



Appalachian Mountain Advocates

West Virginia
Post Office Box 507
Lewisburg, WV 24901
(304) 645-9006

Virginia
415 Seventh Street NE
Charlottesville, VA 22902
(434) 529-6787

www.appalmad.org

Great Horned Owl © Estate of Roger Tory Peterson. All rights reserved.

April 7, 2017

Scott Mandirola
Director, Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304
ATTENTION: 401 Certification Program

Re: Request for Hearing on State 401 Water Quality Certification; Nationwide Permit No. 12; Mountain Valley Pipeline, LLC; Mountain Valley Pipeline Project; FERC Docket No. CP-16-10-000; Wetzel, Harrison, Doddridge, Lewis, Braxton, Webster, Nicholas, Greenbrier, Fayette, Summers, and Monroe Counties, West Virginia; WQC-16-005

Dear Director Mandirola:

On behalf of O. Ashby Berkley, Tammy A. Capaldo and Caitlyn A. Gregg, Maury Johnson, Norvel Mann and Jean Mann, A. Petrie Brown, Landcey Ragland, Charles Chong and Rebecca A. Eneix-Chong, Ty and Susan Bouldin, Dr. Stephen Miller, James Gore, the Sierra Club, the West Virginia Rivers Coalition, and the Indian Creek Watershed Association (hereinafter, collectively, the "Appellants"), Appalachian Mountain Advocates hereby requests a hearing pursuant to 47 C.S.R. § 5A-7 et seq. on the Certification pursuant to Section 401 of the Federal Water Pollution Control Act issued by the West Virginia Department of Environmental Protection ("WVDEP") on March 23, 2017, for the Mountain Valley Pipeline Project's Section 404 permit authorization and Natural Gas Act Certificate of Public Convenience and Necessity (WQC-16-005).

Appellant O. Ashby Berkley possesses a property or property interest directly affected by WQC-16-005 because he is the owner of two parcels of property, together consisting of 5.5 acres, more or less, in Summers County, WV, along and adjacent to the Greenbrier River. The proposed right-of-way for the Mountain Valley Pipeline crosses Mr. Berkeley's property, and one side of the proposed stream crossing of the Greenbrier River by the Mountain Valley Pipeline abuts and crosses Mr. Berkeley's property. Mr. Berkley and customers of his short-term vacation rentals use the Greenbrier River at the proposed crossing location and downstream of that crossing for recreational purposes, and their uses would be adversely affected by the proposed crossing and the increased sedimentation and other pollution that would be associated with the construction and operation of the Mountain Valley Pipeline. Accordingly, Mr. Berkley possesses a property or property interest directly affected by WQC-16-005. See generally

Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981). Mr. Berkley is a member of the Sierra Club, the West Virginia Rivers Coalition, and the Indian Creek Watershed Association.

Appellants Tammy A. Capaldo and Caitlyn A. Gragg possess a property or property interest directly affected by WQC-16-005 because they are co-owners, as mother and daughter, of a 3.66-acre (more or less) parcel of property in Summers County, WV, along and adjacent to the Greenbrier River. The proposed right-of-way for the Mountain Valley Pipeline crosses their property, and one side of the proposed stream crossing of the Greenbrier River by the Mountain Valley Pipeline abuts and crosses their property. Their property is located on the other side of the Greenbrier River from Mr. Berkley's property. Ms. Capaldo and Ms. Gragg use the Greenbrier River at the location of the proposed crossing and downstream of that crossing for recreational purposes and their uses would be adversely affected by the proposed crossing and the increased sedimentation and other pollution that would be associated with the construction and operation of the Mountain Valley Pipeline. Accordingly, Ms. Capaldo and Ms. Gragg possess a property or property interest directly affected by WQC-16-005. See generally Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981). Ms. Capaldo is a member of the Sierra Club.

Appellant Maury Johnson possesses a property or property interest directly affected by WQC-16-005 because he is the owner of a tract of property of just over 100 acres near Greenville, WV, in Monroe County. The proposed right-of-way for the Mountain Valley Pipeline crosses Mr. Johnson's property, including a crossing for a stream locally known as Slate Run on Mr. Johnson's property, on or near the right-of-way for Ellison Ridge Road, a public road. Downstream of the proposed crossing of Slate Run, that stream proceeds across Mr. Johnson's property towards his home and domestic drinking well. In short, the proposed Mountain Valley Pipeline would be constructed on Mr. Johnson's property, and affect his property interest in riparian rights in Slate Run. Accordingly, Mr. Johnson possesses a property or property interest directly affected by WQC-16-005. See generally Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981). Mr. Johnson is a member of the Sierra Club, the West Virginia Rivers Coalition, and the Indian Creek Watershed Association.

Appellants Norvel and Jean Mann possess a property or property interest directly affected by WQC-16-005 because together they are the owners of a 53-acre (more or less) tract of property near Lindside, WV, in Monroe County. Mr. Mann is also the co-owner, along with his son, of a 14-acre (more or less) parcel of land adjacent to the 53-acre parcel. The proposed right-of-way for the Mountain Valley Pipeline crosses Mr. and Mrs. Mann's property, and will cross Hans Creek on the boundary between the 14-acre and 53-acre parcels. In other words, the proposed Mountain Valley Pipeline would be constructed on the Mann's property and affect their property interest in riparian rights in Hans Creek. Accordingly, Mr. and Mrs. Mann possess a property or property interest directly affected by WQC-16-005. See generally Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981).

Appellant A. Petrie Brown possesses a property or property interest directly affected by WQC-16-005 because she owns an undivided one-third interest in a 70-acre (more or less) parcel of land near Greenville, WV in Monroe County. Dunlap Creek flows across Ms. Brown's property. The proposed right-of-way for the Mountain Valley Pipeline crosses Dunlap Creek on

a property adjacent to Ms. Brown's property upstream from the latter property. Ms. Brown uses Dunlap Creek as an occasional source of water for her domestic animal. Ms. Brown's property interests in riparian rights on Dunlap Creek are directly affected by the Mountain Valley Pipeline. Accordingly, Ms. Brown possesses a property or property interest directly affected by WQC-16-005. See generally Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981). Ms. Brown is a member of the Sierra Club and the Indian Creek Watershed Association.

Appellant Landcey Ragland possesses a property or property interest directly affected by WQC-16-005 because he owns approximately 290 acres of land near Greenville, WV, in Monroe County. The proposed right-of-way for the Mountain Valley Pipeline crosses Mr. Ragland's property, including two crossings of a stream locally known as Slate Run. The proposed right-of-way also parallels Slate Run on Mr. Ragland's property for some distance. Mr. Ragland uses Slate Run as the sole source of drinking water for his livestock. In other words, the proposed Mountain Valley Pipeline would be constructed on Mr. Ragland's property and affect his property interest in riparian rights in Slate Run. Accordingly, Mr. Ragland possesses a property or property interest directly affected by WQC-16-005. See generally Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981).

Appellants Charles Chong and Rebecca A. Eneix-Chong possess a property or property interest directly affected by WQC-16-005 because they are the sole owners of approximately a 220-acre parcel of land near Bristol, WV, in Harrison County. The proposed right-of-way for the Mountain Valley Pipeline crosses the Chong's property, running along a ridge above an unnamed tributary of Halls Run. The Chongs use the unnamed tributary located on their property as a water source for livestock and domestic animals. At the headwaters of the unnamed tributary, the Chongs use a farm pond for recreational purposes. The Chongs are concerned that increased sedimentation in their pond and the unnamed tributary of Halls Run may occur from the construction and operation of the Mountain Valley Pipeline. In other words, the proposed Mountain Valley Pipeline would be constructed on the Chong's property and affect their riparian interests in an unnamed tributary of Halls Run. Accordingly the Chongs possess a property or property interest directly affected by WQC-16-005. See generally Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981).

Appellants Ty and Susan Bouldin possess a property or property interest directly affected by WQC-16-005 because they are the sole owners of certain property located near Pence Springs, WV, in Summers County. Their property abuts Hungards Creek, making them riparian owners along that stream. The proposed right-of-way for the Mountain Valley Pipeline crosses Hungards Creek approximately 3,500 upstream from their property. Additionally, a work area for the construction of the proposed pipeline is located on land immediately across Hungards Creek from their property. The Bouldins frequently walk along Hungards Creek and have used the stream as a source of drinking water for domestic animals. The Bouldins' property interests in riparian rights on Hungards Creek are directly affected by the Mountain Valley Pipeline. Accordingly, the Bouldins possess a property or property interest directly affected by WQC-16-005. See generally Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981). The Bouldins are members of the Sierra Club and the West Virginia Rivers Coalition.

Appellant Stephen Miller possesses a property or property interest directly affected by WQC-16-005 because he owns an undivided one-half interest in approximately 102 acres of land near Lindside, WV, in Monroe County. The proposed right-of-way for the Mountain Valley Pipeline crosses Dr. Miller's property, including a crossing of an unnamed tributary or tributaries of Blue Lick. The proposed right-of-way may also cross additional waters of the state in the form of wetlands. In other words, the proposed Mountain Valley Pipeline would be constructed on Dr. Miller's property and directly affect his property interest in riparian rights in one or more unnamed tributaries of Blue Lick. Accordingly, Dr. Miller possesses a property or property interest directly affected by WQC-16-005. See generally Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981).

Appellant James Gore possesses a property or property interest directly affected by WQC-16-005 because he is the sole owner of a 228.5-acre (more or less) parcel of land near Lindside, WV, in Monroe County. Mr. Gore also owns a one-third undivided interest in a 116-acre parcel of land adjacent to the 228.5-acre parcel. The proposed right-of-way for the Mountain Valley Pipeline crosses Mr. Gore's property, including a crossing of an unnamed tributary of Blue Lick of Hans Creek of Indian Creek of the New River, located entirely on property owned by Mr. Gore, and a crossing of two wetlands. Additionally, construction and operation of the Mountain Valley Pipeline would result in the widening of an existing road on Mr. Gore's property on an extremely steep slope, at the base of which lies an unnamed tributary of Blue Lick. The construction and use of that road threatens the unnamed tributary with additional sedimentation and other runoff. Mr. Gore uses the water in the unnamed tributaries of Blue Lick on his property a water source for livestock. In other words, the proposed Mountain Valley Pipeline would be constructed on Mr. Gore's property and directly affect his property interest in riparian rights in one or more unnamed tributaries of Blue Lick. Accordingly, Mr. Gore possesses a property or property interest directly affected by WQC-16-005. See generally Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981). Mr. Gore is a member of the Sierra Club and the Indian Creek Watershed Association.

Appellant Sierra Club is a "person" eligible to request a hearing under 47 C.S.R. § 5A-7 et seq. because it is a "person" under W. Va. Code § 22-11-3(14), which defines that term to include "public or private corporation[s], institution[s], association[s], firm[s] or compan[ies] organized or existing under the laws of this or any other state or country" and "group[s] of persons or individuals acting individually or as a group." Because Sierra Club's members, including O. Ashby Berkley, Tammy A. Capaldo, Maury Johnson, A. Petrie Brown, Ty and Susan Bouldin, and James Gore, possess property or a property interest directly affected by WQC-16-005, Sierra Club may request a hearing on WVDEP's Section 401 certification as a representative of its members and their interests under Snyder v. Callaghan, 168 W. Va. 265, 278-83 (1981). The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out those objectives. In other words, the Sierra Club's concerns encompass the exploration, enjoyment, and protection of surface waters in West Virginia. Accordingly, the Sierra Club's organizational purpose is germane to the important questions of water quality presented by the WVDEP's certification of the Mountain Valley Pipeline under Section 401 of the Federal Water Pollution Control Act.

Snyder, 168 W. Va. at 282. Finally, the nature of the relief sought is not such that it requires the individual participation of Sierra Club's members. Id.

Appellant West Virginia Rivers Coalition is a "person" eligible to request a hearing under 47 C.S.R. § 5A-7 et seq. because it is a "person" under W. Va. Code § 22-11-3(14), which defines that term to include "public or private corporation[s], institution[s], association[s], firm[s] or compan[ies] organized or existing under the laws of this or any other state or country" and "group[s] of persons or individuals acting individually or as a group." Because the West Virginia Rivers Coalition's members, including O. Ashby Berkley, Maury Johnson, and Ty and Susan Bouldin, possess property or a property interest directly affected by WQC-16-005, the West Virginia Rivers Coalition may request a hearing on WVDEP's Section 401 certification as a representative of its members and their interests under Snyder v. Callaghan, 168 W. Va. 265, 278-83 (1981). The West Virginia Rivers Coalition makes its mission the conservation and restoration of West Virginia's exceptional rivers and streams. It not only seeks preservation of high quality waters but also the improvement of waters that should be of higher quality. Accordingly, the West Virginia Rivers Coalition's organizational purpose is germane to the important questions of water quality presented by the WVDEP's certification of the Mountain Valley Pipeline under Section 401 of the Federal Water Pollution Control Act. Snyder, 168 W. Va. at 282. Finally, the nature of the relief sought is not such that it requires the individual participation of the West Virginia Rivers Coalition's members. Id.

Appellant Indian Creek Watershed Association is a "person" eligible to request a hearing under 47 C.S.R. § 5A-7 et seq. because it is a "person" under W. Va. Code § 22-11-3(14), which defines that term to include "public or private corporation[s], institution[s], association[s], firm[s] or compan[ies] organized or existing under the laws of this or any other state or country" and "group[s] of persons or individuals acting individually or as a group." Because the Indian Creek Watershed Association's members, including O. Ashby Berkley, Maury Johnson, A. Petrie Brown, and James Gore, possess property or a property interest directly affected by WQC-16-005, the Indian Creek Watershed Association may request a hearing on WVDEP's Section 401 certification as a representative of its members and their interests under Snyder v. Callaghan, 168 W. Va. 265, 278-83 (1981). The Indian Creek Watershed Association's mission is the preservation and protection of Monroe County's abundant, pure water. Accordingly, the Indian Creek Watershed Association's organizational purpose is germane to the important questions of water quality presented by the WVDEP's certification of the Mountain Valley Pipeline under Section 401 of the Federal Water Pollution Control Act. Snyder, 168 W. Va. at 282. Finally, the nature of the relief sought is not such that it requires the individual participation of the Indian Creek Watershed Association's members. Id.

WVDEP regulations require the persons requesting a hearing to set forth the manner in which the persons are aggrieved or adversely affected. 47 C.S.R. § 5A-7.1.b. In fulfilling that requirement, Appellants hereby incorporate by reference, as if they were expressly set forth herein, all comments submitted by the Appellants on the application for WQC-16-005 and WVDEP's March 23, 2017 response to those comments. In addition to those comments and WVDEP's response, the manner in which Appellants are aggrieved or adversely affected includes, but is not limited to, the following:

1. WVDEP's certification is not supported by evidence that would allow it to conclude that discharges into state waters from the construction and operation of the Mountain Valley Pipeline will not cause or contribute to violations of water quality standards or otherwise violate Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act.
2. WVDEP's certification is unlawful because WVDEP failed to perform any antidegradation review (including, but not limited to, failing to establish a baseline water quality for each water body that will receive discharge from construction and operation of the Mountain Valley Pipeline), failed to consider whether discharges into state waters from the construction and operation of the Mountain Valley Pipeline, including point source discharges, nonpoint source discharges, and stormwater discharges, would violate West Virginia's Antidegradation Rules and Procedures in 60 C.S.R. § 5-1 et seq., and failed to implement or follow those procedures.
3. WVDEP's certification is premature because, among other things:
 - a) the project's route, construction methods, and avoidance and mitigation measures are not final and remain subject to significant modification;
 - b) surveys for the project's route have not been completed, leaving the locations and effects of discharges associated with the construction and operation of the Mountain Valley Pipeline ill-defined and impossible to fully evaluate at this time;
 - c) stream crossing information in the record for the certification is inconsistent and inadequate to determine whether West Virginia's water quality standards will be violated; and
 - d) wetland crossing and filling information in the record for the certification is inconsistent and inadequate to determine whether West Virginia's water quality standards will be violated.
4. WVDEP's certification fails to protect the designated use of certain streams as trout fisheries.
5. WVDEP's certification fails to protect the designated use of certain streams as mussel fisheries.
6. WVDEP's certification fails to protect water quality standards from violation by the cumulative impacts of the construction and operation of the Mountain Valley Pipeline along its entire length.
7. WVDEP's certification fails to include necessary special conditions to prevent water quality standards violations from storage areas and refueling areas used during the construction of the Mountain Valley Pipeline.

8. WVDEP's certification relies on inadequate and unlawful restoration and mitigation measures to conclude that the construction and operation of the Mountain Valley Pipeline will not violate water quality standards.
9. WVDEP cannot lawfully certify the Mountain Valley Pipeline under Section 401 of the Federal Water Pollution Control Act because WVDEP's certification relies on "best management practices" and other construction techniques that have demonstrably failed to prevent violations of water quality standards in order to conclude that the construction and operation of the Mountain Valley Pipeline will not violate water quality standards. Discharges from the construction and operation of the Mountain Valley Pipeline, authorized by both any FERC certificate and/or Section 404 Permit from the USACE, would originate not just from proposed stream crossings, but also from increased runoff, point source discharges, nonpoint source discharges, and stormwater discharges from the significant land disturbance that would occur along the pipeline right-of-way in watersheds above waters of the State. Erosion and sediment controls for pipelines have been known to fail, even after the implementation of "best management practices." Moreover, the Erosion and Sediment Pollution Control Plans and Erosion and Sediment Control Drawings—which have yet to be approved in the general NPDES permit review process—are demonstrably inadequate to prevent water quality standards violations. In short, the "best management practices" on which the applicant and WVDEP rely are inadequate to reduce or minimize water quality impacts under 47 C.S.R. § 2-4.1.b. Accordingly, WVDEP cannot rely on the use of "best management practices" as proposed by the applicant to conclude that the construction and operation of the Mountain Valley Pipeline will not violate West Virginia's water quality standards.
10. WVDEP's reliance on unmowed vegetation at stream crossings to prevent water temperature increases is not supported by any analysis in the record.
11. WVDEP's certification fails to protect the designated use of certain streams as public drinking water sources, and fails to prevent violations of water quality standards associated with that use.
12. WVDEP's certification fails to prevent violations of water quality standards due to increased turbidity and sedimentation at stream crossings along the route of the Mountain Valley Pipeline.
13. WVDEP's certification is unlawful because increased sedimentation and runoff resulting from the conversion of upland forest to herbaceous cover within the pipeline right-of-way (including, but not limited to, such conversion on steep slopes with highly erodible soil) will cause violations of West Virginia's water quality standards (including, but not limited to, West Virginia's Antidegradation Rules and Procedures and the narrative water quality standard codified at 47 C.S.R. § 2-3.2.b that prohibits sediment deposits on the bottom of streams as a condition not to be allowed in any waters of the State).

14. WVDEP cannot lawfully certify the Mountain Valley Pipeline under Section 401 of the Federal Water Pollution Control Act because neither the applicant nor WVDEP have established that discharges from the operation and construction of that pipeline, including those resulting from (1) the clearing of the right of way above waters of the State, (2) the trenching of stream substrate associated with stream crossings, and (3) the construction of access roads (both temporary and permanent) will not cause violations of state water quality standards related to temperature, turbidity, iron, aluminum and sedimentation, designated uses for aquatic life and public drinking water, and West Virginia's Antidegradation Rules and Procedures.
15. Because the Mountain Valley Pipeline will destabilize steep slopes along waters of the State, including 72.6 miles of slopes greater than 30%, increased sedimentation will violate West Virginia's water quality standards, including but not limited to West Virginia's Antidegradation Rules and Procedures, designated uses for aquatic life and public drinking water, and narrative criteria prohibiting sediment deposits on stream beds.
16. WVDEP purported only to evaluate whether the discharge of dredged or fill materials associated with the construction and operation of the Mountain Valley Pipeline is consistent with the State's water quality standards. WVDEP must evaluate all discharges associated with the construction and operation of the Mountain Valley Pipeline, including, but not limited to, point source discharges, nonpoint source discharges, and stormwater discharges caused by the clearing of the right-of-way for the pipeline and other construction and operation activities.
17. Prior to certifying the Mountain Valley Pipeline under Section 401 of the Federal Water Pollution Control Act, WVDEP must include special conditions to prevent water quality standards violations from all discharges that result from the construction and operation of the Mountain Valley Pipeline, including, but not limited to, point source discharges, nonpoint source discharges, and stormwater discharges caused by the clearing the right-of-way and other construction and operation activities.
18. WVDEP cannot lawfully certify the Mountain Valley Pipeline under Section 401 of the Federal Water Pollution Control Act because the construction and operation of the project will create impervious areas that will increase stormwater and nonpoint source discharges into waters of the state that could lead to violations of West Virginia's water quality standards, including, but not limited to, West Virginia's Antidegradation Rules and Procedures, designated uses for aquatic life and public drinking water, and the narrative criteria prohibiting sediment deposits on stream beds.
19. WVDEP cannot certify the Mountain Valley Pipeline under Section 401 of the Federal Water Pollution Control Act without evaluating the effects of the construction and operation on the pipeline on the designated use of the Greenbrier River and Rich Creek as public drinking water sources, including, but not limited to, the quantity of water available to public drinking water intakes on those streams after potential

effects of the construction and operation of the Mountain Valley Pipeline on groundwater recharge.

20. Special Condition 2 is insufficient to protect West Virginia's water quality standards. The applicant should be required to notify WVDEP on any slip that has impacted or may impact a stream or wetland within 24 hours of the event.
21. The applicant identified as many as 57 Tier 3 streams; WVDEP states that it compared the proposed pipeline to a GIS map of Tier 3 segments but did not identify any Tier 3 stream crossings. WVDEP did not consider (1) whether the Mountain Valley Pipeline is proposed to cross any streams segments that are upstream of Tier 3 segments and any potential water quality degradation from those crossings, or (2) whether construction of the right-of-way for the Mountain Valley Pipeline will result in discharges to Tier 3 segments or to stream segments upstream of Tier 3 segments. WVDEP's failure to consider these potential impacts to Tier 3 streams renders its certification unlawful.

For the foregoing reasons, we respectfully request that the Secretary hold a hearing on the WVDEP's decision to grant the Section 401 Certification for the Mountain Valley Pipeline. Such a hearing is necessary to protect the property interests of the Appellants and the broader public interest in the protection of West Virginia's water resources.

Sincerely,



Derek O. Teaney
Senior Attorney
Appalachian Mountain Advocates
PO Box 507
Lewisburg, WV 24901
304.793.9007