

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Wild Virginia, Inc., Indian Creek)
Watershed Association, Preserve)
Craig, Inc., Neal J. Laferriere, and)
Betty B. Werner)
Complainants,)
)
v.) Docket No. CP
)
Mountain Valley Pipeline LLC,)
Respondent.)

NOTICE OF COMPLAINT

()

Take notice that on June 21, 2019, Wild Virginia, Inc., Indian Creek Watershed Association, Preserve Craig, Inc., Neal J. Laferriere, and Betty B. Werner (“Complainants”) filed a formal complaint against Mountain Valley Pipeline, LLC (“Mountain Valley”), pursuant to the Natural Gas Act, at 15 U.S.C. § 717f.(e), Federal Energy Regulatory Commission regulations at 18 CFR § 157.20, the Clean Water Act at 33 U.S.C. § 1341, and Rule 206 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2018), alleging that Mountain Valley has violated the *Order Issuing Certificates and Granting Abandonment Authority*, 161 FERC ¶ 61,043, October 13, 2017 (“Order”) and underlying statutory and regulatory requirements by (1) continuing construction after authorizations by federal agencies were invalidated or suspended, in violation of Appendix C, condition 9 of the Order and (2) violating environmental conditions described at Appendix C of the Order on hundreds of occasions and on a project-wide scale. Based on these violations Wild Virginia requests that the Commission suspend or revoke its approval for construction of the project, issue a project-wide stop-work order for construction on the project, require Mountain Valley to submit a plan and schedule to repair damage caused to the environment and property by its activities, impose penalties on Mountain Valley that are commensurate with the magnitude and seriousness of its violations and to serve as an effective deterrent to Mountain Valley and other parties regulated by FERC, and impose other remedies as the Commission may deem necessary and appropriate.

Complainants certify that copies of the complaint were served on the contacts for Respondent as listed on the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance

with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose,
Secretary.

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Respondent.)	

**FORMAL COMPLAINT OF WILD VIRGINIA, INC., INDIAN CREEK
WATERSHED ASSOCIATION, PRESERVE CRAIG, INC., NEAL J.
LAFERRIERE, AND BETTY B. WERNER**

Pursuant to the Natural Gas Act at 15 U.S.C. § 717f.(e), Federal Energy Regulatory Commission regulations at 18 CFR § 157.20, the Clean Water Act at 33 U.S.C. § 1341, and Rule 206 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2018), Wild Virginia, Inc., Indian Creek Watershed Association, Preserve Craig, Inc., Neal J. Laferriere, and Betty B. Werner, (“Complainants”) hereby file this formal complaint (“Complaint”) against Mountain Valley Pipeline, LLC (“Mountain Valley”).

Mountain Valley has violated and continues to violate conditions of the Certificate of Public Convenience and Necessity (“Certificate”) issued by the Commission, *Order Issuing Certificates and Granting Abandonment Authority* (“Order”), 161 FERC ¶ 61,043, October 13, 2017, including numerous statutory and regulatory requirements incorporated as requirements of the Certificate. The violations include: (1) continuing construction after authorizations by federal agencies were invalidated or

suspended, in violation of Appendix C, condition 9 of the Order and (2) actions that violate environmental conditions described at Appendix C of the Order on hundreds of occasions and on a project-wide scale.

By this formal complaint, Complainants request that the Federal Energy Regulatory Commission (“Commission” or “FERC”): (1) suspend or revoke its approval for construction of the project, (2) issue a project-wide stop-work order for construction on the project, (3) require Mountain Valley to submit a plan and schedule to repair damage caused to the environment and property by its activities, (4) impose penalties on Mountain Valley that are commensurate with the magnitude and seriousness of its violations and to serve as an effective deterrent to Mountain Valley and other parties regulated by FERC, and (5) impose other remedies as the Commission may deem necessary and appropriate.

The relief sought is necessary because Mountain Valley has demonstrated through hundreds of violations of requirements enforceable under FERC’s Order that it cannot or will not abide by the conditions of the Order. Continued construction in the absence of all required federal approvals, which are conditions precedent to construction, is a blatant violation of the Order and must be halted by the Commission. Violations of requirements to protect the environment and property are ongoing and will predictably continue to occur if construction continues and environmental damages already caused will worsen unless Mountain Valley is required to repair them.

I. COMMUNICATIONS

Communications regarding this matter should be addressed to the following persons, who also should be designated for service on the Commission's official list:

David Sligh
Wild Virginia
108 Fifth Street, S.E.
Room 206
Charlottesville, VA 22902
david@wildvirginia.org

II. RULE 206 REQUIREMENT FOR FORMAL COMPLAINT

This formal Complaint satisfies the requirements of the Commission's Rule 206, as described in this section and in succeeding sections of this Complaint.

A. "Clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements." 18 U.S.C. § 385.206(b).

Evidence that demonstrates violations by Mountain Valley are described in Section III. of this Complaint. The violations include A) violation of the requirement that construction on the project may not proceed unless Mountain Valley is in possession of all federal licenses or permits and B) repeated and frequent violation of requirements designed to protect the environment and property, improper trespass onto and damage of private property, damage to environmental resources, and interference with landowners' rightful uses of private property.

B. "Explain how the action or inaction violates applicable statutory standards or regulatory requirements." Id.

These explanations are provided in section III. of this Complaint. Mountain Valley's actions have violated conditions in Appendix C of the Order, which incorporates regulatory and statutory requirements.

C. “Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant.” Id.

The violations complained of herein implicate the rights of the organizations and their members and the individual complainants to use and enjoy waters negatively affected for multiple purposes, to include recreation and aesthetic enjoyment, water supply, and educational and scientific purposes. The individual complainants, additionally, have economic costs through damages to their land and waters, both on the easements and off, impairing uses for farming and other businesses, improper trespass by Mountain Valley personnel and representatives onto their properties, and other improper activities related to the project.

D. “Make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction.” Id.

The magnitude of financial impacts and burdens to complainants cannot be readily or reliably estimated in most cases or is subject to pending litigation and therefore not available at this time. The harms are continuing to accrue, so that ultimate costs, both tangible and intangible continue to accrue and are not presently estimated.

E. “Indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction.” Id.

As stated above, impacts to waterbodies due to Mountain Valley’s violations affect their uses by the Complainant organizations and to their members and by the individual Complainants. Other impacts to individual Complainants include interference with the use of their lands due to off-site transport of materials, changes to stream banks,

property, and vegetation not authorized by easement and unauthorized activities on their lands by personnel working for or representing Mountain Valley.

F. “State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum.” Id.

Complainant Ferriere has filed suit against Mountain Valley and other parties in the United States District Court for the Southern District of West Virginia. Given the existence of ongoing violations by Mountain Valley, it is urgent that damage stops as soon as possible and not be delayed until this case is resolved.

G. “State the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief.” Id.

Remedies requested are discussed in Section IV. of this complaint. They include requests that the Commission: (1) suspend or revoke its approval for construction of the project, (2) issue a project-wide stop-work order for construction on the project, (3) require Mountain Valley to submit a plan and schedule to repair damage caused to the environment and property by its activities, (4) impose penalties on Mountain Valley that are commensurate with the magnitude and seriousness of its violations and to serve as an effective deterrent to Mountain Valley and other parties regulated by FERC, and (5) impose other remedies as the Commission may deem necessary and appropriate.

H. “Include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits.” Id.

Documents supporting the contentions herein are included as Attachments to this Complaint.

I. “State . . . whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures were used, or why these procedures were not used.” Id.

As described below, organizational and individual Complainants have submitted complaints to FERC through various means, including discussions with FERC representatives and compliance inspectors, submissions to the FERC docket for this project, and other means. In addition, it should be noted that this Complaint is based not only on the specific incidences of violations cited by Complainants but on the entire body of violations by Mountain Valley and that hundreds of those violations are documented in FERC compliance reports and other FERC documents. Resolution of individual concerns reported to FERC by Complainants would not and could not address the larger pattern of non-compliance and the systemic problems experienced by Complainants and many others.

J. “State . . . whether the complainant believes that alternative dispute resolution (ADR) under the Commission's supervision could successfully resolve the complaint.” Id.

Complainants do not believe ADR can successfully resolve the complaints.

K. “State . . . what types of ADR procedures could be used. Id.

Complainants do not believe ADR is appropriate or likely to resolve the problems complained of.

L. “State . . . any process that has been agreed on for resolving the complaint.” Id.

No process for resolving the complaint has been agreed upon.

M. Include a form of notice of the complaint suitable for publication in the *Federal Register* in accordance with the specifications in § 385.203(d) of this part. The form of notice shall be on electronic media as specified by the Secretary. Id.

The form of notice was sent by Federal Express overnight service on June 20, 2019. The form was contained on a disk and in the correct format, as required on the FERC website.

N. Explain with respect to requests for Fast Track processing, why the standard processes will not be adequate for expeditiously resolving the complaint.

This condition is not pertinent as Complainants are not seeking Fast Track processing.

III. LEGAL REQUIREMENTS AND EVIDENCE OF NON-COMPLIANCE

To issue a Certificate of Public Convenience and Necessity under the Natural Gas Act (“NGA”), the Commission must make a finding that the applicant “is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder.” 15 U.S.C. § 717f.(e). FERC regulations state that a Certificate “issued to

applicant . . . shall be effective only so long as applicant continues the operations authorized by the order issuing such certificate and in accordance with the provisions of the Natural Gas Act, as well as applicable rules, regulations, and orders of the Commission.” 18 CFR 157.20(e).

Mountain Valley’s activities are not “in accordance with” the requirements imposed through the Certificate so, under the regulation, that Certificate is no longer “effective” and, therefore, the Commission must be compelled to issue an order of revocation or suspension. Evidence is presented below on which to judge compliance with the requirement making other agency approvals conditions precedent to authorization to construct and with those designed to protect the environment and property.

A. Evidence of Construction Without Required Permits

The Commission’s Order requires all federal authorizations to be in place in order for construction to take place. Environmental Condition 9 requires that

Mountain Valley and Equitrans must receive written authorization from the Director of OEP before commencing construction of any project facilities. To obtain such authorization, Mountain Valley and Equitrans must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

Order at Appendix C, Condition 9.

Mountain Valley does not currently have authorization from the Bureau of Land Management (“BLM”) to cross land within the Jefferson National Forest and all CWA section 404 permits from the U.S. Army Corps of Engineers (“Corps”) have been invalidated or suspended. In both cases, before the federal agencies can authorize Mountain Valley’s activities under their jurisdictions each of them must take regulatory

actions and, in so doing, must satisfy procedural and substantive requirements. The agencies considering those regulatory actions may not prejudge the outcome of their reviews or allow regulated actions to proceed based on a presumption that an applicant will be granted a permit. Likewise, the Commission cannot put itself in the position of granting approval that is to be based on separate agency actions not yet taken.

Mountain Valley currently lacks permits from three Corps Districts that are required under CWA section 404. 33 U.S.C § 1344. The U.S. Court of Appeals for the Fourth Circuit issued an order vacating the Huntington District of the U.S. Army Corps of Engineers' authorization of the Mountain Valley Pipeline ("MVP") pursuant to Nationwide Permit 12 ("NWP 12"), issued under CWA Section 404, 33 U.S.C. § 1344, in *Sierra Club v. U.S. Army Corps of Eng'rs* , No. 18-1173(L) (4th Cir. October 2, 2018). The Court's Order also establishes that the Corps' coverage under NWP 12 for the remainder of the project outside the Huntington District is invalid. Nothing in the Corps' regulations at 33 C.F.R. § 330.6(d) nor in any of the Corps' official interpretations thereof distinguishes projects whose NWP verification comes from multiple Corps districts. Rather, because the crossings within the Huntington District were improperly authorized, all of the MVP's crossings in the Pittsburgh and Norfolk Districts are ineligible for coverage under NWP 12.

Subsequent to the Court's vacatur of the 404 permit, the Pittsburgh and Norfolk Districts of the Corps suspended coverage for waterbody crossings within the areas of their jurisdictions. As the Corps' Norfolk District stated in a letter to Mountain Valley, "Because of [the Court's order], it is uncertain whether NWP 12 will ultimately be available to authorize work for MVP in West Virginia. Therefore, the Norfolk District

finds it appropriate to suspend your authorization and await clarity on this issue.” Letter from William T. Walker, Chief Regulatory Branch to Robert Cooper, October 5, 2018, accession no. 20181009-5188, page 2.

Multiple parties, including Complainants Wild Virginia, Inc. and Indian Creek Watershed Association, informed FERC that Mountain Valley lacks the required CWA section 404 permits and explained the legal basis on which FERC must require construction on the MVP to cease. *See* Letters from Appalachian Mountain Advocates to FERC, October 3, 2018 and October 22, 2018, accession nos. 20181003-5137 and 20181022-5086, respectively. To date, FERC has not responded to those notifications and requests. Therefore, the Commission must take action where FERC staff has refused to do so.

The authorizations granted by the Bureau of Land Management (“BLM”) and the U.S. Forest Service (“Forest Service”) for Mountain Valley to cross the Jefferson National Forest (“JNF”) have also been vacated by the Fourth Circuit, through its order in *Sierra Club, Inc. v. U.S. Forest Service*, 897 F.3d 582 (4th Cir. 2018), stating: “we grant the petition for review of the Forest Service Rule of Decision and vacate that decision. We also grant the petition for review of the BLM's Rule of Decision and vacate that decision. We remand to the respective agencies for proceedings consistent with this opinion.” *Id.* at 606.

On remand, BLM and the Forest Service must satisfy their responsibilities to provide valid analyses and must complete notice and comment proceedings if and when they propose to re-issue authorizations to Mountain Valley. Neither agency has taken these steps. The BLM provided an “analysis of the Mountain Valley Pipeline project

under section 28(p) of the Mineral Leasing Act of 1920” to FERC by letter dated October 24, 2018 and, based on that analysis, a FERC official expressed the opinion, in a letter to Mountain Valley dated August 2, 2018, that “[b]ased on the BLM’s determination that the route previously approved by all federal agencies provides the greatest level of collocation for an alternative crossing that is also practical, the specific route of the Project no longer seems in question.” Letter from Terry L. Turpin, FERC to Matthew Eggerding, Counsel for Mountain Valley, August 29, 2018, accession no. 20180829-3026, page 1. Relying on that judgement, FERC lifted the stop work order for the majority of the MVP route, despite the fact that BLM stated “this analysis in itself does not constitute a record of decision or right-of-way grant.” *Id.* at 3. At no place has FERC explained how its reliance on an analysis by BLM that has no regulatory weight allows the Commission to ignore Appendix C, Condition 9 of the Order.

Based on the lack of necessary approvals by the Corps, BLM, and Forest Service, the remedies requested, to suspend or revoke the Certification and issue a project-wide stop-work order are necessary to prevent further damage to the environment and property such as that described below in section III.B. The costs now being imposed on the public and private parties may, in fact, be exacted for a pipeline that cannot be completed.

B. Evidence of Violations of Requirements to Protect the Environment and Property

In addition to its authority under the NGA and implementing regulations, the Clean Water Act (“CWA”) section 401 (33 U.S.C. § 1341) gives the Commission additional authorities and duties. The CWA reserves to the states the authority to veto or condition federal licenses or permits, if necessary to protect those states’ waters. When a

state issues a water quality certification with conditions, section 401(d) mandates that any such conditions “shall become a condition on any Federal license or permit subject to the provisions of this section.” 33 *U.S.C.* § 1341(d) and, importantly, the federal agency has no authority to reject or amend those conditions. *American Rivers v. FERC*, 129 F.3d 99, 107 (2nd Cir 1997).

The Virginia State Water Control Board issued a water quality certification for so-called “upland” activities proposed by Mountain Valley (meaning those portions of the project not regulated by the Corps of Engineers) and there are many specific requirements applicable to this project related to Virginia’s erosion and sediment control and stormwater management rules and other provisions of state law. As explained above, those Virginia conditions are all incorporated into FERC’s Certificate and the Commission is obligated to enforce them.

Virginia has identified hundreds of instances in which its 401 certification has been violated, as incorporated in a Notice of Violation and a lawsuit filed in Virginia state court. Attachments A and B, respectively. In addition, the Virginia Department of Environmental Quality (“DEQ”) has documented dozens of additional instances of Mountain Valley’s failure to comply with its requirements that were not incorporated into its previous enforcement actions. Attachment C.

The State of West Virginia has also documented numerous violations of its requirements through at least thirty notices of violation and a draft Consent Order. Attachment D. These include failure to install and maintain required pollution control measures and violation of state water quality standards.

Finally, members of the public have documented numerous violations throughout the period of Mountain Valley's pre-construction and construction phases that were not cited in the DEQ actions and which have not been adequately addressed by Virginia or West Virginia authorities or by FERC. These include failures to install and maintain pollution abatement measures, unlawful encroachment on private property interests, and severe damage to streams and wetlands, riparian areas, and groundwater resources.

The evidence provided by each of the government agencies and by the public demonstrates, in each case, Mountain Valley's failure or refusal to conform to approved plans, by neglecting to install and maintain pollution control measures on a systematic basis, the frequent and repeated failure of approved measures to prevent off-site transport of sediment, mud, and other materials, and repeated instances of activities outside the boundaries within which Mountain Valley is allowed to work. In some cases, it is apparent that Mountain Valley is incapable of providing the required protections of the environment and property, as evidenced by repeated failures of its attempts to control slips and other problems.

The evidence must compel the Commission to find that Mountain Valley is not acting in accordance with the NGA or other applicable requirements and that failure is neither minor nor temporary. Rather, based on Mountain Valley's record, it must follow that the Certificate can no longer be "effective." We ask the Commission to suspend or revoke the Certificate on that basis.

It is important to recognize that, while the evidence herein, shows individual violations by Mountain Valley and that, in some cases, such problems have been addressed, Mountain Valley's record of non-compliance must be viewed in a larger

context of lawlessness. The repeated occurrence of the same or similar violations, even after those problems have been observed in individual cases, shows an unwillingness or inability to protect resources and property, rather than simply respond after problems have occurred and after Mountain Valley's misdeeds are discovered. Documenting and addressing violations one at a time, does not fulfill the promises to protect the environment that Mountain Valley and FERC made when the project was approved.

A Certificate holder that violates the requirements of the Order hundreds of times in countless different ways, that fails to correct violations for weeks or months after notified that it must do so, and that fails to address systemic failures in its protocols or in its project design such that the same or similar violations continue to occur on a frequent and regular basis cannot be deemed "able and willing . . . to conform to the provisions" of the Order and applicable legal mandates. This is exactly the case for Mountain Valley and suspension or revocation of the Certificate is not only justified but is necessary to protect the public and its resources.

The Commission's Order stated "[w]e expect strict compliance by the applicants with any federal and state mandated conditions." Order at 187. This expectation has not been met. FERC has taken no enforcement action against Mountain Valley, even in the face of an astounding number and variety of infractions and of clear damage to resources. And, though both Virginia and West Virginia have taken enforcement actions against Mountain Valley, in neither case has the destruction and the damage stopped. Complainants assert that only strong and decisive action by the Commission can stop the violations and protect so-far unaffected resources and that such an action must be paired with requirements for Mountain Valley to develop a plan to repair the harms it has caused

and to begin that work immediately. We ask that the Commission show that it meant what it said in the quoted provision in the Order.

1. Violations and Damages Documented in FERC Compliance Reports

One of the fundamental aims of pollution controls for the pipeline is to prevent sediment, mud, or other material from leaving the areas to which Mountain Valley's activities are to be confined. Through a combination of causes such releases have occurred on hundreds of occasions, as documented in FERC Environmental Compliance Monitoring reports. In all, a review of February 10, 2018 through May 25, 2018, reveals three hundred and seven (307) instances where mud, sediment-laden water, or other such materials went outside the prescribed limits of disturbance (LOD). In one hundred and sixty nine (169) of these instances, the pollutants affected waterbodies.

In some cases individual streams or wetlands have been affected by off-site pollution on multiple occasions. For one wetland, designated W-J40 and located in the vicinity of mileposts 40 - 42 in West Virginia, FERC compliance inspectors documented pollution impacts on seven different occasions during the period between early June, 2018 and April, 2019. The litany of assaults on this one waterbody is described as follows in the FERC reports. It is important to note that the kinds of actions described here are far too numerous to describe but are, as demonstrated by all the evidence, typical of routine operations across this project.

June 7, 2018 - "Environmental crews were removing sediment from wetland W-J40 . . . and replacing compost filter sock with silt fence." accession no. 20180619-4008, page 5.

June 19, 2018 - ". . .rain event carried upland sediment into wetland W-J40." accession no. 20180619-4008, page 5.

June 21, 2018 - “The Compliance Monitor was notified of additional impacts on wetland W-J40 (MP 42.0) and stream S-K94 after a heavy rain event. The crew failed to close the travel lane and reinstall temporary slope breakers after work was completed in the area. Upland sediment traveled down slope across the wood mats and into wetland W-J40.” accession no. 20180619-4008, page 7.

June 23, 2018 - “The Compliance Monitor was notified of additional impacts on wetland W-J40 (MP 42.0) and stream S-K94 after a heavy rain event. Crews had installed additional erosion controls after the last rain event that impacted these resources, however they were overwhelmed by this additional rain event.” accession no. 20180619-4008, page 8.

October 12, 2018 - “The Compliance Monitor and Lead Environmental Inspector conducted a follow-up inspection of wetland W-J40 south of Kincheloe Road. . . . The crew also partially backfilled wetland W-J40. During the partial backfill the crew relayed wetland soil onto the rock construction entrance and a large amount of rock from the construction entrance ended up being backfilled into wetland W-J40.” accession no. 20181115-4001, page 8.

February 8, 2019 - “The water on the south side of wetland (W-J40) was more tinted and there was a small amount of sediment in the wetland. The Compliance Monitor found a section of super silt fence, upslope of the wetland, that appears to be undermined and could be the source of this sediment.” accession no. 20190313-4007, page 8.

February 11, 2019 - “The Compliance Monitor conducted a follow-up inspection of erosion controls south of Kincheloe Road and on the south side of wetland W-J40 to verify if the silt fence was indeed undermined south of wetland W-J4, therefore, this

inspection was conducted during a rain event. The Compliance Monitor observed where there had been an attempt to pack soil on both sides of the super silt fence to stop the undermining from occurring. The Compliance Monitor observed water still flowing underneath the silt fence during the inspection. This undermined silt fence is contributing to the discoloration of water in this section of wetland WJ40.” accession no. 20190313-4008, page 4.

April 16, 2019 - “There was some red tinted water on the south side of W-J40, but the Compliance Monitor and Lead Environmental Inspector were not able to determine how the tinted water had entered wetland W-J40. The Lead Environmental Inspector said that he would have crews redirect the slope breakers and install additional erosion controls in an attempt to stop the tinted water from entering wetland W-J40.” accession no. 20190514-4000, page 4.

It is notable that in characterizing the incidents described above, FERC at no point deemed any of these assaults on this wetland, or the misdeeds by Mountain Valley that led to them, to fall into their categories designated “noncompliance” or “problem area,” yet there are clearly violations of FERC’s requirements to install and maintain proper control measures. In fact, through the report ending May 25, 2019, FERC admits to only 45 instances of “noncompliance” by Mountain Valley. accession no. 20190606-4002, page 1. Clearly, FERC’s enforcement system cannot be expected to provide real protections when the agency fails even to admit that violations are occurring. Still, the documentation the inspectors provide show the picture of wholesale violations all too clearly.

As noted above, there have been reports of three hundred and seven (307) instances where mud, sediment-laden water, or other such materials went outside the prescribed limits of disturbance (LOD) on MVP. Those for which impacts to waterbodies were not reported, totaling 138 instances, still posed a threat to waters in the future. In some cases, Mountain Valley retrieved off-site sediment days, weeks, or even months after it moved off-site. Any rain storm that happened in that area while the sediment was in an unprotected location could and probably did in many cases contribute sediment to waterbodies and represented an encroachment on landowners without their permission.

Mud and sediment are just one of the ways Mountain Valley has encroached on property it has no legal right to access or disturb. Landslides that continue to advance further and further off-site without measure adequate to stop them, entry into and work in off-limits archaeological site, work in bat areas outside allowed time periods, hundreds of trees cut or allowed to fall off-site, sometimes damaging private property, and many other examples can be found in FERC inspection reports. It is incumbent on Mountain Valley and FERC to ensure these kinds of offenses do not continue.

2. Virginia's Documentation of Violations and Damages

The State of Virginia has cited Mountain Valley for violations of the conditions of its CWA Section 401 water quality certification through issuance of a Notice of Violation ("NOV"), Attachment A, and filed enforcement suit in state court, Attachment B.

Specific provisions of state law that Virginia has charged in its lawsuit include:

Unpermitted discharge of sediment and sediment-laden stormwater to state waters on twenty two separate occasions, in violation of the State Water Control Law, the

Virginia Water Resources and Wetlands Protection Program, and the Virginia Water Protection Permit Program Regulations.

Failure to maintain and repair erosion and sediment control structures in three separate instances, in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

Failure to repair erosion and sediment controls within the required time-frame in one hundred and eight separate instances, in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

Failure to apply temporary or permanent stabilization in 65 instances, in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

Sediment off of right-of-way in at least 26 instances, in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

Failure to keep a daily log of activity documenting project activities related to environmental permit compliance and corrective measures implemented on three occasions, in violation of MVP's Site Specific ESC and SWM Plans, the State Water

Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

Failure to install an adequate channel, flume, or slope drain structure in June 2018, in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

Failure to construct a vehicular stream crossing in June, 2018, in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

Failure to maintain access roads in June, 2018, in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

Attachment C to this Complaint includes reports from Virginia DEQ inspections of MVP sites during 2019.. The violations documented in those inspection reports are not reflected in Virginia's lawsuit or in the previous NOV but many of the same types of violations alleged in those actions continue to occur. The consistency and the existence of these same or very similar violations as MVP has now been under construction for more than a year show a stunning lack of willingness or ability on Mountain Valley's part to live up to its obligations.

Each of the requirements for which Virginia had found violations by Mountain Valley is incorporated under the state's CWA 401 certification, are therefore part of FERC's Certificate, and the Commission has an obligation to enforce them. Section 401(a)(5) gives the Commission the authority to suspend or revoke Mountain Valley's Certificate and we strongly urge that the extreme level of noncompliance in evidence for MVP warrants these actions.

The Virginia State Water Control Board considered an action to revoke its water quality certification based on the violations by Mountain Valley. The Board decided that it lacked the authority to take that action and that it was preempted under the federal law. In deciding whether provisions of the Clean Water Act have been violated, the Commission must respect the judgement of Virginia as to the proper interpretation and application of those requirements. FERC has neither the expertise nor the authority to second-guess the state's judgement in these matters and

3. West Virginia's Documentation of Violations and Damages

NOVs and a consent order by the West Virginia Department of Environmental Protection ("DEP") are contained in Attachment D. The same laundry list of missing or failed pollution control measures, failure to respond in a timely fashion to violations identified, and other noncompliance issues identified by FERC and Virginia are found here as well. Importantly, states in many cases that its water quality standards have been violated. Such violations must be counted as damage to the affected waterbodies and the uses the public has a right to make of them.

4. The Public's Reports of Violations and Damages

Complainant Betty B. Werner has made an affidavit, Attachment E, recounting a variety of negative impacts to her land and the waterbodies on and near her property. These impacts are the results of violations by Mountain Valley during pipeline construction on hers and adjacent properties like those that the Virginia DEQ and FERC inspectors have identified. Mountain Valley has failed to stabilize the bare soil on the right-of-way for months, has caused discharges of sediment-laden water on many occasions, applied pelleted mulch material on Werner's property outside the limits of disturbance and in standing water. All of these activities violate the various requirements already discussed above. Werner and her husband have filed multiple complaints with FERC and the Virginia DEQ and attempted to solve these problems as they occurred, without success.

Of particular concern and importance is damage that has resulted from Mountain Valley's actions in disrupting a wetland and the flow of a spring through the right-of-way, allowing large volumes of water to accumulate in the open trench and adjacent areas, and causing increased volumes of concentrated flow to the stream. This change in hydrologic characteristics on the site is a direct result of Mountain Valley's failure to abide by requirements to stabilize and de-water ponded areas, to manage the discharge of that water properly, and to safeguard existing waterbodies.

Complainant Neal Laferriere has made an affidavit, Attachment F, which describes violations Mountain Valley has committed on and around his property.

Laferriere states

To date I have filed 17 complaints with the West Virginia Department of Environmental Protection, 3 complaints to FERC, 1 complaint to the FAA, and 1 complaint to the US Army Corp of Engineers. . . . The majority of these complaints are related to failed erosion control measures. One complaint is for

working outside the ROW in a wetland. Another complaint is for working in a wetland without the required permits.

Attached F at 3.

In blatant disregard of the duty to restrict its activities to permitted areas, Mountain Valley has dumped erosion control pellets off the right-of-way, even striking people rightfully on Laferriere's property.

Attachment G contains a summary table of a series of complaints the Indian Creek Watershed Association has filed with FERC, with the accession numbers for each submittal included. Also in Attachment G is a report compiling information and photographs of specific complaints and violations.

Mountain Valley Watch is a volunteer organization formed to perform surveillance on the pipeline. They monitor operations and include a credentialed erosion and sediment control engineer who has assessed compliance of MVP with Virginia law. Their observations and documentation illustrates the same patterns of continuing and frequent violation shown above by private parties and the responsible state and federal agencies. Attachment H includes two recent quarterly reports prepared by Mountain Valley Watch to summarize conditions and show specific instances of noncompliance.

IV. SPECIFIC RELIEF REQUESTED

For the reasons discussed above, Wild Virginia requests that the Commission:

- A. Suspend or revoke its approval for construction of the project.
- B. Issue a project-wide stop-work order for construction on the project.
- C. Require Mountain Valley to submit a plan and schedule to repair damage caused to the environment and property by its activities.

D. Impose penalties on Mountain Valley that are commensurate with the magnitude and seriousness of its violations and to serve as an effective deterrent to Mountain Valley and other parties regulated by FERC.

VIII. CONCLUSION

WHEREFORE, for the foregoing reasons, Complainants respectfully request that the Commission grant specific relief request and impose other remedies as the Commission may deem necessary and appropriate

Respectfully submitted,

/s/ David Sligh
David Sligh

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Commission's Corporate Officials List as representing the Respondent in this action as required by the Commission's regulations.

Dated at Crozet, Virginia this 21st day of June, 2019.

/s/ David Sligh

David Sligh
On behalf of Wild Virginia, Inc.,
Indian Creek Watershed Association,

Preserve Craig, Inc.,
Neal J. Laferriere, and
Betty B. Werner