

THE ROANOKE TIMES

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Legal fights continue over the Mountain Valley Pipeline

By Laurence Hammack

While cutting a 303-mile-long scar along the mountains of Virginia and West Virginia, the construction of a natural gas pipeline has also left a long trail of litigation with no end in sight.

Four years ago, after the first trees were felled and a 125-foot-wide strip of land was cleared for the Mountain Valley Pipeline, lawsuits by environmental groups soon followed. A federal appeals court has struck down enough government permits to delay — but not to kill, at least so far — the \$6.2 billion project.

Three new legal challenges were filed in the past month. Since 2017, there have been at least 56 civil actions brought in state and federal courts in Virginia.

“Mountain Valley Pipeline has faced an unusually high volume of litigation because it is an unusually unwise and unneeded project,” said Gillian Giannetti, a senior attorney with the Natural Resources Defense Council.

Judges have pondered a host of issues: The actions of regulatory bodies, environmental damage caused by digging trenches to bury the 42-inch diameter pipe, the rights of the landowners who refused to sell their property to Mountain Valley, the fate of endangered species and claims that the project is not needed and will worsen climate change.

“The volume is definitely higher than average, but I think it’s warranted,” Giannetti said.

Many of the lawsuits have been filed and financed by a coalition of national, state and community environmental groups — from heavyweights such as the Sierra Club to local groups like Preserve Craig County.

Even if this pipeline survives, opponents say their legal battle will not be a lost cause.

“You haven’t seen another huge, several hundred mile pipeline proposed since Mountain Valley,” said Giannetti, whose national nonprofit based in New York is not a plaintiff in the cases.

Developers know that a similar venture today would be met by “an army” of opposition, she said.

Mountain Valley says there is a public need for the 2 billion cubic feet of natural gas that will be shipped through the pipeline each day, once it goes into service this summer. The joint venture of five energy companies also argues that environmental problems with muddy runoff from construction sites have been addressed with its new set of permits.

“Aside from the number of challenges and litigation efforts by the opposition, the fact is that total project work on the MVP is roughly 94% complete,” company spokeswoman Natalie Cox wrote in an email last week.

But key decisions are expected soon from the 4th U.S. Circuit Court of Appeals — which in the past has been a burial ground for permits granted to Mountain Valley.

“At the end of the day, this pipeline continues to be in serious legal jeopardy,” Giannetti said.

Perhaps the most litigated — and for opponents, the most lucrative — aspect of construction has been the way Mountain Valley has tried to run the pipe beneath streams and wetlands. There are nearly 1,000 such crossings along the pipeline’s path from northern West Virginia, through the New River and Roanoke valleys, to connect with an existing pipeline near the North Carolina line.

Mountain Valley says it has completed more than half of the crossings with no adverse effects.

The U.S. Army Corps of Engineers granted the company a Nationwide Permit 12 in early 2018, which critics said took a “one size fits all” approach to temporarily damming waterways and burying the pipe along the exposed bottom. A three-judge panel of Fourth Circuit threw out that approval, ruling that the government cut corners in a way that favored Mountain Valley.

A second Nationwide Permit 12 was issued in September 2019, only to be stayed by the appellate court two months later.

Sensing that its coveted blanket permit was doomed, Mountain Valley decided to seek an individual permit, which involves a more detailed analysis of each crossing. As part of that process, Virginia and West Virginia needed to grant water quality certifications before the federal government could take action.

Virginia's State Water Control Board voted 3-2 last month to do so, and the West Virginia Department of Environmental Protection followed suit two weeks later.

And once again, both states were sued.

Last week, the Sierra Club and seven other groups asked the Fourth Circuit to stay the Virginia permit until reaches a final decision on their latest legal challenge. A decision on that request is expected by the end of January.

In seeking a stay, the groups argued that Mountain Valley intends to "ramp up" construction in February and would otherwise be done with the project before the court could rule.

Delaying the permit would allow time for a full examination of plans to trench and blast through streams, which the motion says would cause "irreparable harm" to the environment.

The State Water Control Board, according to the groups, failed to consider alternative locations for the water body crossings, wrongly concluding that it lacked the authority to do so.

Mountain Valley has made so many conflicting statements in the past about the best locations and methods to ford across streams and wetlands that it no longer has any credibility, attorneys for the groups contend.

"In short, MVP has a demonstrated history of saying whatever it needs to say about alternative crossing methods in order to gain approval of its preferred methods," the motion states.

The Fourth Circuit has given Mountain Valley until Tuesday to respond to the arguments.

In an email Friday, Cox wrote that "if the opponents were truly interested in environmental protection, they would have engaged with us to address their concerns through honest, open dialogue, which we

respectfully offered on numerous occasions, rather than wasting agency resources and burdening the courts to support their myopic agendas.”

In addition to the motion for a stay, the Fourth Circuit has other pipeline business before it.

Last October, the same three-judge panel that has rejected earlier permits heard arguments in two cases. One is a challenge of a U.S. Forest Service permit that allows the pipeline to pass through 3.5 miles of the Jefferson National Forest in Giles and Montgomery counties. The other asks the court to reverse a finding by the U.S. Fish and Wildlife Service, which concluded that running a pipeline across steep mountain slopes and through pristine streams would not jeopardize endangered species such as the Roanoke logperch and the candy darter.

Written opinions are expected any day now.

Still more legal challenges are pending before an appellate court in Washington, D.C. In those cases, opponents are questioning decisions by the Federal Energy Regulatory Commission, which in 2020 lifted a stop-work order and gave Mountain Valley more time to complete the project.

When it comes to fighting the powerful interests that are part of the fossil fuel industry, it helps to have the deep pockets and national profile of groups like the Sierra Club, Giannetti said.

“There are people in California who are getting emails about how important it is to stop the Mountain Valley Pipeline,” she said.

Having made that point, she stressed the importance of local involvement.

“It has to start from the bottom,” Giannetti said, “from your friends and neighbors in the community.”

THE ROANOKE TIMES

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Future of Mountain Valley Pipeline clouded
by court decisions

By Laurence Hammack

BRUSH MOUNTAIN — For four years now, the half-mile hike from David Sheriff's front door to a ridgetop has offered the same vista: a 125-foot-wide trough plowed up one side of the mountain and down the other. Along the route, segments of an unfinished natural gas pipeline lie in a state of suspended animation.

Sheriff is a declarant in lawsuits that seek to stop the Mountain Valley Pipeline.

A federal appeals court recently rejected two government permits that are needed to complete a massive infrastructure project that opponents say is an environmental train wreck.

On Friday morning, as he stood on the windswept ridge, Sheriff's outlook had not changed.

"I think it's another nail in the coffin," he said of the 4th U.S. Circuit Court of Appeals' Jan. 25 reversal of a permit allowing the pipeline to pass through the Jefferson National Forest, which abuts his home north of Blacksburg. A second ruling last Thursday invalidated a finding that endangered species would not be jeopardized.

"But we haven't killed the beast."

If the complex regulatory and legal proceedings that have enveloped the 303-mile pipeline since 2018 could be reduced to a simple baseball analogy, Mountain Valley has two strikes against it.

Three sets of key permits — the U.S. Forest Service's approval for the buried pipe to cut through 3.5 miles of public woodlands, the U.S. Fish and Wildlife Service's finding that it would not destroy the habitats of endangered species, and the U.S. Army Corps of Engineers' green light for Mountain Valley to cross streams and wetlands — have each been struck down twice by the Fourth Circuit.

Mountain Valley is still swinging, though.

“With total project work nearly 94% complete, Mountain Valley remains committed to meeting Americans’ energy needs and completing this pipeline,” company spokeswoman Natalie Cox wrote in an email Friday.

The joint venture of five energy companies is reviewing the lengthy opinions to see if there’s any way it can still meet its goal of completing the pipeline this summer.

“For eight years, the MVP project team has worked diligently with state and federal regulators to ensure this important infrastructure project is built and operated to the highest levels of safety and environmental standards,” the email read.

“The MVP has undergone an unprecedented level of review, and rigorous analysis has repeatedly demonstrated that this project can in fact be built safely and responsibly. “

Another delay likely

If the pipeline is to survive, government agencies must again rewrite permits to satisfy the Fourth Circuit — which has been perhaps the biggest challenge for developers since they first announced the project nearly a decade ago.

“MVP is now highly unlikely to enter service in 2022, in our view, and the in-service date could be pushed into 2024 depending on how the court’s concerns are addressed,” Height Capital Markets, an investment banking firm that has followed the project, said in a written commentary last week.

Of the two most recent decisions, the reversal of a biological opinion that found no jeopardy to two endangered fish — the Roanoke logperch and the candy darter — was seen as the more troubling for Mountain Valley.

In its “non-legal expert” reading, Height said the Fourth Circuit appears to have extended the scope of the Endangered Species Act “to include a standard that would be difficult for most new infrastructure projects to meet.”

Judge James Wynn wrote in a unanimous opinion from a three-judge panel that the Fish and Wildlife Service failed to adequately consider two things: the environmental baseline of the two imperiled fish and the cumulative effects of future events, such as climate change.

“We recognize that this decision will further delay the completion of an already mostly finished pipeline, but the Endangered Species Act’s directive to federal agencies could not be clearer: halt and reverse the trend toward species extinction, whatever the cost,” the 40-page opinion concluded.

Wynn wrote of the “apparently not-long-for-this world candy darter.”

In oral arguments last year, lawyers for the Sierra Club told the court that the small fish, easily distinguishable by its vibrant teal, red and orange colors, could be gone forever within 25 years.

The candy darter and Roanoke logperch are an important link to the aquatic food chain, feeding on insects before they are sometimes eaten by larger fish and other natural predators.

Worldwide, 23 endangered species were recently declared extinct, from a tiny catfish to some of the planet’s most spectacular birds, according to the Center for Biological Diversity.

More than a million other species could be lost in the coming decades, the center says.

Running a 42-inch diameter steel pipe across the habitat of the candy darter may not be enough, alone, to wipe out the fish by making it harder to feed and breed. However, the Fourth Circuit ruled that the Fish and Wildlife Service needed to better take into account the bigger picture.

Whether the court went too far is a question that could be grounds for an appeal, Height said in its analysis.

One option for Mountain Valley would be to ask the full Fourth Circuit, which consists of 15 judges, to reconsider the panel’s ruling. No such step had been taken by Friday, according to court records.

Regulatory and legal roadblocks

A four-year history of legal battles between environmental groups and fossil fuel interests offers a possible scenario of what could happen next with Mountain Valley.

The last time the company had so many permits remanded or stayed, in October of 2019, the Federal Energy Regulatory Commission stepped in and ordered all work to stop on the pipeline.

After most of the permits were reissued, FERC — the lead agency overseeing construction — lifted the stop-work order in the fall of 2020.

Should that happen again, decisions would be made by a much different FERC, whose five members are appointed by the president. Shortly after he took office last year, President Joe Biden named then-commissioner Richard Glick, who had voted against the pipeline previously, as chair.

In December, a new member appointed by the Democratic president joined the commission, giving pipeline opponents what they hope will be a 3-2 advantage in decisions that had earlier favored the pipeline.

At the same time it allowed work to resume in 2020, FERC also gave Mountain Valley another two years to complete the pipeline. The company had initially said the job would be done by late 2018, but has run into repeated delays caused by the legal challenges.

The current FERC certificate of public necessity expires Oct. 13.

Even if the commission does nothing before then, opponents say the Fourth Circuit's most recent rulings effectively stop all work on the pipeline. The Army Corps is currently considering a third stream-crossing permit, after the first two were rejected.

But the Army Corps cannot act now that Mountain Valley lacks a biological opinion from the Fish and Wildlife Service, according to Caroline Hansley, an organizer with the Sierra Club's Dirty Fuels Campaign.

"It's full stop, and I would argue they have nowhere to go," Hansley said.

Construction of the pipeline is currently in a winter break. The most recent weekly report filed with FERC states that the only work being done is maintenance of erosion and sediment control measures.

The joint venture's lead partner said last November that it expected to begin work early this spring and be done by summer. That would allow 2 billion cubic feet of natural gas per day to begin shipment from northern West Virginia, through the New River and Roanoke valleys, to connect with an existing pipeline near the North Carolina line.

"It's in the red zone for completion," Thomas Karam, CEO of Equitrans Midstream Corp., said in a conference call to discuss the company's third quarter results with financial analysts.

An update may come on Feb. 22, when Equitrans is scheduled to present its year-end earnings in another conference call.

A magical mountain

From his vantage point atop Brush Mountain, David Seriff woefully surveyed a muddy strip carved into the mountain four years ago. Graffiti has been painted on some sections of pipe stacked on wooden platforms along the right-of-way.

"It hurts," Seriff said. "I've always been an outdoors kind of person."

Several times a week, the 65-year-old makes the hike along a Forest Service road to the pipeline's path across the mountain.

It is here where a protester stopped construction for a day in 2018 by climbing to the top of an excavator and refusing to come down. Emily Satterwhite was one of many opponents who have occupied trees, construction equipment and other blockades since work began.

On Friday, the site was more sedate as Seriff pointed to the Jefferson National Forest on one side and the Brush Mountain Wilderness area on the other.

As a declarant in lawsuits filed by a coalition of national, state and local environmental groups, Seriff wrote in affidavits about how he — and the natural area where he lives — have been harmed.

"I find this mountain magical, especially in the ethereal hours of dawn and dusk," he wrote in a 2020 essay.

“As I survey the massive steel pipes stacked atop what had been deemed a specially protected place, it feels like a punch in the gut,” he wrote. “More than once I’ve simply sat here and wept while I pondered the death of forest life caused by this unneeded project.”

Steep slopes usually covered by trees and shrubs have been cleared to dig a ditch for the pipeline.

When it rains, muddy runoff is swept from construction sites. The Virginia Department of Environmental Quality has cited Mountain Valley more than 300 times with violating erosion and sediment control regulations.

Nearly a quarter of the pipeline’s route takes it up and down slopes with a gradient of more than 30%. In the Fourth Circuit’s opinion last week, Wynn wrote that black diamond ski slopes — among the steepest and most difficult runs on any mountain — typically have a gradient of 40% or higher.

Mountain Valley and its supporters say the best way to stop environmental damage is to finish burying the pipeline and plant vegetation over the right of way.

Opponents counter that if that happens, the natural gas flowing beneath the ground at high pressure will go on to be burned to heat homes and power businesses, worsening a climate crisis that is best addressed with the use of renewable energy.

Regulatory agencies or the courts may not kill Mountain Valley outright. But opponents hope that the costs and delays caused by their legal challenges will eventually force investors to give up.

“They’re eight years in, \$3.5 billion over budget, and four years behind schedule,” Hansley said.

If the pipeline is to be stopped, she said, “I don’t think we’ve ever had a stronger case than we do now.”

THE ROANOKE TIMES

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Jury boosts landowners’ compensation for
Bent Mountain property taken by MVP

By Laurence Hammack

A jury ordered Mountain Valley Pipeline to pay \$523,327 Thursday for a prime piece of Bent Mountain real estate that it took, against the owners' wishes, using its power of eminent domain.

The company building a natural gas pipeline first offered about \$119,000 for an eight-acre easement through the 560-acre tract. After the Terry family refused to sell, Mountain Valley took possession of a 125-foot-wide right of way and quickly began cutting trees on land that includes old-growth forests, meadows and the headwaters of Bottom Creek.

Four years later, company attorneys argued this week that the Terrys deserved \$151,850 for their loss.

The jury saw it differently, awarding most of the \$570,000 the family had sought. The verdict in Roanoke's federal court came after four days of often conflicting testimony from appraisers who were asked to put a price on land that has been with the Terry family for seven generations.

"I think it was a great thing for the jury to do," said Frank Terry, who lives in a circa-1890 farmhouse on property that he jointly owns with his brother and sister, John Coles Terry and Elizabeth Terry Reynolds.

But, he added, he would rather have the land back.

"I don't want them on my property, and if I could I'd keep them off," Terry said of construction crews building the deeply controversial project that slices through the rural heart of the New River and Roanoke valleys.

Joe Sherman, a Norfolk attorney who represented the family, told the jury that the only measure of justice would be to award just compensation, or the difference between the fair market value of the land before and after it was condemned for the pipeline.

"The Terrys can't stop this project," he said. "That's been decided. So their only remedy is money."

Jurors were asked to sort through the work of four different appraisers, who offered widely different values and accounting methods in testimony that was both dry and sometimes contentious.

Joseph Thompson, a Roanoke appraiser hired by Mountain Valley, said he found the property to be worth \$1.2 million before the taking. The pipeline easement reduced the value by 12%, he testified, which worked out to a just compensation figure of about \$150,000.

The Terrys countered with an initial assessment of \$1.9 million and a diminution of 30%. That put just compensation at \$570,000, Sherman told the jury.

But Wade Massie, an Abingdon attorney who represented Mountain Valley, argued that those calculations were based on bits and pieces of what several different appraisers said.

“I don’t think that you can decide this case based on some unknown, hypothetical, mystery appraiser,” Massie told the jury.

In 2017, after proposing a 303-mile pipeline that would run through West Virginia and Southwest Virginia, Mountain Valley began to approach landowners in its path.

About 85% of the property owners agreed to sell their land, the company says.

Those who did not – including the owners of about 300 parcels in Southwest Virginia – were sued by Mountain Valley, which had the power of eminent domain on its side.

Over the years, eminent domain has traditionally been used for government projects to take private land for a public good, such as the construction of highways.

But the Natural Gas Act gives private companies like Mountain Valley the authority to condemn land for pipelines when there is a determination of public necessity, which the Federal Energy Regulatory Commission found in 2017.

U.S. District Judge Elizabeth Dillon ruled the company had the right to immediate possession of the land in early 2018. Tree cutting began shortly afterward, and Mountain Valley was allowed to work out just compensation for the owners in the years that followed.

Most of the cases have been settled, either through voluntary agreements or after a judge's ruling on evidentiary issues forced a resolution. Less than a dozen remain. Among them are John Coles Terry and Elizabeth Terry Reynolds, who own land near the tract that was the subject of this week's trial.

Although Mountain Valley's power to take land was not at issue, the way it used the process was sometimes questioned. "Eminent domain is not inherently evil," Sherman said. "But it's got tremendous potential for abuse."

Thompson, the appraiser hired by Mountain Valley, testified that he had been paid about \$295,000 for evaluating dozens of properties over the past four years.

"That's a great job," Sherman told the jury, "if you're willing to say what needs to be said to help the bottom line."

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With construction at a standstill, MVP looks for solutions

By Laurence Hammack

ROCKY MOUNT — Adding a splash of yellow to the drab winter landscape, dozens of excavators and bulldozers sit in rows on a gravel lot, idled by the latest stop in construction of the Mountain Valley Pipeline.

Developers had hoped the equipment would be in the field by now, finishing work on a natural gas pipeline that was supposed to be done four years ago.

But on a mild afternoon last week, crews loaded one of the excavators onto a tractor-trailer bound for a different construction job, one with more promise.

Mountain Valley — which lost two permits this year to a federal appeals court that has repeatedly struck down its government-issued approvals — is facing the greatest danger of collapse since the \$6.2 billion infrastructure project was authorized in 2017.

While construction remains at a standstill, efforts to revive the pipeline continue on several fronts:

* Attorneys for Mountain Valley have asked the full 4th U.S. Circuit Court of Appeals to reconsider decisions by a three-judge panel, which in late January struck down a permit allowing the pipeline to pass through the Jefferson National Forest and the following week invalidated an opinion from the U.S. Fish and Wildlife Service that work would not jeopardize endangered species.

* U.S. Sen. Joe Manchin of West Virginia is calling for legislative or executive action to advance the project. The 303-mile pipeline will start in the Mountain State before passing through the Roanoke and New River valleys.

* And with Russia's invasion of Ukraine tightening the global energy market, supporters of Mountain Valley say it's needed more than ever for a steady supply of natural gas.

Seeking legal relief

A federal appellate court based in Richmond — and in particular, three judges on the 15-member court — has been perhaps the sharpest thorn in the side of a joint venture of five energy companies that make up Mountain Valley Pipeline LLC.

Chief Judge Roger Gregory and judges Stephanie Thacker and James Wynn have presided over 12 cases in which environmental groups challenged permits issued to Mountain Valley and the Atlantic Coast Pipeline, a similar project that was canceled in 2020 as legal problems mounted.

“That panel’s record speaks for itself,” pipeline attorneys wrote in a recent court filing, stating that all but two of the 12 contested permits have been vacated or stayed over the past four years.

On March 11, a petition filed by Mountain Valley asked the full Fourth Circuit to consider the decisions of the three-judge panel in a rare proceeding known as an en banc hearing.

“The consequences of the panel’s actions are grave,” the petition states. “Its errors have trapped Mountain Valley and the agencies in a perpetual loop, ordered to redo work that was neither arbitrary nor capricious, knowing that revised analysis will yet again be subject to inappropriately aggressive review.”

A key argument is that the three-judge panel substituted its own judgment for that of the Forest Service and Fish and Wildlife Service. Mountain Valley says that violates a long-established precedent that deference should be given to agencies when they decide complex matters involving their own expertise.

The panel engaged in “textbook fly-speckary,” the petitions state, examining in minute detail the Fish and Wildlife Service’s opinion that construction would not jeopardize endangered species in the pipeline’s path, which include the Roanoke logperch and the candy darter fish.

“Worse, the panel’s criticisms in key respects are just wrong,” the filings contend.

In 2018, the Fourth Circuit remanded a Forest Service permit, which allowed the pipeline to pass through 3.5 miles of national forest in Giles and Montgomery counties. The agency spent nearly two years working on an environmental impact statement that addressed the court’s concerns about erosion problems being overlooked, Mountain Valley contends.

“The panel nonetheless vacated the agency’s determination once again, based on modest disagreements over points of secondary significance,” the company’s filing said of the court’s second rejection of the Forest Service permit earlier this year.

Hearings by full court are rare

Mountain Valley faces a steep uphill climb.

When a three-judge panel’s decision is unanimous, as it was in the two cases at issue, the Fourth Circuit is cautious about granting an en banc hearing, according to Carl Tobias, an expert on the court who teaches at the University of Richmond’s law school.

Just four such requests were granted last year by the Fourth Circuit, Tobias said. The court hears appeals from federal administrative agencies and nine district courts in Virginia, West Virginia, North Carolina, South Carolina and Maryland.

“The active judges may defer somewhat to a unanimous panel ruling, especially if the reasoning is persuasive,” Tobias said.

An en banc hearing is generally not ordered unless it is necessary to secure uniformity in the court’s decisions or the case involves a question of “exceptional importance,” according to the rules of the court.

The Sierra Club, one of about a dozen national, state and local environmental groups that have challenged Mountain Valley’s permits, says there is no need for the full court to second-guess its three-judge panel.

“This petition is just another example of MVP grasping for straws to complete their unnecessary project,” Caroline Hansley, a senior campaign representative with the Sierra Club, said last week in a statement.

Pipeline opponents point to Mountain Valley’s environmental track record, which in Virginia includes nearly 400 violations of erosion and sediment control regulations and fines of more than \$2 million from state regulators.

“This reckless project cannot be built in a safe manner that complies with standards designed to protect our lands, water and vulnerable species,” Hansley said.

To date, neither the Forest Service nor the Fish and Wildlife Service have joined Mountain Valley, which is an intervenor in the cases, in asking the Fourth Circuit to grant a rehearing.

When asked if the Fish and Wildlife Service supports Mountain Valley’s petition, a spokesman for the service said he could not comment on legal matters. The Forest Service had not provided an answer to the same question by late Friday.

Nathan Matthews, a senior attorney for the Sierra Club who was involved in the Forest Service case, questioned the assertion that the Fourth Circuit substituted its own judgment for that of the agency.

Rather, the Forest Service failed to form any judgments at all in some cases, Matthews said, citing as an example its failure to consider water quality data from government monitors installed a short distance from the Jefferson National Forest.

A legislative solution?

In recent weeks, Mountain Valley has gained an ally in West Virginia Democrat Manchin, who is often more conservative than his party's base.

Manchin is pushing for reinforcing domestic energy supplies in light of Russia's invasion of Ukraine, which has tightened the global market for oil and natural gas.

"I know some might bristle at investing in fossil fuel infrastructure as a long-term asset," the senator said in prepared remarks March 10 to the Energy and Natural Resources Committee, which he chairs.

"But let me tell you — the Mountain Valley Pipeline could be completed in four months if it was finally given the green light. And I've got legislation ready that would do just that."

Details of the bills, which have not yet been introduced, were not available. Manchin's press office declined to comment.

Manchin has also called on President Joe Biden to employ the Domestic Production Act, directing private companies to step up efforts crucial to national defense interests, in an effort to jump-start Mountain Valley. In the past, the measure has been used for emergency matters such as the COVID-19 pandemic.

When asked earlier this month about the matter, White House press secretary Jen Psaki suggested that the administration was not inclined to pay oil companies for "what they probably already have the capacity to do," according to reporting by The Hill, which covers politics and policy from Washington, D.C.

Manchin's support for Mountain Valley has also been reflected in his questions to nominees for Department of Interior positions and to members of the Federal Energy Regulatory Commission, the lead agency responsible for approving natural gas pipelines and overseeing their construction.

Mountain Valley "has run into court case after court case after court case," Manchin said in a recording posted to the committee's website. "This product needs to get to market."

Debate over need continues

Ever since 2014, when plans to bury a 42-inch pipe along the mountains of Southwest Virginia sparked an intense controversy that continues today, there's been debate over the need for the fuel it will carry.

Pipeline opponents say residential and commercial use of natural gas has remained stable over the past 20 years and is expected to remain so for just as long.

Transporting 2 billion cubic feet per day of natural gas to markets in the mid-Atlantic and Southeastern regions of the county will worsen a climate crisis that should be addressed with renewable energy, they say.

A small crowd of protesters gathered Wednesday outside Roanoke Gas Co., which plans to take natural gas from two taps of pipeline and distribute it to its 60,000-plus customers in the Roanoke and New River valleys.

“It’s a tragedy that MVP’s partners haven’t been responsible to their shareholders by canceling this ever increasingly expensive boondoggle,” said Freeda Cathcart of Roanoke, a frequent critic of Roanoke Gas’s involvement with the project.

A subsidiary of RGC Resources, the parent company of Roanoke Gas, is a 1% partner in building the pipeline.

Paul Nester, president and CEO of RGC, disputed the group’s positions, which include arguments that there is sufficient capacity in the two other pipelines that currently supply Roanoke Gas.

“Multiple federal and state regulatory bodies have confirmed the need for the energy this important infrastructure project can provide to not only this region, but the entire United States,” Nester said.

When it approved the project in 2017, FERC found there was a public need for the gas — a decision it reaffirmed in 2020 when it gave Mountain Valley a two-year extension to complete the project. FERC’s initial finding has been upheld by the U.S. Circuit Court of Appeals for the District of Columbia.

Despite the recent setbacks, Mountain Valley says it still plans to complete the project. Details on when that may happen, and whether the \$6.2 billion cost of construction will rise once again, have been sketchy.

At a trial last week in Roanoke's federal court, held to determine how much property owners should be paid for land taken by eminent domain, a Mountain Valley official testified that the hope is to have the pipeline in operation by next summer.

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MVP seeks new appellate court panel to hear legal challenges

By Laurence Hammack

Unhappy with the way it has been treated by a three-judge panel of an appellate court, Mountain Valley Pipeline is asking for a new slate of judges to hear the next round of its long-running legal battle with environmentalists.

In an unusual move, the company building a natural gas pipeline through Southwest Virginia filed a motion last month requesting the 4th U.S. Circuit Court of Appeals to assign a new panel at random.

Mountain Valley is hoping for better luck than it had with a panel that presided over 12 earlier challenges of government approvals for it and the now-defunct Atlantic Coast Pipeline. Those three judges, it says, vacated or stayed all but two of the permits, effectively killing Atlantic Coast and threatening to do the same for Mountain Valley.

"The perception created by this Court's deliberate formation of a special 'pipeline panel' – actually a 'Mountain Valley panel' – threatens public confidence in the Court's legitimacy," the motion

The Richmond-based Fourth Circuit, which consists of 15 active judges and three senior judges to hear appeals from five states, has a computer program that randomly assigns three-member panels for incoming cases.

However, the court's rules allow for the same judges initially appointed at random to remain with a case when it comes up again, under certain circumstances.

When the Fourth Circuit was first asked to decide a case involving Mountain Valley – an appeal of a Roanoke judge's 2017 decision on the company's powers of eminent domain – the court's program indiscriminately selected three judges.

The luck of the draw went to Chief Judge Roger Gregory and Judges Stephanie Thacker and James Wynn. That led to their assignment to most, but not all, of the future cases in which federal and state permits issued to Mountain Valley were contested repeatedly by environmental groups and local opponents.

But the Fourth Circuit did not follow its internal operating procedures, which only allow such assignments in limited cases, Mountain Valley asserts.

The rule states, in part: "Every effort is made to assign cases for oral argument to judges who have had previous involvement with the case" to preside over a motion made before oral arguments or a prior appeal in the matter.

Mountain Valley contends that the current cases – which involve petitions from environmental groups seeking the reversal of approvals for the 303-mile pipeline to cross streams and wetlands in Virginia and West Virginia – involve neither a pre-argument motion nor a prior appeal.

The company "therefore respectfully asks the Court to correct this departure from its own procedures," George Sibley, a Richmond attorney who represents Mountain Valley, wrote in court papers.

Not only does the Fourth Circuit's repeated reliance on the same three judges run counter to its rules, Mountain Valley argues, it also has created a public perception "of a deck stacked against large infrastructure projects in general and one private party specifically."

The motion cites reports in The Roanoke Times about how the court's overall record has evoked a saying by pipeline opponents: "May the Fourth be with you."

Also included is an editorial from The Wall Street Journal, which opined that “oddly, repeated challenges keep landing before the same three-judge panel of Roger Gregory, James Wynn and Stephanie Thacker even though cases are supposed to be assigned to judges at random.”

Steve Emmert, a Virginia Beach lawyer and an authority on state and federal appeals who publishes the online Virginia Appellate News & Analysis, said he has never seen a motion like the one filed by Mountain Valley.

“To me, it’s very, very unusual,” Emmert said.

The most recent actions by Judges Gregory, Thacker and Wynn came earlier this year, when they cited environmental concerns in rejecting two permits – for the second time – that had been issued to Mountain Valley.

One of the authorizations allowed the pipeline to cross through a 3 1/2 mile segment of the Jefferson National Forest in Giles and Montgomery counties; the other was a biological opinion by the U.S. Fish and Wildlife Service that found endangered species would not be jeopardized by construction of the buried pipeline.

Mountain Valley then asked the full Fourth Circuit to reconsider the panel’s decisions, which it declined to do.

“That tells me it is unlikely that the court will grant them the relief that they are now seeking,” Emmert said.

The Sierra Club and other environmental groups, which are contesting the latest permits for water crossings, urged the court not to grant Mountain Valley’s request.

“The crux of MVP’s motion is that MVP has grown dissatisfied with that initial assignment because it has lost more often than it thinks it should have,” wrote attorneys Derek Teaney and Spencer Gall, who represent the coalition.

They say Mountain Valley voiced no objections to the Gregory-Thacker-Wynn trio when it was first appointed at random. In that case, the panel upheld a decision from U.S. District Judge Elizabeth Dillon

that favored the pipeline. Dillon ruled that she lacked jurisdiction to hear opponent's challenges of the company's use of eminent domain to take property for the controversial project.

Most of the approximately half-dozen cases that involved eminent domain were omitted from Mountain Valley's calculations that it won only two of the 12 cases decided by the panel.

In so doing, "MVP distorts [the panel's] actual track record," the Sierra Club's motion states.

There is no reason to disqualify the three judges for making rulings that were clearly supported by the facts, the motion continues. Those facts show "systemic flaws in the permitting of MVP's pipeline, rather than 'a deck stacked against it,' " Teaney and Gall wrote.

Many of the cases decided by the panel involved what it found to be inadequate oversight by government agencies to control muddy runoff from the massive construction project. Mountain Valley has been cited nearly 400 times by Virginia regulators for violating erosion and sedimentation control regulations since work began in 2018.

In support of the Fourth Circuit's process of assigning three-judge panels, the Sierra Club cited an article from the Texas Law Review. Two law professors noted that having the same judges hear similar cases "arises out of notions of judicial efficiency, allowing those already familiar with a case to remain involved."

Legal battles have delayed completion of the pipeline by nearly four years and doubled its cost, now estimated at \$6.6 billion.

Mountain Valley spokeswoman Natalie Cox said the company "respects the judicial system," and accordingly is requesting a new panel selection. She declined to comment further. Teaney, an attorney with Appalachian Mountain Advocates, declined to comment.

The future of the project could rest on what the Fourth Circuit does next.

Challenges of a Virginia State Water Control Board approval for stream crossings, and a similar authorization by West Virginia, are now before the court.

Mountain Valley is also seeking, for the third time, a permit struck down earlier by the court for the pipeline to pass through the national forest and an opinion from the Fish and Wildlife Service that construction would not jeopardize endangered species. Should those approvals be re-issued later this year, additional lawsuits would likely follow.

The last brief due in Mountain Valley's request for the random selection of a new panel was filed last week. A decision is expected in the coming weeks or months.

THE ROANOKE TIMES
JUNE 23, 2022

Appeals court denies MVP's request for new judges

By Laurence Hammack

In five words, the 4th U.S. Circuit Court of Appeals ruled on Mountain Valley Pipeline's request that it draw a new three-judge panel to reconsider permits for the embattled project that have repeatedly been struck down.

"The court denies the motion," read a one-sentence order filed late Wednesday.

In a highly unusual move, the company building a natural gas pipeline through Southwest Virginia asked the Fourth Circuit in May for the random selection of a panel to hear the latest challenge of its permits, made by a coalition of environmental groups and local opponents.

Mountain Valley contended that public confidence in the court is threatened by its continued rejection of government approvals for the 303-mile pipeline, often by the same trio of judges.

"The public has certainly noticed these exceptional results and has zeroed in on the peculiarity that each case involving an authorization for Mountain Valley draws the same three-judge panel," the motion stated.

The Richmond-based Fourth Circuit, which consists of 15 active judges and three senior judges to hear appeals from five states, has a computer program that randomly assigns three-member panels for incoming cases.

However, the court's rules allow for the same judges initially appointed at random to remain with a case when it comes up again, under certain circumstances.

When the first lawsuit involving Mountain Valley reached the court in 2018, the computer program indiscriminately picked three names — Chief Judge Roger Gregory and Judges Stephanie Thacker and James Wynn.

That led to their assignment to most, but not all, of the dozen or so future cases in which federal and state permits issued to Mountain Valley were contested.

Supporters of keeping the same judges on similar cases say it improves judicial efficiency, as the panel gains knowledge of past history and familiarity with complex issues.

Lawyers for a coalition headed by the Sierra Club argued that it was the facts of the cases — not the judges who heard them — that led to Mountain Valley's losing record.

Those facts show “systemic flaws in the permitting of MVP's pipeline, rather than ‘a deck stacked against it,’” read a brief filed by Appalachian Mountain Advocates and the Southern Environmental Law Center, two groups that represent the petitioners.

Many of the cases decided by the panel involved what it found to be inadequate oversight by government agencies to control muddy runoff from the massive construction project. Mountain Valley has been cited nearly 400 times by Virginia regulators for violating erosion and sedimentation control regulations since work began in 2018.

Officials with the Sierra Club and Appalachian Voices, which are part of the group that is fighting the permits, declined to comment Thursday. A spokeswoman for Mountain Valley also had no comment.

The cases involve the latest challenge of stream crossing permits — one issued by Virginia's State Water Control Board last December and a similar authorization by West Virginia — where the pipeline starts.

Generally, it is not known which Fourth Circuit judges will hear a case until the day of oral arguments before the court. No date has been scheduled in the stream crossing cases, which will likely not be heard until the court's September term, at the earliest.

Steve Emmert, an authority on state and federal appeals who has never seen a motion like the one filed by Mountain Valley, said the brevity of the Fourth Circuit's ruling was not unusual.

Unlike formal opinions in which the court explains its reasoning and cites case law, rulings on motions usually contain little detail, according to Emmert, a Virginia Beach attorney who is not involved in the pipeline litigation.

"I imagine that this is a disheartening ruling for the pipeline, but the court absolutely has the discretion to control its case assignments," he said.

The remaining crossings of streams, rivers and wetlands is not the only obstacle Mountain Valley must overcome to meet its target of completing the long-delayed, \$6.6 billion infrastructure project by late 2023.

Earlier this year, the Fourth Circuit — again represented by Gregory, Thacker and Wynn — struck down for the second time two other authorizations: One for the pipeline to pass through the Jefferson National Forest and the second a finding by the U.S. Fish and Wildlife Service that endangered species would not be jeopardized.

Mountain Valley is applying for renewed permits yet again.

In a filing this week with the Federal Energy Regulatory Commission, the lead agency overseeing the pipeline, the company submitted details on its application to the U.S. Forest Service for approval to pass through public woodlands in Giles and Montgomery counties and Monroe County, West Virginia.

All of the trees have been felled along a 125-foot wide right of way through 3.5 miles of the Jefferson National Forest, according to the documents.

About half of the land along Sinking Creek and Brush Mountain has been cleared and graded, but no pipe has been installed in the forest.

The pipeline will cross under the Appalachian Trail as it traverses Peters Mountain. Plans call for Mountain Valley to bore a tunnel for the pipe about 90 feet below the trail, leaving a buffer of about 300 feet on either side of the scenic foot path.

Critics of the pipeline say its corridor will still be visible from the trail for miles away.

THE ROANOKE TIMES
AUG. 15, 2022

Sen. Manchin's maneuvers for MVP not necessarily certain to succeed

By Laurence Hammack

When there's a legal battle brewing over the Mountain Valley Pipeline, supporters would rather see it play out in the federal courthouse in Washington, D.C. — not one 100 miles to the south in Richmond.

The U.S. Court of Appeals for the District of Columbia is largely deferential to pipeline approvals by the Federal Energy Regulatory Commission, legal experts say. The appellate court upheld a FERC decision that greenlighted Mountain Valley in 2017, and more recently rejected challenges to the commission's approval for an extension of the pipeline.

In Richmond, where the 4th U.S. Circuit Court of Appeals sits, the pipeline has not fared as well. The Fourth Circuit has stayed or struck down nearly a dozen permits issued to Mountain Valley by other federal agencies.

Joe Manchin hopes to change that.

The U.S. senator from West Virginia, a staunch supporter of Mountain Valley, struck an agreement with Democratic leaders earlier this month that would make Washington, D.C., the exclusive venue for future legal challenges.

But should Manchin's proposed legislation be passed, there's no guarantee that it would ensure the completion of a litigation-battered and long-delayed natural gas pipeline that passes through the New River and Roanoke valleys.

"It would be foolhardy to say that this is a *fait accompli* now," said Cale Jaffe, a law professor and director of the Environmental Law and Community Engagement Clinic at the University of Virginia.

First, there's the unusual nature of Manchin's venue proposal, which some lawyers likened to switching referees in the middle of a ballgame.

"We seldom see a legislative intervention in litigation to change the court in which legal challenges are to be filed," said Steve Emmert, a Virginia Beach lawyer who founded and is past chair of the appellate practice section of the Virginia Bar Association.

Under current federal law, challenges to an approval by FERC — the lead agency that oversees interstate projects such as Mountain Valley — go to the D.C. Court of Appeals. Petitions that seek to overturn secondary permits issued by other government agencies wind up before the appellate court in the district where the project is located, which for Mountain Valley is the Fourth Circuit.

Even if the proposal were to become law, some legal experts said Mountain Valley may not necessarily find a more sympathetic forum in the D.C. Court of Appeals, which in recent years has become more willing to scrutinize FERC decisions.

"On the whole, I wouldn't expect the change of venue to make that much of a difference," Alison Gocke, an associate professor of law at UVA's law school, wrote in an email.

"These are both circuits that have a record of thoughtful decisions that try to faithfully apply the law, and I would imagine challenges to the MVP would be treated and reviewed similarly in both."

'Court case after court case'

Mountain Valley hit its first legal roadblock in 2018, just a few months after work started on a deeply controversial pipeline that runs for 303 miles from northern West Virginia through Southwest Virginia to connect with an existing pipeline near the North Carolina line.

A three-judge panel of the Fourth Circuit struck down a permit from the U.S. Forest Service for the pipeline to pass through a 3.5-mile section of the Jefferson National Forest, voicing concerns about erosion and sedimentation caused by digging trenches for a buried pipe along steep mountainsides.

The court later stayed approvals from the U.S. Army Corps of Engineers for the pipeline to cross under nearly 1,000 streams and wetlands. And it rejected an opinion from the U.S. Fish and Wildlife Service that endangered species — including fish such as the Roanoke logperch and the candy darter — would not be jeopardized by the construction.

Mountain Valley is seeking new permits, which are likely to be challenged yet again by the same environmental and community groups.

Noting that the same three judges presided over most of the cases, Mountain Valley asked the court to randomly select the next panel, writing in court documents that continuing with the same trio would “undermine public trust in the judicial process.” In June, the court denied the motion without comment.

Manchin, meanwhile, was becoming more outspoken about his frustrations with what he called a bogged-down permitting process.

“It has run into court case after court case after court case,” Manchin said during a meeting of the Senate’s Committee on Energy and Natural Resources, which he chairs. “This product needs to get to market.”

As arguably the most conservative Democrat in the Senate, Manchin’s support for key priorities of his party and the White House is often elusive in the evenly divided chamber.

So it was a major breakthrough in early August when he struck an agreement with Senate Majority Leader Chuck Schumer, House Speaker Nancy Pelosi and President Joe Biden. Manchin agreed to vote for the Inflation Reduction Act, a sweeping law that includes spending for renewable energy to fight climate change. The measure also aims to lower the cost of prescription drugs and pay down the national debt.

In return, the Mountain State's senator was promised Democratic support for one of his pet projects — a reform of the permitting process that governs energy infrastructure projects such as natural gas pipelines. The measure would set timelines for reviews and impose limits on “excessive litigation.”

A one-page summary of the package includes a single line labeled “Complete the Mountain Valley Pipeline.”

It calls for relevant federal agencies to “take all of the necessary actions to permit the construction and operation” of the project, while giving “the DC Circuit jurisdiction over any further litigation.”

A change of heart?

It was early April, and any home-court advantage that Mountain Valley might have in the nation's capital was not apparent.

A three-judge panel of the D.C. Court of Appeals was hearing oral arguments in a lawsuit brought by the Sierra Club and other environmental groups. At issue was a decision by FERC in 2020 that extended by two years a deadline for the pipeline's completion, allowing work to resume despite the lack of permits struck down by the Fourth Circuit.

Judge Patricia Millett said it “just seems troubling” that FERC had not ordered all construction to halt after the Fourth Circuit's rulings.

She also questioned Mountain Valley's explanation, which was accepted by the commission, that “historic rainfall” in 2018 was to blame for repeated problems controlling muddy runoff from construction sites.

“The historic rainfall wasn't for a full year, this wasn't like the times of Noah,” Millett told a FERC attorney.

The D.C. Circuit has yet to rule on the case. But some observers say the exchange that occurred April 7 is part of a broader pattern: An appellate court long seen as FERC-friendly is becoming less so.

“Over the last couple years, the D.C. Circuit has been increasingly willing to scrutinize FERC’s pipeline decisions, and in several important decisions the Court has remanded cases back to FERC for violations of the National Environmental Policy Act and the Natural Gas Act,” Gocke said.

She added that it’s too early to discern whether there has been a fundamental shift, or to explain what’s behind it.

“There has been a lot of activity and advocacy by many environmental groups, community groups, and landowner groups over the years — it’s possible this advocacy has encouraged the Court to look more closely at these cases,” she said.

Some of D.C. Circuit’s recent rulings have focused on greenhouse gas emissions, and whether FERC took proper steps to evaluate that impact in approving fossil fuel projects.

Gocke said it’s possible that “as climate change has become a more salient issue, the Court has been more willing to look closely at pipeline approvals. But that’s speculation on my part; I don’t think we know why.”

Legislative outlook unclear

Equally uncertain, it seems, are the details of Manchin’s proposal to streamline the permitting process for energy projects, and how it might fare in Congress.

No legislation has been introduced yet, although the senator’s office says that Schumer and Pelosi have agreed “to move a comprehensive permitting reform package before the end of the fiscal year on Sept. 30, 2022.”

Sen. Tim Kaine, D-Va., said there is no explicit agreement that Manchin’s support for the Inflation Reduction Act means that his separate legislation will get the backing it needs.

“No one’s made a commitment on how they will vote, and I’m certainly not going to make a commitment until I see what’s in the bill,” Kaine said in a recent video session with reporters.

Rep. Morgan Griffith, a Republican whose 9th District is crossed by the pipeline, also says he doesn’t know enough now on which to base a decision.

“While I support permitting reform generally, I have heard from many constituents opposed to the MVP,” he said in a statement last week. “I also have my own concerns about the process the Federal Energy Regulatory Commission followed for permitting the MVP.”

It is possible that Manchin’s permitting package will be included in broader legislation — such as a bill to continue funding the operations of the government — that would be difficult for lawmakers to oppose, according to Arbo, a Washington, D.C., firm that provides legal counseling for large energy infrastructure projects.

“That could ease its passage,” a recent post on Arbo’s blog stated.

“Otherwise, it would be difficult to see how the required votes can be obtained because many Democrats will likely oppose aspects of the permitting reform legislation, and it is far from certain that Republicans would be inclined to help Senator Manchin get it passed,” considering his vote that assured passage of the Inflation Reduction Act, the blog post stated.

Although many questions remain, Arbo said, “the benefits to MVP could be substantial” if the legislation passes.

A statement from Mountain Valley praised the concept of Manchin’s proposal without commenting on its impact to the pipeline specifically.

Spokeswoman Natalie Cox wrote in an email that it “would address issues that have presented costly, time-consuming delays in the construction of energy infrastructure projects and supports Americans’ demands to execute a timely transition to clean energy, while at the same time ensuring energy reliability and affordability.”

“By providing a timely and certain permitting process, the proposed legislation would benefit all energy infrastructure projects, which is just as important for renewable energy infrastructure projects as it is for oil and gas,” Cox said.

Before the Manchin deal was announced, the consulting firm put the odds of Mountain Valley meeting its goal of finishing work on the pipeline by the end of next year at just 27%. Its chances now stand at 70%, Arbo says.

Although environmentalists are pleased with many parts of the Inflation Reduction Act — which includes record federal spending on clean energy — some say the tradeoff for Manchin’s support hurts those in the pipeline’s path.

“Communities in Appalachia are not a sacrifice zone,” said Grace Tuttle of the Protect Our Water, Heritage, Rights coalition. “Tell President Biden to stop the Mountain Valley Pipeline, now.”

No direct effect for wind farm project

The climate legislation, meanwhile, would not directly help a proposed wind farm in Botetourt County — which would be the first of its kind in Virginia — but will likely have secondary benefits.

“It will provide more support and a better environment for all renewable energy projects,” Patrick Chilton, a spokesman for Apex Clean Energy, said in an email Friday.

Apex is proposing a wind farm to be built on the ridgeline of North Mountain, about 5 miles northeast of Eagle Rock. Rocky Forge Wind would consist of 13 turbines, each one 643 feet tall.

The project has encountered delays caused by difficulties finding a buyer for the renewable energy and by lawsuits filed by opponents.

“The legislation will create more clean power, more jobs, and more stability for the industry. This will drive investment in and deployment of renewables in Virginia and across the country,” Chilton said.

“If passed, the new and expanded tax credits for renewables would remain on the books for a decade, providing unprecedented certainty for developers to plan future projects.”

THE ROANOKE TIMES
SEPT. 3, 2022

As MVP construction extended, concerns about pipe's integrity grow

By Laurence Hammack

Jan. 12, 2018: In a Roanoke courtroom packed with people whose land was being taken for the Mountain Valley Pipeline, a company executive explained why it was so important that construction begin as soon as possible.

One of the reasons was that sections of pipe already purchased by Mountain Valley needed to be buried promptly, before sunlight could break down an epoxy coating meant to safeguard the steel from corrosion.

“The coating needs to be protected,” Robert Cooper, the company’s vice president for engineering and construction, testified. “You have to do that very carefully.”

Aug. 25, 2022: Atop Bent Mountain, under a late-summer sun, sections of pipe were sitting along a linear construction zone like a giant, chopped-up garden hose. The pipe was supposed to have been buried in 2018, but lawsuits filed by environmentalists have slowed work to a crawl.

Pipes like this should be stored above-ground for no longer than six months, unless additional coating is applied, according to industry standards. Otherwise, exposure to the elements could make the pipe more vulnerable, once it’s buried, to a leak or rupture. And that could cause the highly pressurized natural gas being transported through the pipe to explode.

One of the pipe segments on Bent Mountain bore a stamp that read: “Date of coating: 8/25/2017” — exactly five years ago. Others had documented coating dates that fell in the same month.

That worries Mary Beth Coffey, who lives nearby and accompanied two other Bent Mountain residents on a recent hike along the pipeline's dormant right-of-way to view the pipes.

"I think there could be big ramifications," she said, "and a big boom."

At least a half-dozen individuals and organizations raised concerns about the exposed coating, and the effect it could have on the pipe's integrity, in public comments made this summer to the Federal Energy Regulatory Commission.

But in giving Mountain Valley another four years to complete the 303-mile pipeline — which traverses the New River and Roanoke valleys — FERC noted in an Aug. 23 order that the pipe would have to be inspected before installation. "And therefore the concerns raised by commenters on this matter do not justify additional analysis," the order stated.

Critics say that does not address the majority of pipe already buried after lying outdoors for extended time periods. They also voiced concerns about the adequacy of pipe inspections.

And now that Mountain Valley has until Oct. 13, 2026, to put the \$6.6 billion project into service, they worry that more time will only make things worse.

"Given what I've seen of this project, the public is raising valid concerns, and they need answers to those concerns," said Richard Kuprewicz, an independent pipeline safety expert who is president of Accufacts Inc., a consulting firm in Redmond, Washington.

Testing the pipe

In an emailed response to questions, a Mountain Valley spokesperson said: "First and foremost, the safe construction and operation of the MVP project remains our top priority."

The company understands that sunlight has changed the pipe's exterior from shiny green to a chalky and whitish-green appearance, Natalie Cox wrote, and has developed a plan to ensure that the coating is not compromised.

Before each section of pipe is placed in a trench and covered with dirt, the coating is inspected for any damage or deterioration, she said. This is done by scanning the pipe with a device called a “holiday detector,” which uses an electrical current to detect flaws that might not be visible to the naked eye.

“Any damaged coating or coating thin spots are repaired prior to installation, or the pipe segment is not installed,” Cox wrote.

That has yet to happen.

“All of the pipes shipped to the ROW [right of way] have continued to meet specification,” the email stated. “The pipes will continue to be checked to identify any issues that need to be addressed prior to the pipe being placed in the ditch and backfilled.”

In addition to inspecting the pipe immediately before it’s placed in the ground, Mountain Valley says it also “continuously surveys and monitors” sections of above-grade pipe that is either in storage yards or along the right of way.

The problem, according to Kuprewicz and others, is that the standards for inspections, which are enforced by the U.S. Pipeline and Hazardous Materials Safety Administration, do not include detailed specifications on how to gauge the coating’s condition.

“It’s probably in terrible shape,” Kuprewicz said. “But that in itself does not prevent the operator from putting it in service.”

Bill Caram, executive director of Pipeline Safety Trust, a nonprofit organization that promotes pipeline safety, agreed that government rules are not as precise as advocates say they should be.

“The regulations are written to largely allow the operator to determine if the coating is appropriate as opposed to prescribing exactly what would make a coating safe or unsafe,” Caram wrote in an email.

Spot checks are not enough, he said. “We would hope the operator would inspect each pipe’s coating, as it only takes one problem area to cause a failure once the pipeline is operating under pressure.”

The regulatory oversight

A spokesperson for PHMSA, the regulatory agency, said pipeline developers must inspect the coating for each section of pipe to ensure that it meets required specifications immediately before installation.

PHMSA oversees that process, the spokesperson said, and any violation of the rules is subject to enforcement action and an order for immediate corrective measures.

Data on PHMSA's website do not show any violations in Virginia involving coating inspections by Equitrans Midstream Corp., the lead partner in the Mountain Valley venture and considered by the agency to be its operator.

In West Virginia, where the pipeline starts, PHMSA issued in 2021 what's called a "notice of amendment" to Mountain Valley's written procedures for assessing the coating, finding that they lacked detail for certain sections of pipe..

Mountain Valley disputed the agency's finding. However, it agreed to make changes to language in its protocols to provide "further clarification" for future inspections.

"MVP takes pride in the comprehensive standards it maintains and welcomes suggested modifications," Gregg West, Equitrans' vice president for environment, safety and compliance, wrote in a Dec. 16, 2021, letter to PHMSA.

Two months later, the regulatory agency closed the case without taking further action.

Roberta Bondurant, a Bent Mountain resident who is co-chair of Protect Our Water, Heritage Rights, an anti-pipeline coalition, questioned both PHMSA's oversight and Mountain Valley's commitment to safety.

"We're going on five years now," she said of the time some of the pipe has remained above the ground. "And so my point is that, presumptively, that pipe is bad, and that's by MVP's own testimony."

Delays grow longer

Although there are differences of opinion on the issue, this much is undisputed: Mountain Valley never planned for portions of the 42-inch diameter pipe to remain unconnected and above the ground for as long as they have.

Cooper, the lead company official overseeing construction, said in his January 2018 testimony that the plan was to have the project done by end of that year.

In Roanoke's federal court, he explained that Mountain Valley — which had filed a lawsuit to take land by eminent domain from opposing landowners in the pipeline's path — needed to start work by the following month.

U.S. District Judge Elizabeth Dillon granted the company's request for immediate possession, putting off until later decisions on how much money the company should pay landowners.

Later that year, other courts began to rule on lawsuits filed by national environmental groups and local opponents. Those legal challenges took aim at permits issued by the federal government, arguing among other things that the agencies did not adequately take into account the erosion to be caused by trenching across steep mountain slopes and through streams and wetlands.

Mountain Valley has been cited by environmental regulators in Virginia with violating erosion and sedimentation control regulations more than 300 times. And the 4th U.S. Circuit Court of Appeals has set aside about a dozen permits, forcing Mountain Valley back to the drawing board as it seeks new authorizations.

With the project already four years behind schedule, opponents wonder how exacting the company will be with coating inspections, should construction be allowed to continue.

“As soon as the permits are issued, my guess is that Mountain Valley is going to be in a hurry to get the pipeline completed, considering all the obstacles they have faced,” said Carl Zipper, an environmental scientist in Blacksburg.

Zipper lives close to the pipeline's route, and joined other opponents in expressing concerns to FERC about the pipe's condition. Those questions apply to both the pipe that has already been buried and what

remains strung along the right of way — largely in the Jefferson National Forest and along streams and wetlands, areas where the suspension of permits has slowed construction the most.

In a status report filed with FERC July 15, Mountain Valley said 84% of the pipe has been laid in trenches and backfilled. Construction is currently stalled — except for erosion control maintenance — while the company seeks its latest round of new permits.

New standards approved

On Sept. 9, 2010, a natural gas pipeline ruptured and exploded in a residential neighborhood of San Bruno, California, killing eight people and injuring more than 60 in a fireball reported to be 1,000 feet high.

The blast was so powerful it left a crater 72 feet long and 26 feet wide. A 3,000-pound segment of the pipe where the rupture occurred was found about 100 feet from the crater.

Following the incident, which was blamed on faulty welds in the pipe, PHMSA began a lengthy review of its regulations. The process was completed last month, with the announcement of new rules that will take effect next May.

“This new rule will significantly improve safety and environmental protections for our nation’s natural gas pipeline system,” U.S. Transportation Secretary Pete Buttigieg said in a statement. PHMSA is part of the Transportation Department.

Among the changes are tougher standards that apply to monitoring pipes for corrosion.

While most pipeline operators conduct inspections before installation, using a holiday detector like the one described by Cox, the pipe’s coating can be damaged later, when the pipe is lowered into a trench by pieces of heavy equipment, which then dump dirt on top it.

The new regulations call for additional tests to be done after the pipe is underground, using high-voltage devices.

Mountain Valley is already planning to employ that technology to test the buried pipe before it goes into service and then regularly after that, Cox said, and the company is committed to meeting other standards announced by PHMSA.

According to the Pipeline Safety Trust, problems with corrosion have been increasing over the past four years and are now the second leading cause of pipeline failures.

As pipelines age, the risk grows higher. “If you’re looking for a perfect coating, you’re never going to find it,” Kuprewicz said.

The pipeline expert said pipe coatings should work hand in hand with cathodic protection, which uses electrochemical reactions that occur within the soil around the pipe to reduce the likelihood of corrosion. The pipe is coupled to buried anodes, which consist of magnesium or other reactive metals, and an electrical current shifts corrosion away from the pipe and to the anodes.

Some of the Mountain Valley pipe already has permanent cathodic protection in place, Cox said. In other areas where shorter segments are buried, more than 400 temporary systems have been installed to offer protection until the pipe can be connected to an overall network once it is completed.

“How do you forget?”

During their walk along the pipeline’s right of way in Southwest Roanoke County, Coffey, Grace Terry and Robin Austin pointed to sections of the pipe that will likely spend at least another winter exposed to the forces of nature.

Although Mountain Valley has another four years to complete the project, it says it hopes to have reissued permits by early next year, which would allow a final stage of construction before the pipeline begins transporting natural gas by late 2023.

But in giving the company more time, FERC wrote: “We consider it likely that, should Mountain Valley receive the required permits, those permits will undergo judicial review, which will take time to resolve.”

For Coffey, whose Bent Mountain farm the pipeline will pass through, that means worries that started in 2016, when the pipeline was first proposed, will continue indefinitely.

“I think about it every day,” she said.

With the rural landscape already bearing the impact of tree-cutting and muddy runoff from construction sites, opponents say the risk of a pipe failure is a growing concern with each passing year.

“The scars will never go away,” Austin said. “How do you forget?”

THE ROANOKE TIMES
NOV. 1, 2022

Mountain Valley says it 'will not rest' until pipeline completed

By Laurence Hammack

Citing what it called a federal court's “continued hostility” to the Mountain Valley Pipeline, the joint venture's lead partner said Tuesday that the best path forward may be through Congress.

In a conference call to discuss its third quarter earnings, Equitrans Midstream Corp. expressed hope that calls to reform the permitting process for energy projects will include legislation that requires the completion of the natural gas pipeline.

But at the same time, the company will continue to pursue new permits that have been struck down repeatedly by the 4th U.S. Circuit Court of Appeals.

“We remain confident that we will complete MVP through one path or another,” Equitrans Chairman and CEO Thomas Karam told financial analysts during the call.

Asked if finishing the 303-mile pipeline by the end of next year remains the goal, Karam said: “It's difficult to provide a definitive timeline until we know which path we will travel.”

Last week, a three-judge panel of the court raised a number of questions about a water quality certification granted for the buried pipeline to cross streams and wetlands on its way from northern West

Virginia — and through the New River and Roanoke valleys — to connect with an existing pipeline near the North Carolina line.

Many of the concerns raised by the judges during oral arguments were based on Mountain Valley's 500-some violations of erosion and sediment control regulations in the two Virginias, and whether the latest permit issued to the company adequately addresses those questions.

In what Karam called "unrelenting litigation" from the Sierra Club and other environmental groups, he said the 4th Circuit appears inclined to throw out the most recent approval to be challenged. A decision is not expected until next year.

Considering the court's rejections of nearly a dozen state and federal permits since 2018, "it's not a particularly friendly panel to the project," Karam said. "That's stating the obvious."

While Mountain Valley will continue its efforts to secure new authorizations from regulatory agencies, the company is also looking for help on the legislative front.

U.S. Sen. Joe Manchin of West Virginia has proposed a package of permitting reforms that, if passed by Congress, would ensure completion of the pipeline and shift the venue for legal challenges from the 4th Circuit to a federal appeals court based in Washington D.C.

The conservative Democrat's plan won the backing of party leaders in exchange for his needed support of the Inflation Reduction Act. The sweeping law, passed over the summer, includes a record \$369 billion in federal funding for clean energy and is expected to reduce carbon emissions by 40% over the next eight years.

Manchin had included his permitting changes in a budget resolution that had to be passed by Sept. 30 to avoid a government shutdown. Although opposition from both Democrats and Republicans forced him to drop that plan, the Mountain State senator has pledged to introduce the package as separate legislation.

The legal problems facing Mountain Valley, combined with global events that have increased the demand for natural gas, "clearly highlight the need for expeditious action by Congress on federal permitting reform legislation as the best path to complete the MVP project in 2023," Karam said.

In the meantime, the \$6.6 billion project is facing growing financial pressures.

During Tuesday's conference call, Equitrans reported a \$583 million impairment on the project in the third quarter — the most recent in a number of write-downs on a venture that was initially expected to cost \$3.7 billion.

Equitrans expects to fund about half of the project's total cost. With a 48% ownership interest, the company will operate the pipeline once it's completed.

Other Mountain Valley partners, including Roanoke Gas Co., are also taking a hit on a massive construction project that was supposed to be done four years ago.

Roanoke Gas's corporate parent, RGC Resources, reported an impairment loss of about \$29.6 million earlier this year related to the 1% investment by one of the company's subsidiaries, RGC Midstream. Roanoke Gas says it needs the pipeline to meet growing demand.

Work to finish the project is currently stalled by the lack of permits, and Mountain Valley is spending about \$25 million a month to stabilize erosion on a 125-foot right of way that traverses steep Appalachian mountains.

Pipeline opponents — who cite the environmental damage caused by construction as well as the finished project's contribution to climate change — say its investors should abandon a failing venture.

In his comments Tuesday, Karam promised that will not happen.

“We will not rest, and have no intention of resting, nor do our partners, until we complete MVP,” he said.

Senate votes down proposal to greenlight MVP

Dec. 16, 2022

By Laurence Hammack

The U.S. Senate has rejected Sen. Joe Manchin's latest attempt to extricate the Mountain Valley Pipeline from a series of legal and regulatory snags that have delayed its completion by four years.

Manchin's effort to include his permitting reform bill as an amendment to national defense legislation died Thursday with a 47-47 vote. Sixty votes were needed.

The West Virginia Democrat had attempted to attach his bill — which would streamline federal permitting for energy projects in general and greenlight Mountain Valley in particular — to a larger piece of legislation that required immediate action.

A part of Manchin's bill that would move legal challenges to a court where the pipeline developers might fare better drew strong opposition from Sen. Tim Kaine, D-Virginia.

If Mountain Valley was allowed to switch venues from the 4th U.S. Circuit Court of Appeals, which has repeatedly struck down its federal permits, to a federal appeals court in Washington D.C., what would prevent other large corporations dissatisfied with a court's ruling from doing the same thing? Kaine asked.

"If we go down this path on this project, I can see it opening a door we will not want to open — a door that can even lead to corruption," Kaine said from the Senate floor earlier this week.

Late Thursday, the Senate voted down Manchin's proposed amendment to the National Defense Authorization Act, the annual budget for the U.S. military.

Manchin had attempted a similar move in September, when he tried to include his permitting reform package in another "must-pass" piece of legislation, a budget resolution needed to avoid a government shutdown. He withdrew the bill after it drew opposition from both sides of the aisle.

Pipeline opponents praised the Senate vote.

"The Mountain Valley Pipeline, which has been cited for hundreds of permit violations related to water quality, should not get special treatment in Congress," said Chelsea Barnes, legislative director for Appalachian Voices.

Manchin's proposal "sends terrible messages to the public — that corporations that curry favor with an elected official do not have to comply with our laws, and that processes designed to protect transparency, public participation and our environment can be sacrificed," Barnes said in a statement.

Delays in construction of the 303-mile pipeline, which was supposed to be in service by now, are in part attributable to decisions by the Fourth Circuit. Raising environmental concerns, the court has repeatedly struck down federal permits for the \$6.6 billion project.

In an earnings call last month, the lead partner in the joint venture referenced the court's "continued hostility" to Mountain Valley, saying the most probable path to completion may be through Congress.

The war in Ukraine and other global events have only increased the demand for natural gas, and "clearly highlight the need for expeditious action by Congress on federal permitting reform as the best path to complete the MVP project in 2023," said Thomas Karam, chairman and CEO of Equitrans Midstream Corp.

Twice in the past four years, the Fourth Circuit has thrown out permits allowing Mountain Valley to pass through the Jefferson National Forest, and reversed an opinion from the U.S. Fish and Wildlife Service that endangered species would not be jeopardized by running a buried pipeline through their habitats.

Critics have long said it would flirt with environmental disaster to build such a large pipeline across steep mountain slopes and through pristine forestland.

Mountain Valley is in the process of applying for new permits for the third time. The company also faces uncertainty with a different set of permits, also invalidated by the Fourth Circuit, that would allow it to cross the remaining streams and wetlands along the pipeline's route from northern West Virginia, passing through the New River and Roanoke valleys to connect with an existing pipeline near the North Carolina line.

In granting legal challenges by the Sierra Club and other opponents, a three-judge panel of the appellate court has raised questions about Mountain Valley's ability to curb muddy runoff from construction sites, and the government's oversight of the company.

Environmental agencies in the two Virginias have cited Mountain Valley about 500 times for violating erosion and sediment control regulations.

Although Karam said last month that Mountain Valley is committed to seeking new permits that will withstand legal scrutiny, he expressed hope for a legislative solution.

Manchin — who won support from Democratic leaders for his permitting reform legislation in exchange for his key vote supporting a climate, health and tax bill that was a key priority of the White House — says he's not done.

“Permitting reform and the completion of the Mountain Valley Pipeline are essential to ensuring lasting American security and independence,” Manchin said in a statement following the Senate vote.

His proposal to streamline federal approvals of all energy projects could still proceed as stand-alone legislation — albeit at a slower pace than the methods he has tried so far.

Several other lawmakers, including Sen. Pat Toomey, R-Pennsylvania, have introduced similar proposals that would mandate strict timelines for review under the Clean Water Act and speed up the National Environmental Policy Act approval process.

Those bills, like Manchin's, give specific leeway to Mountain Valley.

However, the Senate's vote this week does not bode well for permitting reform early next year, according to Height Capital Markets, an investment banking firm that follows Mountain Valley and regularly releases commentaries on developments.

Democrats tend to be skeptical of giving too much clout to the fossil fuel industry, while some Republicans view Manchin's bill as not going far enough to loosen regulatory red tape.

“It is possible that a new Congress will bring a clean slate for bipartisan compromise in 2023,” Height said Friday. “The White House has emphasized the need for permitting reform to facilitate electric transmission to access high-value renewable resources” that are a key part of the climate, health and tax bill that passed earlier this year, it said. “A grand compromise here is easy to visualize.”

But given the political realities, Height added, “we are very cautious on passage in early 2023.”