



May 14, 2018

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Joby Timm
Forest Supervisor
George Washington and Jefferson National Forests
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Sent Via Email

Re: Mountain Valley Pipeline Emergency Closure Order 08-08-11-18-05

Dear Supervisor Timm:

Board of Directors:

On behalf of Wild Virginia and our members, I write to object to the referenced closure order and to ask that you issue a revised order to replace it. As explained below, we assert that

Reiko Dogu

- the scope of the Emergency Closure order now in place far exceeds temporal limits that are necessary or proper to meet the stated purpose of avoiding “hazards associated with constructing the Mountain Valley Pipeline. . . .” and

Bette Dzamba

Howard Evergreen

- additional bases on which you have attempted to justify the scope of the closure order are not specified in the order, are invalid, and go beyond the scope of your authority.

Katie Keller

Jennifer Lewis

According to the text of the order, it prohibits specified activities on the Forest “due to hazards associated with constructing the Mountain Valley Pipeline on the Eastern Divide Ranger District, George Washington and Jefferson National Forests, West Virginia and Virginia.” We agree that an order that is reasonably designed to meet that purpose is within your authority. However, given that closure of portions of public lands to allow MVP to exercise the rights gained through their easement for the pipeline conflicts with rights generally enjoyed by the public to access parts of the National Forest, such closure order should be narrowly defined and reasonably related to the valid purpose for the order.

David Sellers

Deirdre Skogen

Elizabeth Williams

Jamie Trost

Your order excludes the public from the following areas for the entire period between the date of issuance (April 7, 2018) and March 31, 2019:

- being “within 100 feet from the outer edge of each side of the Construction ROW as already cut through the National Forest along the Approved Pipeline Route. . . .”
- “[f]or areas on the Approved Pipeline Route where the Construction ROW has not been cut through the National Forest” being “within 200 feet on either side of the centerline of the Approved Pipeline Route. . . .”
- being “on any portion of Mystery Ridge Road . . . from its intersection with Pocahontas Road to its endpoint at Peters Mountain Wilderness” or being “within 125 feet of the centerline of said Mystery Ridge Road Segement.”

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- being on “any portion of Pocahontas Road . . . between its intersection with Clendennin Road . . . and its intersection with Mystery Ridge Road” or being “within 125 feet of the centerline of said Pocahontas Road Segment.”

There is simply no valid or rational purpose for imposing the order’s restrictions on all of the areas described for the entire period lasting through March 31, 2019. The wording of the order addresses “hazards associate with constructing” the pipeline. No such hazards exist, or should be allowed to exist, in periods when construction is not underway. During periods before construction begins or before those activities require active use of roads or trail areas, there is no danger to members of the public. Likewise, after any active work is completed the public should not be at risk when entering these areas. In fact, if MVP should create any conditions that do pose risks and then fail to alleviate those risks when it completes active work, then we believe that situation would be unacceptable and would likely violate its easement.

In an email you sent me on March 24, 2018 (attached), addressing a previous Wild Virginia letter regarding closure of Forest areas and providing a link to the third version of your order (#08-08-11-18-03, dated 3/19/2018), you reiterated that the “primary purpose of the closure order is to keep the public safe in the area surrounding the approved right-of-way *when tree felling and construction that [sic] will occur.*” (emphasis added). However, you then added a supposed justification for making the order effective for more than one year. You stated:

Large infrastructure projects like the MVP Project often require construction schedules to shift (with appropriate authorization). Due to the uncertainty about schedule and the process involved in issuing multiple closure orders, I determined public safety would be best met through keeping the order in place continuously while Mountain Valley Pipeline, LLC has the potential to be conducting activities to develop the MVP Project.

This statement clearly reveals that the extended period of coverage under that and subsequent orders is designed for the convenience of MVP, to the extent that it may change its intended construction schedule, and of the Forest Service, to the extent you may need to issue new or revised orders to accommodate such changes.

First, this purpose is not stated in the order as a justification for closing areas on the Forest. Second, even if this purpose was clearly stated in the order as a basis for your action, this would not be a valid or reasonable purpose. The convenience of a company to cause disruption and destruction on the Forest must not be used as an excuse for impairing the public’s valid use of areas normally available to it. Finally, the Forest Service will bear no significant administrative burden if required to issue new or revised orders to accommodate changing construction schedules. You have so far issued five successive versions of the order between March 7 and April 7, 2018, a period of just 31 days. Given this record, it is ludicrous to cite “the process involved in issuing multiple closure orders” as a justification for the excessive length of your order.

We also endorse positions expressed by other parties that exclusion of the public from certain roads and other areas seem to be motivated by an effort to limit the public’s right to exercise First Amendment rights. Clearly, any infringement on the public’s right of free expression can only be made for valid purposes and must be no broader than necessary to meet those purposes.

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Our concerns about the exclusion of the public from prescribed areas over such an extended period are not merely theoretical. For example, citizens plan to visit stream crossing sites that will be affected by pipeline construction and associated activities in the near future to document pre-construction conditions in those waters. Under your order, as it now stands, we would face severe penalties for doing so. Further, as you know, some of these streams are important and highly used areas for fishing and other recreational uses and to ban those uses throughout the next ten months is outrageous. Likewise, roads and other portions of the Forest within the areas of exclusion and are used for hunting, hiking, and other public purposes and to prohibit those uses throughout and entire summer or through entire hunting seasons without a valid purpose is simply unacceptable.

Under the Administrative Process Act, your actions in issuing closure orders must generally be judged, at the very least, under a standard of reasonableness. The factors described above make it impossible for the current order to meet even that relatively deferential standard. An even higher standard must be met when Constitutional rights are implicated, as others have expressed through legal action.

We insist that you revoke the current order and issue a version that truly reflects the valid purposes you are authorized to serve. Any order should specify that the public's use of roads, trails, or any other areas on the Forest is prohibited *only during active construction or authorized uses* by MVP. You are obligated to rescind the referenced order and, in any future orders, define a scope for the closures that preserves the public's rights to use our public lands to the maximum extent possible while still serving any valid need that forms the basis for such order(s).

Thank you and we look forward to your response.

Sincerely,

_____/s/_____

David Sligh
Conservation Director

cc: Karen Overcash, GW&JNF