



NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

MICHAEL S. REGAN

Secretary

S. DANIEL SMITH

Director

August 11, 2020

Certified Mail
Return Receipt Requested
7018 1130 0000 1612 778

DWR # 20181638 v3
Alamance & Rockingham Counties

Mountain Valley Pipeline LLC
Attn: Kathy Salvador
700 Universe Boulevard
Juno Beach FL 33408

Subject: DENIAL of 401 Water Quality Certification and Jordan Lake Riparian Buffer Authorization Application
MVP Southgate Project

Dear Ms. Salvador:

On August 13, 2019, the Division of Water Resources (Division) received your application, requesting a 401 Individual Water Quality Certification and Jordan Lake Buffer Authorization Certificate from the Division for the subject project. The application fee for the project was subsequently received on August 15, 2019 at which time the application was complete.

Upon review of your application and supporting materials, the hearing officer's report, the FERC Final Environmental Impact Statement (FEIS), responses to the Division's requests for additional information, and public comments, the Division has determined that the proposed MVP Southgate project is inextricably linked to, and dependent upon, completion of the under-construction Mountain Valley Pipeline (MVP Mainline) project. The physical connections and functional links between the MVP Mainline project and the MVP Southgate project are evident in your stated purpose to "provide additional firm natural gas transportation services ... via interconnections with the under construction Mountain Valley Pipeline project,"¹ and to transport "natural gas from the existing terminus of the Mountain Valley Pipeline in Pittsylvania County, Virginia to the T-15 Dan River Interconnect in Rockingham County and then on to the T-21 Haw River Interconnect in Alamance County, North Carolina."² Without a complete and in-service MVP Mainline, MVP Southgate project's purpose of

¹ FERC Final Environmental Impact Statement dated February 2020 [EIS-0297F, FERC Docket No.: CP19-14-000] p. 1-2 (PDF p. 38)

² MVP Southgate Project Pre-Construction Notification Joint Permit Application, August 2019, p.2-1 (PDF p. 11)



North Carolina Department of Environmental Quality | Division of Water Resources
512 North Salisbury Street | 1617 Mail Service Center | Raleigh, North Carolina 27699-1617
919.707.9000

providing “southern Virginia and North Carolina with direct pipeline access to the Marcellus and Utica gas regions in West Virginia, Ohio and Pennsylvania”³ is unachievable.

As indicated in your “Response to Request for Additional Information” dated June 26, 2020, several federal permits necessary for the construction of the MVP Mainline project have been suspended or are pending, with some in litigation. In addition, the Federal Energy Regulatory Commission has issued a stop-work order on the currently incomplete MVP Mainline project. The uncertainty of the MVP Mainline project’s completion presents a critical risk to the achievability of the fundamental purpose of MVP Southgate.

Certification of this project, without further confidence that it can achieve its stated purpose, is inappropriate and allows for avoidable environmental impacts to water quality and protected riparian buffers. This problem is unique to the MVP Southgate project in that its sole utility and purpose is tied to and wholly relies on, the completion of the entire MVP Mainline project. The FEIS notes that most adverse environmental impacts of the MVP Southgate project would occur during construction.⁴ And that the MVP Southgate project has the potential to result in “sedimentation and turbidity, alteration or removal of instream and stream bank cover, stream bank erosion, introduction of water pollutants, water depletions, and entrainment of small fishes and fry during water withdrawals [which] could increase the rates of stress, injury, and mortality experienced by fish and other aquatic life.”⁵ In addition, the project would unnecessarily risk impacting high-quality waters and protected and critical drinking water supplies of North Carolinians. As noted in your June 26, 2020 Response to Request for Additional Information request, you intend to begin construction on the MVP Southgate project immediately once all necessary permits are in place, irrespective of the completeness of the MVP Mainline project. Approving construction activities and thereby allowing the most adverse environmental impacts - without certainty of the project’s utility upon completion - is inconsistent with principles of minimization. **Therefore, the Division has determined that your applications are hereby denied.**

The Division’s decision can be contested as provided in Chapter 150B of the North Carolina General Statutes by filing a Petition for a Contested Case Hearing (Petition) with the North Carolina Office of Administrative Hearings (OAH) within sixty (60) calendar days. Requirements for filing a Petition are set forth in Chapter 150B of the North Carolina General Statutes and Title 26 of the North Carolina Administrative Code. Additional information regarding requirements for filing a Petition and Petition forms may be accessed at <http://www.ncoah.com/> or by calling the OAH Clerk’s Office at (919) 431-3000. One (1) copy of the Petition must also be served to the North Carolina Department of Environmental Quality:

William F. Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

³ *Ibid.*

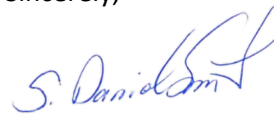
⁴ *FERC Final Environmental Impact Statement dated February 2020 [EIS-0297F, FERC Docket No.: CP19-14-000] p. 5-1 (PDF p. 396)*

⁵ *Ibid.* p. 5-9, (PDF p. 404)

Please be aware that you have no authorization under the Water Quality Certification Rules or the Jordan Lake Riparian Buffer Rules for this activity and any work done within waters of the state or riparian buffers may be a violation of North Carolina General Statutes and Administrative Code.

Please contact Sue Homewood at 336-776-9693 or Sue.Homewood@ncdenr.gov if you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "S. Daniel Smith". The signature is written in a cursive style with a large, stylized "S" at the beginning.

S. Daniel Smith, Director
Division of Water Resources

cc: Heather Patti, TRC Environmental Corporation (via email)
David Bailey, USACE Raleigh Regulatory Field Office (via email)
Olivia Munzer, NCWRC (via email)
Todd Bowers, EPA (via email)
Christopher A. Militscher, Chief, NEPA Section, Strategic Programs Office, USEPA, 61 Forsyth St SW, Atlanta GA 30303
Maria Clark, NEPA Section – Region 4, USEPA, 61 Forsyth St SW, Atlanta GA 30303
DWR WSRO 401 files
DWR 401 & Buffer Permitting Unit