

ORAL ARGUMENT HAS NOT BEEN SCHEDULED

**In the United States Court of Appeals
for the District of Columbia Circuit****Nos. 17-1271, 18-1002, 18-1175, 18-1177 & 18-1186 (consolidated)**

APPALACHIAN VOICES, *ET AL.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

**RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION'S
RESPONSE TO PETITIONERS' EMERGENCY MOTION FOR EXPEDITION**

James P. Danly
General Counsel

Robert H. Solomon
Solicitor

Robert M. Kennedy
Senior Attorney

For Respondent
Federal Energy Regulatory
Commission
Washington, D.C. 20426

August 16, 2018

INTRODUCTION

The Commission does not oppose Appalachian Voices' (Petitioners) request for an expedited ruling on Petitioners' most recent motion for an indefinite stay of the Mountain Valley Pipeline Project (Project). The Commission submits this response, however, to ensure that the Court has an accurate explanation of recent events before ruling upon the expedition request and underlying motion for stay.

A. The Fourth Circuit's July 27 Opinion Did Not Rule Upon The Commission's Environmental Analysis.

As the Commission noted in its opposition (at 3 n.1) to Appalachian Voices' motion for stay, in a July 27, 2018 decision, the Fourth Circuit, among other things, remanded for further consideration the United States Forest Service's decision to amend the Jefferson National Forest Land Resource Management Plan to accommodate the Project's right-of-way and pipeline construction. *Sierra Club, Inc. v. U.S. Forest Serv.*, Nos. 17-2399, *et al.*, 2018 WL 3595760, at *1 (4th Cir. July 27, 2018).¹ The Court found that the Forest Service had failed to explain in its

¹ The Fourth Circuit also found that the Forest Service had failed to adequately explain how Project-related amendments to the soil and riparian standards in the Jefferson Forest Plan will comply with the National Forest Management Act. *Sierra Club*, 2018 WL 3595760, at *15. The court also found that, in failing to expressly find that the use of an existing right of way would be impracticable, the Bureau of Land Management failed to comply with the dictates of the Mineral Leasing Act. *Id.* at *16.

Record of Decision how the Service's previously expressed concerns regarding the analysis of sedimentation issues had been resolved. *Id.* at *8.

Petitioners assert that the Fourth Circuit's decision "strongly supports" their claim that the Commission's sedimentation analysis was faulty. Motion at 4. But the court's decision was focused on determinations from *other* federal agencies, not FERC. Indeed, in an August 1, 2018 decision, the Fourth Circuit rejected challenges to Virginia's issuance of a water quality certificate for the Project pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1441, finding that the State reasonably concluded that there were measures, restrictions, and programs in place to prevent excess sediment from entering state waters and that such measures and conditions would be effective to satisfy the requirements of Virginia's antidegradation policy. *See Sierra Club v. State Water Control Board*, Nos. 17-2406, *et al.*, 2018 WL 3635962, at *16-*18 (4th Cir. Aug. 1, 2018). *See also id.* at *6-*8 (discussing FERC sedimentation analysis).²

² Petitioners also cite a Fourth Circuit decision vacating the Fish and Wildlife Service's Incidental Take Statement issued in connection with the separate Atlantic Coast Pipeline Project. *See* Motion at 2 n.1 (citing *Sierra Club v. U.S. Dep't of Interior*, No. 18-1082, 2018 WL 3717067 (4th Cir. Aug. 6, 2018)). Notably, in that case, the Fourth Circuit recently rejected a request to enjoin all construction pending reissuance of an Incidental Take Statement. The court found that, because construction activity that could likely adversely affect protected species had already ceased, it was not necessary to enjoin construction. *See Sierra Club v. U.S. Dep't of Interior*, No. 18-1082 (4th Cir. Aug. 15, 2018).

B. The Commission Has Authorized Limited Activities To Protect Safety And The Environment.

Petitioners also claim that the Commission has “unlawfully” “greenlit” construction activities in violation of the Fourth Circuit’s decision and the Commission’s certificate order. Motion at 8. Initially, the Fourth Circuit’s July 27 opinion only concerned the federal permits needed for the Project to cross federal land. Petitioners do not allege that any construction activity is occurring within the Jefferson National Forest. *See* Motion at 7. Moreover, as described below, Petitioners mischaracterize the activity authorized by FERC staff since issuance of the August 3, 2018 stop work order.

1. The Commission has partially approved Mountain Valley Pipeline’s stabilization plan.

On August 3, 2018, in response to the Fourth Circuit’s July 27, 2018 decision regarding the Bureau of Land Management and Forest Service permits, the Director of FERC’s Office of Energy Projects issued an order directing Mountain Valley Pipeline to immediately cease all construction activity along the entire pipeline route. (A copy of this letter, which FERC submitted to the Court on August 3, 2018, is attached as Exhibit A.) In recognition that work stoppage could have significant safety and environmental impacts, the stop work order excepted those “measures deemed necessary by those land managing agencies or FERC staff to ensure the stabilization of the right of way and work areas.” *See* Exhibit A at 1.

The Commission also directed Mountain Valley Pipeline to submit for approval a plan to stabilize the right-of-way and work areas during the work stoppage period.

On August 10, 2018, the Director issued an order approving portions of Mountain Valley Pipeline's stabilization plan. (A copy of this letter, which FERC submitted to the Court on August 14, 2018, is attached as Exhibit B.) Petitioners' emergency motion takes issue with FERC staff's approval of certain pipe laying and backfilling activities and the completion of horizontal directional drilling. *See* Motion at 8. While Petitioners assert that these activities are simply the result of the Commission "acced[ing] to the company's demands to proceed with construction" (Motion at 7), they are, in fact, necessary to prevent potential safety and environmental impacts.

a. The completion of pipe lowering activities

There are segments of the Project, totaling approximately 26 miles, where the pipeline trench has been dug and pipe has been strung³ alongside the trench and

³ Pipe stringing involves transporting large sections of pipe to the right-of-way and laying them beside the trench in a continuous line. The pipe is delivered to the right-of-way with a protective coating designed to inhibit corrosion by preventing moisture from coming into direct contact with the steel. After being strung alongside the trench, individual sections of pipe would be bent to conform to the contours of the ground. (Some complex bending may take place off-site.) After the pipes are bent, they would be aligned and welded together into a long segment. Following inspection and protective coating of the welds, the pipeline would then be lowered into the trench by side-boom tractors. The trench is then backfilled. *See* Final Environmental Impact Statement for the Mountain Valley Pipeline Project (FERC Dkt. Nos. CP16-10-000 and CP16-13-000) at 2-39 to 2-40.

welded together. There are also segments totaling roughly 7 miles where trenching and pipeline stringing have been completed, but the pipe segments have not been welded. *See* Mountain Valley Pipeline's Temporary Stabilization Plan at 8 (attached as Exhibit D to Petitioners' Motion). With respect to both segments, the Director's August 10 letter authorized Mountain Valley Pipeline to (a) weld the pieces of pipe if necessary, (b) lower the pipe into the open trench, (c) backfill the trench, (d) restore the disturbed land to grade if appropriate, and (e) permanently stabilize the area per the approved state plans. *See* Exhibit B at Attachment 1 pp. 1-2. FERC staff determined that such activity was necessary "to prevent potential safety and environmental impacts." *See id.* at 1.

As explained in the stabilization plan, storing pipe segments alongside trenches for extended periods of time could pose bodily and property safety risks and could result in damage to the pipe itself. *See* Motion, Exhibit D at 5-6 (discussing potential for bodily or property injury, and UV damage and point source damage to pipe). In addition, in those areas where trenching has been completed and pipe laid along the trench, installing the pipe and backfilling will better promote proper restoration of the right-of-way and protection of sensitive environmental resources. *Id.* at 5. Beginning reclamation in these areas now, as opposed to leaving the pipe out and using temporary stabilization soils, promotes long-term revegetation and minimizes the potential for sedimentation and erosion

events, and geotechnical failures. *Id.* (“Temporarily stabilized soils are more susceptible to erosion and sediment loss than final restored conditions.”); *see also id.* at 7 (“Temporary stabilization without returning the ROW to final grade puts these high-hazard steep slope areas at an elevated risk of geotechnical failures.”).

b. The completion of horizontal directional drilling

The Commission required the pipeline to use a horizontal directional drill to cross under the Pigg River. *See Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, P 179 (2017).⁴ When the stop work order was issued, the pilot hole had been completed and half of the Pigg River crossing had been enlarged. *See* Motion, Exhibit D at 7. Leaving the crossing in that condition increases the risk that drilling equipment could be seized downhole and increases the risk of an inadvertent release of drilling fluid once drilling resumes. *Id.*

2. The Commission has authorized construction activities between milepost 0 and milepost 77.

In an August 15, 2018 letter, the Director of FERC’s Office of Energy Projects explained that FERC staff had determined that protection of the environment along the Project right-of-way would be best served by permitting construction activities between milepost 0 and milepost 77, excluding the right-of-

⁴ The horizontal directional drilling method involves drilling a hole along the pipeline’s projected path, enlarging it to accommodate the pipeline, then pulling the pipeline into the hole.

way between mileposts 64 and 71.⁵ (A copy of this letter is attached as Exhibit C.) Eighty percent of this segment of the Project has been cleared and, at some points, pipe has been brought to the right-of-way, trenching has occurred, and some pipe is already in the ground. *See* Exhibit C at 1. In light of these circumstances, FERC staff concluded that completing construction and restoration activities would protect the environment to the maximum extent possible while the relevant agencies determine how to comply with the Fourth Circuit's July 27 decision. By contrast, simply maintaining current conditions could have adverse consequences:

Maintaining the status quo would result in significant areas being subject to erosion and soil movement for an indeterminate period, possibly negatively affecting plant and wildlife habitat and adjacent water bodies. At the same time, requiring restoration of the right-of-way immediately to pre-construction conditions would require significant construction activity, including earth moving, with concomitant environmental impacts, and might result in the same areas having to be disturbed twice, if construction is later reauthorized.

Id. at 2.

The stop work modification excluded the right-of-way between mileposts 64 and 71, which encompasses the crossing of the Weston and Gauley Bridge

⁵ The Project will pass through the Jefferson National Forest for a total of 3.5 miles in three segments between Project mileposts 196.2 and 197.8, mileposts 218.5 and 219.4, and mileposts 219.8 and 220.8. *See Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 223.

Turnpike Bridge Trail. *Id.* The exclusion zone is intended to accommodate any alternatives analysis that the Bureau of Land Management may wish to conduct in response to the Fourth Circuit’s July 27 decision. *Id.*⁶ The August 15 letter also emphasized that “construction activity along all other portions of the project from Milepost 77 to Milepost 303 and in all other work areas remains subject to the August 3, 2018 stop work order.” *Id.*

* * *

Petitioners blithely assert that “continued construction of the Pipeline is not ‘necessary’ for proper stabilization.” Motion at 7. FERC – the agency charged with bringing its expertise to bear to ensure that the construction and operation of interstate pipelines is conducted consistent with the public interest – disagrees. And as evidenced by the stop work order, the stabilization plan order, and the recent modification to the stop work order, the Commission is diligently responding to the developing facts to ensure that all aspects of the public interest are protected.

⁶ The August 15 letter also explained that Mountain Valley Pipeline could proceed with the mechanical installation of compressor station equipment at the Bradshaw, Harris, and Stallworth Compressor Stations, since the construction of access areas and ground disturbance had been completed prior to the August 3, 2018 stop work order. *See* Exhibit C at 2.

CONCLUSION

For the foregoing reasons and those stated in the Commission's July 27, 2018 opposition, Appalachian Voices has not established the extraordinary circumstances necessary to justify a stay of pipeline construction and, therefore, the motion for stay should be denied.

Respectfully submitted,

James P. Danly
General Counsel

Robert H. Solomon
Solicitor

/s/ Robert M. Kennedy
Robert M. Kennedy
Senior Attorney

For Respondent
Federal Energy Regulatory
Commission
Washington, D.C.

August 16, 2018

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify that this reply complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(C) because it contains 2,019 words, excluding the parts exempted by Fed. R. App. P. 32(f).

I further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in Times New Roman 14-point font using Microsoft Word 2010.

/s/ Robert M. Kennedy
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August 16, 2018

EXHIBIT A

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:OEP/DG2E/Gas Branch 3
Mountain Valley Pipeline LLC
CP16-10-000

August 3, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222**Re: Notification of Stop Work Order**

Dear Mr. Eggerding:

On July 27, 2018, the United States Court of Appeals for the Fourth Circuit issued an order vacating decisions by the Department of the Interior's Bureau of Land Management (BLM) and by the Department of Agriculture's Forest Service (Forest Service) authorizing the construction of the Mountain Valley Pipeline Project (Project) across federal lands and remanding to those agencies for further proceedings to address issues identified in that opinion. In light of this development, Mountain Valley Pipeline, LLC (MVP) has not obtained the rights-of-way and temporary use permits from the federal government needed for the Project to cross federally owned lands.

There is no reason to believe that the Forest Service or the Army Corps of Engineers, as the land managing agencies, or the BLM, as the federal rights-of-way grantor, will not be able to comply with the Court's instructions and to ultimately issue new right-of-way grants that satisfy the Court's requirements. However, Commission staff cannot predict when these agencies may act or whether these agencies will ultimately approve the same route. Should the agencies authorize alternative routes, MVP may need to revise substantial portions of the Project route across non-federal lands, possibly requiring further authorizations and environmental review. Accordingly, allowing continued construction poses the risk of expending substantial resources and substantially disturbing the environment by constructing facilities that ultimately might have to be relocated or abandoned.

MVP is hereby notified that construction activity along all portions of the Project and in all work areas must cease immediately, with the exception of any measures deemed necessary by those land managing agencies or FERC staff to ensure the stabilization of the right of way and work areas. Commission staff intends to review the need for this stop work notification in light of further actions that the Forest

Service, the Army Corps of Engineers, and the BLM will take with respect to the issues raised in the Court's opinion and stand ready to assist to achieve a prompt resolution.

In addition, within 5 days, MVP must provide an interim right-of-way and work area stabilization plan for review and written approval by the Director of the Office of Energy Projects.

Sincerely,

A handwritten signature in blue ink that reads "Terry L. Turpin". The signature is written in a cursive style with a large initial "T".

Terry L. Turpin
Director
Office of Energy Projects

EXHIBIT B

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas Branch 3
Mountain Valley Pipeline LLC
CP16-10-000

August 10, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222**Re: Partial Approval of the Temporary Stabilization Plan**

Dear Mr. Eggerding:

Staff has reviewed Mountain Valley Pipeline LLC's (Mountain Valley) August 8, 2018 *Temporary Stabilization Plan*, filed in response to the August 3, 2018 Notification of Stop Work Order. As indicated in your plan, the shutdown presents challenges for stabilization and restoration, and we agree that there are some clear advantages to allowing some limited construction activities to proceed to prevent potential safety and environmental impacts.

Mountain Valley is approved to implement the stabilization measures as indicated in Attachment 1. Any measures discussed within the Temporary Stabilization Plan that are not identified in the attachment as "approved" cannot be implemented at this time. Commission staff will continue to evaluate unapproved measures and will be requesting additional information from Mountain Valley during that review. Mountain Valley must also seek concurrence from appropriate agencies, such as the Bureau of Land Management, the Forest Service, or the Army Corps of Engineers, for any measures that Mountain Valley proposes on federal lands.

Sincerely,

Terry L. Turpin
Director
Office of Energy Projects

Enclosure

Attachment 1

Plan Section	Stage of Construction	Action	Approval Status
Short Term Stabilization Plan: Tree Felled, Cleared and Graded Only	Not Felled	Continue to monitor and inspect per WVDEP and VADEQ requirements.	Yes
Short Term Stabilization Plan: Tree Felled, Cleared and Graded Only	Tree Felled Only	Continue to monitor and inspect per WVDEP and VADEQ requirements.	Yes
Short Term Stabilization Plan: Tree Felled, Cleared and Graded Only	Trees Felled/ROW Cleared and/or Graded No Pipe Strung/Not Trenched	Temporary stabilization in accordance with the approved WVDEP and VADEP Erosion and Sediment Control Plans.	Yes
Inspection/Maintenance Activities	N/A	N/A	Yes
Stabilization Activities	N/A	N/A	Yes
Short Term Stabilization Plan: Pipe Strung, Welded and Trenched	Trench Open Only	Stabilize the trench by installing / maintaining trench breakers or trench plugs. Monitor daily, continue to dewater open excavations / trenches to avoid saturation and potential for cave-in / slip. Backfill any open trench that poses a safety concern. Secure all remaining open trench with orange safety fencing.	Yes
Short Term Stabilization Plan: Pipe Strung, Welded and Trenched	Pipe Strung / Welded, Trench Open	Lower in, backfill, restore to final grade, if appropriate, and permanently stabilize per approved WVDEP or VADEQ plans.	Yes

Short Term Stabilization Plan: Pipe Strung, Welded and Trenched	Pipe Strung / Welded, Not Trenched	In non-steep slope areas Mountain Valley will stabilize the pipe as appropriate. Mountain Valley will use seed and mulch to temporarily stabilize the ROW per the WVDEP and VADEQ requirements.	Pending
Short Term Stabilization Plan: Pipe Strung, Welded and Trenched	Pipe Strung / Welded, Not Trenched	In steep slope areas, trenching, lowering in, backfilling, restoring to final grade, if appropriate, and permanently stabilizing ROW.	Pending
Short Term Stabilization Plan: Pipe Strung, Welded and Trenched	Pipe Strung / Not Welded, Trench Open	Weld, lower in, backfill, restore to final grade, if appropriate, and permanently seed per approved WVDEP or VADEQ plans.	Yes
Short Term Stabilization Plan: Pipe Strung, Welded and Trenched	Pipe Strung / Not Welded, Not Trenched	In non-steep slope areas Mountain Valley will stabilize the pipe as appropriate. Mountain Valley will use seed and mulch to temporarily stabilize the ROW per the WVDEP and VADEQ requirements.	Yes
Short Term Stabilization Plan: Pipe Strung, Welded and Trenched	Pipe Strung / Not Welded, Not Trenched	In steep slope areas, trenching, lowering in, backfilling, restoring to final grade, if appropriate, and permanently stabilizing the ROW.	Pending
Short Term Stabilization Plan: Pipe Strung, Welded and Trenched	Pipe Installed / Backfilled	Restore to final grade, if appropriate, and permanently seed per approved WVDEP or VADEQ plans.	Yes
Short Term Stabilization Plan: Pipe Strung, Welded and Trenched	Pigg River HDD	Fully complete the HDD by finishing reaming and pull back operations. Temporarily seed and mulch adjacent temporary workspace areas.	Yes

<p>Short Term Stabilization Plan: Pipe Strung, Welded and Trenched</p>	<p>Blue Ridge Parkway</p>	<p>In consultation with National Park Service, install grouting around the bored pipe under the Blue Ridge Parkway, back fill the open trench, rough grade, temporarily seed and mulch, monitor and maintain the temporary ECDs, assure that the cattle have access to the existing spring and the work area is fenced off, repair and stabilize the private road on the south side of the Blue Ridge Parkway, and remove all equipment and pipe that is stacked from National Park Service property.</p>	<p>Pending</p>
<p>Short Term Stabilization Plan: Pipe Strung, Welded and Trenched</p>	<p>Jefferson National Forest</p>	<p>All work stopped</p>	<p>Pending</p>
<p>Immediate actions are necessary to temporarily stabilize the facilities and their associated work areas -</p>			<p>Yes</p>
<p>Longer Term Stabilization Plan: Pipeline ROW and Facilities</p>	<p>Pipe Strung/Welded, Not Trenched</p>	<p>In non-steep slope areas, trenching, lowering in, backfilling, restoring to final grade and permanently stabilizing the ROW.</p>	<p>Pending</p>
<p>Longer Term Stabilization Plan: Pipeline ROW and Facilities</p>	<p>Pipe Strung/Not Welded, Not Trenched</p>	<p>In non-steep slope areas, trenching, welding, lowering in, backfilling, restoring to final grade and permanently stabilizing the ROW.</p>	<p>Pending</p>

<p>Longer Term Stabilization Plan: Compressor Station and Interconnects</p>	<p>N/A</p>	<p>Install security fencing at the Compressor Station and Interconnect sites.</p> <ul style="list-style-type: none"> -Complete any work in open excavations, including welding, coating, x-ray of pipe, finishing concrete pours already prepared and backfilling as appropriate (already in ditch). -Protect any installed anchor bolts from the elements. -Preserve, protect and maintain all equipment per best practices / manufacturer's recommendations at all Compressor Station and Interconnect Facilities. 	<p>Yes</p>
<p>Specific Areas of Sensitive Environmental Concern</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>

<p>Longer Term Stabilization Plan: Compressor Station and Interconnects</p>	<p>N/A</p>	<ul style="list-style-type: none"> - Complete MLV-9 installation at Harris – this is currently ready for final coating test and backfill. It would be beneficial to complete to protect the pipe and leave one less open excavation to monitor and dewater. -Complete MLV-19 installation at Stallworth – this work is currently in progress. It would be beneficial to complete to protect the pipe and leave one less open excavation to monitor and dewater. -Complete compressor foundation #4 at Bradshaw - Currently an open excavation that can't be backfilled due to forms, exposed rebar, bolts, etc. -Compressor building walls at Harris - Currently an open excavation that can't be backfilled due to forms, exposed rebar, bolts, etc. -Complete 42" header piping that is already in the ditch at all facilities - Currently exposed pipe, open excavations. 	<p>Yes</p>
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EXHIBIT C

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas Branch 3
Mountain Valley Pipeline, LLC
CP16-10-000

August 15, 2018

Matthew Eggerding, Senior Counsel
Mountain Valley Pipeline, LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222**Re: Stop Work Order Modification**

Dear Mr. Eggerding:

Staff, having further reviewed the status of construction activities along the route of the Mountain Valley Pipeline Project, has determined that the protection of the environment along the project right-of-way is best served by modifying the Stop Work Order issued on August 3, 2018, as described below.

In the Stop Work Order, Mountain Valley Pipeline, LLC (Mountain Valley) was "...notified that construction activity along all portions of the Project and in all work areas must cease immediately, with the exception of any measures deemed necessary by those land managing agencies or FERC staff to ensure the stabilization of the right-of-way and work areas." On August 10, 2018, the Director of the Office of Energy Projects issued a letter authorizing Mountain Valley to implement certain of the measures proposed in Mountain Valley's August 8, 2018 *Temporary Stabilization Plan*, recognizing that "the shutdown presents challenges for stabilization and restoration, and we agree that there are some clear advantages to allowing some limited construction activities to proceed to prevent potential safety and environmental impacts."

Upon additional review, staff has determined that approximately eighty percent of the right-of-way from Milepost 0 up to Milepost 77 has been cleared. Not only have trees been felled in this area, but much of the right-of-way has been disturbed and graded. At some points, pipeline has been brought to the right-of-way; some has been bent to fit the contours of the right-of-way and some has been welded together. In addition, some of the right-of-way has been trenched and some pipe is already put in the ground.

After careful consideration, and with the goal of protecting the environment to the maximum extent possible while the relevant agencies determine how best to comply with the orders of the U.S. Court of Appeals for the Fourth Circuit, staff concludes that allowing completion of construction, including full restoration along the right-of-way, in

this limited area is the best option. Maintaining the status quo would result in significant areas being subject to erosion and soil movement for an indeterminate period, possibly negatively affecting plant and wildlife habitat and adjacent water bodies. At the same time, requiring restoration of the right-of-way immediately to pre-construction conditions would require significant construction activity, including earth moving, with concomitant environmental impacts, and might result in the same areas having to be disturbed twice, if construction is later reauthorized. Long-term restoration along the right-of-way could be difficult with such repeated disturbance, potentially leading to other negative environmental impacts.

In its August 14 filing, Mountain Valley proposes the Stop Work Order be modified to allow construction to continue between Milepost 0 and the interconnection with Columbia Gas Transmission near Milepost 77, a section of the certificated project that can provide natural gas transportation once the BLM addresses the right-of-way grant across the Corps of Engineers' Weston and Gauley Bridge Turnpike Trail.¹ Consistent with the findings of the Commission's October 13, 2017 Order² that the Mountain Valley Pipeline Project is in the public interest and the discussion above, Mountain Valley may continue construction of the project from Milepost 0 up to, and including, the WB interconnect with Columbia Gas Transmission near Milepost 77, excluding the right-of-way between Mileposts 64 and 71. The scope of this exclusion, which encompasses the certificated crossing of the Weston and Gauley Bridge Turnpike Trail, is intended to accommodate the BLM's assessment of any necessary alternative co-location routes across this Federal property should that agency undertake such analysis. However, Mountain Valley must take whatever measures determined to be necessary and appropriate by Federal land managing agencies and/or FERC staff to ensure the stabilization of the right-of-way and work areas within the Federal lands and the exclusion area.

In addition, as construction of access areas and ground disturbance at compressor station sites was completed prior to issuance of the Stop Work Order, Mountain Valley may also proceed with mechanical installation of compressor station equipment at the Bradshaw, Harris, and Stallworth Compressor Stations. Mountain Valley's request for construction of additional interconnects outside of these areas remains under review. We emphasize that construction activity along all other portions of the project from Milepost 77 to Milepost 303 and in all other work areas remains subject to the August 3, 2018 stop work order.

¹ Staff recognizes that the BLM right-of-way grant across the Weston and Gauley Bridge Turnpike Trail was included in the vacatur issued by the Fourth Circuit. However, neither the installed location nor the alternatives analysis on which that location was based appear to have been a material issue in the proceedings before the Court.

² *Mountain Valley Pipeline, LLC*, 161 FERC ¶61,043 (2017), *order on reh'g*, 163 FERC ¶61,197 (2018).

Finally, as we are allowing construction to continue in the above areas because we deem that to be the best way to mitigate further impacts on the environment, Mountain Valley must take all steps necessary to promptly complete post-construction restoration activity in the areas on which we are allowing construction, as soon as construction is complete.

Sincerely,

Terry L. Turpin
Director
Office of Energy Projects

CERTIFICATE OF SERVICE

I hereby certify that, on August 16, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Robert M. Kennedy

Robert M. Kennedy
Senior Attorney