezing temperatures that will make it difficult to dig trenches along mountain slopes for the buried natural gas pipeline.

Even if it was being built in the tropics, this project would be stalled.

Mountain Valley has lost three sets of key permits — all suspended because of the pipeline’s impact on the environment — that have fallen like slow-motion dominoes for a project that was supposed to be done by now.

The most recent blow came last week, when the Federal Energy Regulatory Commission ordered the company to “cease immediately” all work on the interstate pipeline, at least until questions raised by the latest legal challenge are resolved.

While the courts consider that case, the U.S. Army Corps of Engineers is likely months away from making a decision on whether to re-issue permits that allowed the pipeline to cross more than 1,000 streams and wetlands in Virginia and West Virginia.

Those permits were revoked or suspended a year ago, and Mountain Valley had hoped to have them restored by now — until a legal challenge, filed in August, took issue with a determination from the U.S. Fish and Wildlife Service that the pipeline would not jeopardize endangered species of fish and bats.

And a decision on a third set of permits for the pipeline to pass through the Jefferson National Forest, thrown out in July 2018, remains in limbo while the U.S. Supreme Court considers a case that could impact the pipeline’s crossing of the Appalachian Trail.

With three federal agencies — the Army Corps, the Fish and Wildlife Service and the U.S. Forest Service — all back at the drawing board to redo their respective permits, there’s not a lot of work that can be done along the pipeline’s 303-mile route from northern West Virginia to Chatham.

“I think what has caught up with MVP and the agencies is that none of them did their jobs right,” said David Sligh, conservation director of Wild Virginia, one of about a dozen environmental groups that have challenged the permits in court.

“That is something they all have in common.”

When Mountain Valley began work in February 2018, it said the project would be completed by the end of that year at a cost of $3.7 billion. Several delays and cost increases later, the most recent announced goal is to have the pipeline operational by mid-2020, at a cost of $5 billion.

Work crews have “completed pipeline installation in nearly all accessible areas,” Mountain Valley’s assistant general counsel, Matthew Eggerding, wrote in a letter to FERC on Thursday.

That leaves a 25-mile stretch around the national forest, about 90 miles of pipeline right of way where endangered species are found, and most of the stream and wetland crossings to be completed next year — assuming Mountain Valley gets its permits back.

Meanwhile, the company is on schedule to complete stabilization and restoration work, which includes seeding the denuded 125-foot wide construction zone to curb erosion, before cold weather sets in, Eggerding wrote.

But opponents worry that FERC will allow the company to continue actual construction under the guise of stabilization, which they say has happened in the past.

“Letting MVP self-police on defining ‘stabilization’ and harming endangered species is like asking the fox to guard the henhouse — it’s an abdication of FERC’s responsibilities,” Elly Benson, a senior attorney for the Sierra Club, said in a statement last week.

**‘May the 4th be with you’**

Since a group of five energy companies proposed building a natural gas pipeline through Southwest Virginia more than five years ago, opponents have protested on various fronts.

They have climbed trees on the project’s right of way in an attempt to block construction; packed countless meetings of regulatory bodies at the local, state and federal levels; and turned to the courts for relief.

Perhaps their greatest success has been found in a stone courthouse in downtown Richmond, where the 4th U.S. Circuit Court of Appeals has issued three major rulings.

In July 2018, the court remanded a permit for the pipeline to cross the Jefferson National Forest, ruling that the U.S. Forest Service had failed to adequately plan for the erosion and sedimentation caused by digging trenches for the 42-inch diameter pipe.

Three months later, the court threw out a permit for stream crossings in West Virginia because the Army Corps improperly bypassed a requirement from state regulators, meant to limit water pollution, that major river crossings had to be completed within 72 hours. A similar permit for water crossings in Virginia was then suspended.

And most recently, the court issued a stay of two permits from the Fish and Wildlife Service while it reviews claims that the service overlooked key information in 2017, when it determined that building the pipeline would not significantly harm endangered or threatened species of fish, bats and plants. That stay in turn led FERC last week to order that construction be stopped.

The 4th Circuit’s actions have prompted a saying by pipeline opponents: “May the 4th be with you.”

In all three cases, Roger Gregory, the chief judge of the court, and Judge Stephanie Thacker have been members of three-judge panels that issued the opinions. Judge James Wynn joined the panel in two of the cases.

Although the 4th Circuit generally uses a computer program to randomly select its three-judge panels from the 15 members of the bench, Washington and Lee University law professor Brandon Hasbrouck said the makeup for the pipeline cases is not unusual.

The court’s policy states that “every effort is made to assign cases for oral argument to judges who have had previous involvement with the case.”

And Gregory, Thacker and Wynn have also served on panels in at least three cases that went for the pipeline, two of them upholding its use of eminent domain to take property and a third that validated a clean water certification by Virginia’s State Water Control Board.

Once considered one of the most conservative courts in the land, the 4th Circuit began to change under the administration of Democratic presidents Bill Clinton and then Barack Obama, who appointed about half of its judges during his two terms.

“That shifted the court from being very conservative to more moderate, progressive-leaning,” Hasbrouck said.

A recess appointment by Clinton put Gregory on the court temporarily, but he was later nominated for the position by Republican President George W. Bush. Thacker and Wynn were nominated by Obama.

Sligh, a former environmental engineer for the Department of Environmental Quality and an attorney, said the judges seem to have read the lengthy briefs carefully and have kept an open mind in deciding the cases.

“I don’t care if they are conservative or liberal. I don’t care who appointed them,” he said. “They are looking at the facts and the law very thoroughly.”

**Stabilization, or plowing ahead?**

When the 4th Circuit issued its stay of the Fish and Wildlife Service permits on Oct. 11, it also put on hold all proceedings in the underlying case, which deals with whether the federal government is adequately protecting endangered species in the pipeline’s path.

Led by the Sierra Club, a group of seven environmental groups say that clearing trees has damaged the habitat of the Indiana and northern long-eared bats, and that erosion from land-clearing and ditch-digging has allowed sediment to clog rivers and streams inhabited by the Roanoke logperch and the candy darter.

Not long after the case was filed, the Fish and Wildlife Service and FERC decided to review a 2017 biological opinion and incidental take statement, which allowed limited harm to fish and bats.

What happens with that process is likely to influence the next step in the legal proceedings, which will resume in January.

In the meantime, FERC must decide how much work to allow on the pipeline. In an Oct. 15 letter ordering Mountain Valley to stop all construction, the agency made an exception for restoration and stabilization work.

“Commission staff believes this will be more protective of the environment, including listed species, than leaving these areas in an unstable condition,” Terry Turpin, director of energy projects, wrote in the letter.

Since then, FERC has granted Mountain Valley’s request to finish work — which includes welding plates onto open ends of pipes, coating welds and burying pipe that was lying in open trenches — at 12 sites, all of them in West Virginia.

Mountain Valley then asked for permission to complete work that was in progress at another nine sites. No decision had been made on those requests by Friday.

None of the work sites that the company has asked to complete are in the watersheds of the Roanoke logperch and the candy darter, which cover much of the pipeline’s Virginia route through the counties of Giles, Craig, Montgomery, Roanoke, Franklin and Pittsylvania.

About 700 construction workers are still on the job in Virginia, down from a peak of 1,000 over the summer, Mountain Valley spokeswoman Natalie Cox said.

“MVP’s total project work is approximately 90% complete, and the project team remains committed to building this important infrastructure project safely in order to meet the demand for affordable, domestic natural gas,” Cox wrote in an email.

But there is too much work remaining — and too much uncertainty over whether the suspended permits will be restored — to give up now, opponents say.

“FERC should not trust MVP to interpret what is appropriate ‘stabilization’ for this unnecessary project,” said Peter Anderson, Virginia program manager for Appalachian Voices, one of the groups fighting the pipeline.

“It is in the developer’s interest to keep plowing ahead.”