

183 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Mountain Valley Pipeline, LLC

Docket Nos. CP16-10-000
CP21-57-000

ORDER AUTHORIZING ALL CONSTRUCTION ACTIVITIES

(Issued June 28, 2023)

1. On June 26, 2023, Mountain Valley Pipeline, LLC (Mountain Valley) requested Commission approval to move forward with all remaining construction associated with the Mountain Valley Pipeline Project.

I. Background

2. On October 13, 2017, the Commission issued Mountain Valley a certificate of public convenience and necessity authorizing the construction and operation of the Mountain Valley Pipeline Project, a new interstate pipeline system designed to provide up to 2,000,000 dekatherms per day of firm natural gas transportation service from Wetzel County, West Virginia, to Transcontinental Pipe Line Company, LLC's Compressor Station 165 in Pittsylvania County, Virginia.¹ Mountain Valley commenced construction of the project in February 2018.²
3. In July 2018, the U.S. Court of Appeals for the Fourth Circuit vacated the U.S. Forest Service's record of decision and the Bureau of Land Management's right-of-way grant that authorized the project to cross the Jefferson National

¹ *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017), *order on reh'g*, 163 FERC ¶ 61,197 (2018), *aff'd sub. nom. Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019) (unpublished).

² *See* Mountain Valley's Weekly Status Report Nos. 14 and 15 (filed February 7 and 15, 2018, respectively) (construction did not commence until after February 2, 2018).

Forest.³ In response, Commission staff prohibited construction between mileposts 196.0 and 221.0, a 25-mile exclusion zone encompassing the two watersheds within which there is 3.5 miles of pipeline right-of-way that crosses the Jefferson National Forest.⁴ Subsequently, in December 2020, the Commission reduced the exclusion zone and allowed construction to resume between mileposts 201.6 to 218.6, based on its finding that construction in that area would not contribute sediment to any portion of the Jefferson National Forest.⁵

4. In April 2022, the Commission issued an order amending Mountain Valley's certificate, approving, in part, a change in the crossing method for 183 waterbodies and wetlands from open-cut to trenchless.⁶ In the order, the Commission explained that construction associated with the amendment could not proceed until: (1) Mountain Valley obtained authorization from the U.S. Army Corps of Engineers (Corps) to conduct the remaining open-cut crossings;⁷ and (2) Endangered Species Act consultation for the amendment project was complete and the U.S. Fish and Wildlife Service (FWS) issued a new or revised Biological

³ *Sierra Club, Inc. v. U.S. Forest Serv.*, 897 F.3d 582 (4th Cir. 2018).

Subsequently, in January 2022, the Fourth Circuit vacated the U.S. Forest Service's renewed record of decision and the Bureau of Land Management's renewed right-of-way grant. *Wild Va. v. U.S. Forest Serv.*, 24 F.4th 915 (4th Cir. 2022).

⁴ *Mountain Valley Pipeline LLC*, Docket No. CP16-10-000 (August 29, 2018) (delegated order) (Director of OEP's August 29, 2018 Partial Authorization to Resume Construction Order).

⁵ *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,252 (2020).

⁶ *Mountain Valley Pipeline, LLC*, 179 FERC ¶ 61,013 (2022).

⁷ In November 2020, the Fourth Circuit issued a stay of Mountain Valley's Nationwide Permit 12 verifications, issued by the Corps for the project. *Sierra Club v. U.S. Army Corps of Eng'rs*, Nos. 20-2039 and 202042 (4th Cir. Nov. 9, 2020) (order granting stay); *Sierra Club v. U.S. Army Corps of Eng'rs*, 981 F.3d 251 (Dec. 1, 2020) (accompanying opinion). The Corps' Nationwide Permit 12 verifications had authorized Mountain Valley, pursuant to section 404 of the Clean Water Act, to cross waters of the United States using an open-cut method, which was the crossing method approved in the Certificate Order. On March 4, 2021, Mountain Valley filed an individual permit application with the Corps for the remaining open-cut crossings.

Opinion for the Mountain Valley Pipeline Project.⁸ The order further noted that before additional work could proceed in the Jefferson National Forest, the Commission must lift the existing exclusion zone.⁹

5. On February 28, 2023, FWS issued a new Biological Opinion and Incidental Take Statement for the Mountain Valley Pipeline, as amended, thus concluding ESA consultation.
6. On May 15, 2023, the U.S. Forest Service issued a record of decision and, on June 20, 2023, the Bureau of Land Management issued a right-of-way grant, authorizing the project to cross the Jefferson National Forest.
7. On June 3, 2023, President Biden signed into law the Fiscal Responsibility Act of 2023.¹⁰ Section 324 of the Act, entitled “Expediting Completion of the Mountain Valley Pipeline,” ratifies and approves all authorizations issued pursuant to Federal law necessary for the construction and operation of the Mountain Valley Pipeline Project, and directs the relevant agencies to maintain those authorizations.¹¹ Section 324 further provides that it “supersedes any other provision of law (including any other section of th[e] Act or other statute, any regulation, any judicial decision, or any agency guidance) that is inconsistent with the issuance of any authorization, permit, verification, biological opinion, incidental take statement, or other approval for the Mountain Valley Pipeline.”¹²

⁸ FWS issued a Biological Opinion for the Mountain Valley Pipeline Project in November 2017. The 2017 Biological Opinion was stayed by the Fourth Circuit in October 2019. *Wild Va., Inc. v. Dep’t of the Interior*, No. 19-1866 (4th Cir. Oct. 11, 2019) (order granting stay and holding case in abeyance). Following reinitiated consultation, FWS issued a revised Biological Opinion for the project in September 2020. In February 2022, the Fourth Circuit vacated the 2020 Biological Opinion. *Appalachian Voices v. U.S. Dep’t of the Interior*, 25 F.4th 259 (4th Cir. 2022).

⁹ *Mountain Valley Pipeline, LLC*, 179 FERC ¶ 61,013 at P 150, n.268.

¹⁰ Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023).

¹¹ *Id.* § 324(c)(1)-(2), 137 Stat. at 47.

¹² *Id.* § 324(f), 137 Stat. at 48.

8. On June 23, 2023, the Corps issued an individual permit for the Mountain Valley Pipeline, authorizing all remaining open-cut waterbody crossings.¹³

II. Discussion

9. As noted, pursuant to section 324 of the Fiscal Responsibility Act of 2023, all issued Federal authorizations for the Mountain Valley Pipeline Project have been ratified by Congress. We find that includes the authorizations subject to the remand in the U.S. Court of Appeals for the District of Columbia Circuit's May 26, 2023 decision in *Sierra Club v. FERC*.¹⁴ Accordingly, we find that no further action in response to the remand is necessary and none will be forthcoming.
10. Accordingly, Mountain Valley has all necessary authorizations for the Mountain Valley Pipeline Project. Mountain Valley is therefore authorized to proceed with all remaining construction associated with the project. Specifically, Mountain Valley is authorized to proceed with construction in the Jefferson National Forest,¹⁵ and with all remaining waterbody crossings,¹⁶ including waterbody crossings previously approved through the Commission staff variance process.¹⁷

¹³ The Corps' permit also approves the trenchless crossing of five waterbodies that are subject to section 10 of the Rivers and Harbors Act.

¹⁴ 68 F.4th 630 (D.C. Cir. 2023).

¹⁵ As Mountain Valley acknowledges in its June 26 request, it cannot commence work in the Jefferson National Forest until it receives a notice to proceed from the Bureau of Land Management.

¹⁶ Our authorization here is issued in lieu of a notice to proceed with construction from the Director of the Office of Energy Projects (OEP). No further authorization from the Director of OEP is required before Mountain Valley can commence all outstanding construction on the project.

¹⁷ *See, e.g.*, Commission Staff's May 18, 2020 Partial Approval of Variance Requests No. D-35 and G-12 (approving change in waterbody crossing method but not authorizing construction).

11. We note that Order No. 871,¹⁸ which precludes construction while the Commission considers certain requests for rehearing, is not implicated by this order, which implements the provisions of the Commission's initial certificate and amendment orders.¹⁹ Thus, Mountain Valley is authorized by the Commission to proceed with all construction activities at all locations in accordance with federal authorizations, notwithstanding any request for rehearing of this order.²⁰

The Commission orders:

(A) The construction prohibitions from the Director of OEP's August 29, 2018 Partial Authorization to Resume Construction Order, as subsequently modified by the Commission's December 17, 2020 order, are lifted.

(B) Mountain Valley is authorized to proceed with all construction activities for the Mountain Valley Pipeline Project, including those approved in the Commission's April 8, 2022 amendment order, consistent with federal authorizations.

(C) The Director of OEP may authorize any subsequently filed variances that the Director finds to be needed to complete construction of the Mountain Valley Pipeline Project.

By the Commission.

¹⁸ *Limiting Authorizations to Proceed with Constr. Activities Pending Rehearing*, Order No. 871, 171 FERC ¶ 61,201 (2020) (promulgating 18 C.F.R. § 157.23), *order on reh'g and clarification*, Order No. 871-A, 174 FERC ¶ 61,050, *order on reh'g and clarification*, Order No. 871-B, 175 FERC ¶ 61,098, *order on reh'g and clarification*, Order No. 871-C, 176 FERC ¶ 61,062 (2021).

¹⁹ Order No. 871-B, 175 FERC ¶ 61,098 at P 17 (“To the extent that a non-initial order merely implements the terms, conditions, or other provisions of an initial authorizing order—such as a delegated order issuing a notice to proceed with construction, approving a variance request, or allowing the applicant to place the project, or a portion thereof, in service—a request for rehearing of that order would not implicate the initial authorizing order and so we agree that the rule would not apply.”).

²⁰ Section 324 of the Fiscal Responsibility Act of 2023 provides that no court shall have jurisdiction to review any action taken by the Commission granting any approval necessary for the construction of the Mountain Valley Pipeline Project. Fiscal Responsibility Act of 2023, § 324(e)(1), 137 Stat. at 47-48.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.