

February 8, 2024

Mike Rolband, Director
Virginia Department of Environmental Quality
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Sent via email

Re: Emergency Enforcement Action and Stop Work Instruction Required for Mountain Valley Pipeline, Severe Damage to Water Resources and Landowners Ongoing

Dear Director Rolband:

The twenty-nine organizations listed below are calling on the Department of Environmental Quality (DEQ) to take immediate and forceful action to stop destruction and dire impacts to state waters and lands caused by construction on the Mountain Valley Pipeline (MVP). DEQ must fully enforce all conditions in permits issued to MVP and use the enhanced stop work authority granted the agency by the Virginia General Assembly in 2021—steps which the agency has so far refused to take despite clear justification. DEQ must also enforce water quality standards, as explicitly required under the permit granted by the State Water Control Board in 2021, and require that unpermitted discharges cease immediately.¹



Figure 1 - Discharge to Sinking Creek from contaminated spring caused by MVP breach of karst

¹ Concerns and positions presented in this letter are not inclusive and do not supplant and/or waive individual property rights, constitutional, and/or other Clean Water Act claims.

We feature the above image at the start, to emphasize the severity of damage now occurring and to stress that DEQ's continued weak response cannot be accepted. The photo depicts just one of many examples of the harms imposed by MVP due to a weak and ineffectual agency response. The reality of the effects on waterbodies, which DEQ personnel seem all too willing to ignore or dismiss, must not be discounted. The people have become increasingly dispirited when repeatedly receiving DEQ's rote answer to even the ugliest scenes, that "no compliance issue [was] observed." This is particularly galling when, as is explained below, we know that water quality impacts like these are clear violations and are more than adequate bases for stop work orders.

During the recent holiday season and in this new year, when most people have been enjoying time with family and looking forward to a prosperous future, people along the route of the MVP have been plagued with assaults on their properties and on the waters they value and depend on. Since MVP construction resumed in 2023, numerous violations and damages to waterbodies have occurred. DEQ's enforcement efforts have been sporadic and ineffective at solving systemic problems whose occurrence accelerated in late 2023 and are resulting today in dire impacts, as shown in this letter and in dozens of documented incidents reported to DEQ, as well as those shown in the state's own reports.

The most recent and graphic examples of MVP damages have been documented on Sinking Creek in Giles County and in the Bottom Creek watershed in Roanoke County, but the problems are much more widespread. Unfortunately, DEQ officials have taken the position that many of these impacts are not violations of the law or of permits or certifications issued by Virginia, and that they are not a basis on which DEQ can take enforcement action.

These assertions by DEQ are wrong! It seems that DEQ is either unaware of the provisions of state law and its own permits or is simply unwilling to use the powers it has been granted.

DEQ's enforcement pattern to date will, if not changed, allow a continuance of dire pollution events, mirroring those discussed in this letter and the many more that have occurred. This "band-aid" approach, which invariably addresses problems as isolated incidents and in a superficial manner, ignoring the fact that the violations have recurred over and over again, both on individual streams and over a wide swathe of the MVP route, fails to get at the root of the problem.

Only a widespread stop work instruction, as DEQ is authorized to issue, will be sufficient to stop ongoing damages and prevent future ones. Such an action, which would force MVP to devote its resources to the task of designing and implementing real and repeatable solutions to serious deficiencies, is vitally needed. Making necessary changes in construction methods and pollution control protocols requires attention and resources that won't be invested in fixing the problems if MVP is allowed to rush forward with construction at its current breakneck pace.²

² According to a report on MVP inspections by contractors working for the state, there were 42 waterbody crossings "under construction" as of the date of that report in late December, *Stream Crossing Log as of 12-23-23*, acquired from DEQ by Wild Virginia through a Freedom of Information Act (FOIA) request.

DEQ's Unused Authority

As you know, DEQ has a duty and full authority to take necessary actions to hold Mountain Valley Pipeline, LLC (Mountain Valley) accountable for violations of applicable laws and of permit and water quality certification conditions. Further, Virginia law gives DEQ the power to forcefully respond to negative water impacts and imminent threats, as well as damages to downstream properties.

DEQ's public statements and its own website misstate the Department's duties and authorities in two important ways.

Failure to Enforce Water Quality Standards

First, DEQ has repeatedly claimed that it lacks authority to take enforcement action when the pipeline causes polluted discharges, as long as pollution management practices meeting minimum standards are followed. A recent news article noted that "[m]any complaints made by citizens are of increased turbidity in flowing water. But turbidity alone is not grounds for a violation, as long as approved controls are being used and maintained, [DEQ spokesperson Irina] Calos said."³

To the contrary, discharges of materials from the project are in violation of the Virginia Water Protection (VWP) permit issued to MVP in December 2021,⁴ if they cause certain negative impacts to state waters. The permit states unequivocally that "Virginia Water Quality Standards (WQS) shall not be violated in any surface waters as a result of the project activities."⁵

Another requirement in the VWP permit which DEQ is obligated to enforce states: "No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area" ⁶ This requirement stands alone as an enforceable condition but also clearly implicates general criteria and antidegradation requirements in the WQS described below. Release of turbidity-producing pollution into the water column may unquestionably "disrupt the movement of aquatic life,"⁷ as may deposits on stream beds caused by those discharges.⁸

Discharges from pipeline activities absolutely may and in many cases have caused violations of WQS. Those standards require, in part, that

³ Roanoke Times, Laurence Hammack, [Mountain Valley Pipeline nears completion](#), January 13, 2024.

⁴ VWP Individual Permit Number 21-0416, Virginia Water Protection Permit Issued Pursuant to the State Water Control Law and Section 401 of the Clean Water Act to Mountain Valley Pipeline, LLC, December 20, 2021.

⁵ Id. at Part I.C.15.

⁶ Id. at Part I.C.2.

⁷ See mixing zone requirements in the WQS that prohibit discharges that "prevent movement of or cause lethality to passing or drifting aquatic organisms through the water body in question."

⁸ A series of DEQ reports, each entitled "VWP Field Inspection Checklist" documented how sediment deposits in streams caused by MVP were "substantially disrupting aquatic life movement." See e.g. the report dated May 31, 2018 for Spread H, Franklin County, Cahas Mountain Road near Mile Post 255.5, accessible at DEQ web page [Mountain Valley Pipeline](#) through the link [MVP 20180531VWPComplaintInvestigation SpreadH](#).

Unfortunately, DEQ apparently stopped making these types of assessments years ago.

State Waters, including wetlands, shall be free from substances attributable to discharges . . . in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.⁹

Specific types of impacts that must be controlled "include but are not limited to . . . substances that produce **color**, tastes, **turbidity**, odors, or settle to form sludge deposits."¹⁰

In addition to the "general criteria" described above, which DEQ has refused to even acknowledge, as they apply to the pipeline, let alone enforce, the provisions of the antidegradation policy¹¹ must be enforced as well. MVP pollution has impacted numerous streams and wetlands which are of high quality, or were before they were damaged by the pipeline work. For those waters, "that quality shall be maintained and protected"¹² unless the state conducts an analysis and determines that degradation "is necessary to accommodate important economic or social development in the area in which the waters are located."¹³ Of course DEQ has not made, and cannot make, such a finding. As has been obvious from the start, this project is detrimental to the economic and social life of the communities directly affected, with any benefit accruing to private corporations and people who are far away and immune to the harms inflicted on the people of Virginia.

Even higher protections under the antidegradation policy are to be given to "exceptional state waters"¹⁴ The WQS require that these highly valuable waters, which "provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities,"¹⁵ be maintained at high quality and that no new, additional, or increased discharges "shall be allowed." Just downstream from the pipeline right of way and exposed to degradation due to MVP pollution discharges in its headwaters, a section of Bottom Creek is designated an exceptional state water, one of only thirty so-designated in the entire state of Virginia.¹⁶

So, clearly DEQ's assertions that discharges causing turbidity in waterbodies cannot be assessed as permit violations is false. In fact, the turbidity discharges caused by MVP, which interfere with both aquatic life and recreational (aesthetic) designated uses, and the harms to habitats sediment is causing in these streams, many of which are highly valuable and sensitive to pollution, have clearly violated WQS in hundreds of instances.¹⁷ And even where impacts

⁹ 9 VAC 25-260-20.A.

¹⁰ Id. (emphasis added).

¹¹ 9 VAC 25-260-30.

¹² 9 VAC 25-260-30.2.

¹³ Id. (emphasis added).

¹⁴ See DEQ web page *Exceptional State Waters (Tier III)* at <https://www.deq.virginia.gov/our-programs/water/water-quality/standards/exceptional-state-waters-tier-iii>.

¹⁵ 9 VAC 25-260-30.A.3.

¹⁶ 9 VAC 25-260-30.A.3.b.

¹⁷ Such instances have been chronicled in hundreds of citizen complaints to DEQ but also in the state's own inspection reports, where direct and serious waterbody impacts have been documented. These state reports have

resulted from so-called "upland" activities, which are not covered by the VWP permit, violations of WQS still provide a basis for enforcement action under state law, as discussed in the next section.

Below in this letter, we present just a very small sampling of these instances where waters have been and continue to be assaulted and real damage done in the past several months. The story of recent pollution problems from MVP should be assembled by DEQ but, to our knowledge, the agency has not attempted to compile such a narrative or to report it to the public or the State Water Control Board. Thus, it has fallen to the public to expose the depth and breadth of the problem.

Failure to Acknowledge or Use Stop Work Authority under Virginia Law

A second area in which DEQ officials have misstated requirements and abdicated their duties is in relation to DEQ's stop work authority. **We have been shocked to find that DEQ apparently does not know of or does not intend to enforce current stop work authority created by the General Assembly.** As explained below, Virginia law was amended in the 2021 session in two sections and yet DEQ's website refers only to a previous version of the statutory language. Those 2021 amendments were prompted by DEQ's previous failures to impose stop work "instructions" in a way that would effectively address the widespread and frequent violations seen up to that point.

DEQ's Mountain Valley Pipeline [web page](#), under the "Regulatory Oversight & Authority" tab, describes provisions on stop work authority that apply to MVP and similar projects adopted in 2018 and it provides a link to a guidance memo entitled "Procedures for Pipeline Stop Work Instruction," which was written in June of 2018.¹⁸ Clearly, given the date of that guidance document, it does not incorporate the additional provisions adopted in 2021.

Conditions in two sections of Virginia's State Water Control Law¹⁹ include important features that DEQ must acknowledge, as it has failed to do before, and which are vital to halt the ongoing and widespread destruction MVP activities are causing.

First, the trigger that allows for stop work instructions, is the existence of "substantial adverse impact to water quality or an imminent and substantial adverse impact to water quality [that] is likely to occur as a result of such land-disturbing activities."²⁰ The 2021 amendments defined those impacts or imminent impacts, in part, as follows:

where (a) there has been a violation of any water quality standard adopted pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), (b) sediment has

been exhaustively described and analyzed in a series of reports by Wild Virginia, including [Mountain Valley Pipeline Pollution in Virginia Watersheds](#), February, 2023.

¹⁸ Melanie D. Davenport, *Guidance Memo No. 18-2004, Procedures for Pipeline Stop Work Instruction*, June 18, 2018.

¹⁹Code of Virginia, at § 62.1-44.15:37.1. and § 62.1-4.15:58.1.

²⁰ Id. at 62.1-44.15:37.1.A. and 62.1-4.15:58.1.A.

been deposited in significant amounts in areas where those deposits are not contained by best management practices.²¹

Thus, WQS must be applied in assessing and responding to impacts from both "upland" construction work, as addressed in a 2017 Clean Water Act section 401 water quality certification,²² and those activities at waterbody crossing sites covered by the 2021 VWP permit/401 certification.

Second, expanding on DEQ's power to stop work on limited sections of the project, the General Assembly allowed for stop work instructions to have a much larger aerial extent. Again, this was a recognition that MVP violations and damages had occurred repeatedly and over a wide range of terrain before that time. Accordingly, the Code states:

Where substantial adverse impacts or likely adverse impacts are found on a repeated, frequent, and widespread basis, the Department may issue a stop work instruction for every work area in Virginia until the Department determines that any systemic cause that contributed to such occurrences has been corrected.²³

In addition to DEQ's abject failure to reflect current stop work authorities on its website and in guidance to its staff, failures to enforce those provisions in 2021 show that, to date, DEQ has had no interest in stepping up efforts to truly protect state waters and the public when violations continue repeatedly. In the period from June through September, 2021, the state's own reports show that MVP work caused sediment deposits off of work sites in at least 113 instances.²⁴

"In just one 5-day period, including the dates August 16 - 20, 2021, Mountain Valley allowed sediment to be deposited onto adjacent properties 52 times and, in seven of those instances, waterbodies were polluted by sediment deposits."²⁵ One graphic example of assaults on the environment during that period is shown below. In that instance, A segment of the streambed of Doe Creek was covered in mud for more that 3,500 feet. DEQ allowed the stream habitat to be blasted with pressure washers,²⁶ a purported mitigation of the pollution impacts, which likely did more harm than good. We include these past records to make clear that the consequences of DEQ's failures have been dire and lasting on the environment. This record must not continue.

²¹ Id.

²² Certification No. 17-001, 401 Water Quality Certification Issued to Mountain Valley Pipeline, LLC, December 8, 2017.

²³ 62.1-44.15:37.1.A. and 62.1-4.15:58.1.A.

²⁴ Wild Virginia, [*MVP's Record of Pollution Incidents is Predictive of Future Water Quality Threats*](#), July 28, 2022, at 6 (hereinafter Wild Virginia 2022).

²⁵ Id.

²⁶ Id.



Figures 2 & 3 - MVP damage to Doe Creek and "mitigation" with pressure washers

One final factor that should require MVP to stop activities on specific sites and which contribute to the bases for a wider stop work instruction is that some discharges from MVP sites are not authorized by the permit and certifications Virginia issued for the project. As explained in Virginia's 2019 enforcement lawsuit against MVP, DEQ deemed releases of materials or "fill" in twenty-four instances that resulted in sediment deposits in state waters to be illegal discharges under the VWP regulations and not covered by any state permit.²⁷

Deposition of sediment in waterbodies has continued during every period when MVP work was underway since that lawsuit was filed²⁸ and it continues to the current active period which began last year. Waterbodies most recently affected by illegal "fill" discharges include tributaries to Flatwoods Branch in Montgomery County and Sinking Creek in Giles. Streams in the Flatwood Branch drainage, which were heavily and repeatedly damaged by previous unpermitted MVP discharges and sediment deposits, is within the historic range of the endangered Roanoke logperch.

Also, discharges of contaminated groundwater, which have been a major source of pollution since construction resumed, are not addressed through the water quality certifications issued by Virginia, as the groundwater generally results from infiltration into bore holes and pits. The boring operations are not covered under the waterbody crossing certification and VWP permit and the certification for "upland" activities did not address or allow polluted groundwater discharges.

²⁷ David K. Paylor and State Water Control Board v. Mountain Valley Pipeline, LLC, Complaint in the Circuit Court of Henrico County, Case no. Case No. CL18006874-00., at 16 - 18.

²⁸ See Wild Virginia 2022, at 1 (citing at least 113 instances when Virginia inspectors documented deposits in waterbodies for the period through July, 2022).

Why DEQ Must Stop All MVP Work Now

The nature and extent of negative impacts happening along the MVP route in late 2023 and in 2024 have met all of the threshold conditions that justify a widespread stop work instruction by DEQ. They include deposition of sediments into waterbodies and onto land outside of pollution controls; discharges that violate WQS in waterbodies; and serious habitat destruction. The frequency and widespread nature of the problems likewise should compel a stop work instruction for the entire Virginia section of the pipeline.

Contrary to frequent DEQ responses to the public's pollution complaints, the incidents reported often reveal much more than the need for routine maintenance and the problems are often not alleviated by simple fixes to best management practices (BMPs). Rather, the violations revealed by citizen monitors and in the state's own inspection reports show that:

1) Some of the problems MVP is experiencing are due to structural deficiencies in their construction and pollution control plans and practices. These fall into several categories:

a) Incidents where MVP has been unable to properly manage large volumes of water infiltrating into the holes being bored under waterbodies and roads and into bore pits due to shallow groundwater tables. In its attempts to manage the groundwater, MVP has created discharges of pollutants that are not authorized by the permit or certifications issued by Virginia.

b) Incidents where there has been physical damage to habitats in and adjacent to waterbodies, including those where holes developed in stream beds over areas being bored. Again, these impacts in waterbodies, which will require work directly in the waterbodies to address, were never contemplated or permitted under either Virginia or Corps of Engineers permits. Rather, these activities were purported to present little threat to the water resources.

c) Apparent breaches of karst geologic features feeding MVP pollution into the groundwater and subsequently to streams (shown in Figure 1) in the Sinking Creek area.

All three types of damages and failures by MVP are illustrated in the two segments discussed below, in the Sinking Creek area and the Bottom Creek watershed.

These types of incidents are failures of the plans DEQ approved for MVP and, because the conditions that produced them are generally not unique to one or a few locations, can and likely will recur. Stopping pollution and property damage from such sites and preventing them in the future requires MVP to revise its plans and make sure that engineering practices are changed or upgraded and that necessary equipment and personnel are in place where they have apparently been lacking in some areas. Unless DEQ requires work to be stopped now, the record shows that MVP will only address these kinds of issues in one place at a time and generally only when they are caught in the act of polluting by citizen monitors or inspectors from state or federal agencies.

2) Despite the fact that MVP has been allowed to rip and blast through the countryside and our waters for extended periods since early 2018, it has yet to correct its plans and its behavior in a way that avoids the very same kinds of violations first seen six years ago. Those same problems

occur every time construction has been allowed to rush forward²⁹ and this most recent period has been no exception. If MVP had the ability or the will to fix these recurring problems without major changes and stronger enforcement by DEQ, it would have done so by now. If DEQ refuses to stop these detrimental actions now, the damage will continue until construction and so-called "restoration" is completed, and likely beyond.

This is demonstrated in the current period since active construction resumed. In a seven-month period since MVP construction was restarted, DEQ inspectors answered "No" to the question "Are all control measures properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications?" on 32 of 126 reports or 25% of the time.

These failures to perform proper maintenance are not without consequence. For example, during inspections on September 11 and September 19, 2023 on Spread G, the DEQ inspector found places where there was erosion at a site and streams that were "impacted" by materials washed off an MVP site. The word "impacted" as used by DEQ in these instances means that the stream habitat has been damaged by deposits of pollutants caused by the pipeline. DEQ deemed the same kinds of "impacts" to be illegal discharges that were in violation of the VWP regulations, when the state filed an enforcement suit against MVP in 2019.³⁰ Now, however, DEQ is willing to characterize such incidents as mere maintenance issues.

On July 21, 2023 in Spread I, the DEQ inspector reported that there were maintenance failures that led to polluted discharges where "end treatments" were bypassed by sediment-laden water that should have been slowed and filtered by silt fences or filter socks. Wherever such bypasses occur, untreated or poorly treated water is discharged off of the pipeline work site and in many instances sediment-laden water enters nearby state waters.³¹

Even more serious and inexcusable than its maintenance failures, are the instances when MVP has failed even to install or implement the pollution control measures according to plans approved by DEQ in 2018. This is demonstrated, in part, by DEQ reports which answer "No" to the question "Are controls installed and implemented in accordance with the approved erosion and sediment control plan and stormwater management plans?" After six years of experience, it is unthinkable that MVP personnel continue to simply fail to install pollution controls or to follow the plans and procedures they committed to, even under a court-imposed consent order.

The sections below highlight some areas where MVP pollution and violations have been particularly severe. The photographs tell an appalling story and the descriptions tie these incidents to the more general deficiencies explained about. These few instances are not intended to be a comprehensive chronicle of all of the problems found in these watershed areas in the current period, but merely to illustrate the severity of the problems and the features that should compel DEQ to issue a stop work instruction.

²⁹ Wild Virginia 2022 at 6-7.

³⁰ David K. Paylor and State Water Control Board v. Mountain Valley Pipeline, LLC, Complaint in the Circuit Court of Henrico County, Case no. Case No. CL18006874-00., at 16 - 18.

³¹ Wild Virginia 2022 at 23 - 25.

As stated above, it is DEQ's duty to fully document the record of violations and water quality threats and damages and to assess the record to determine the correct level of enforcement response accordingly. This assessment must include all relevant sources: citizen reports and complaints, inspection reports by DEQ and its contractor, and reports by other agencies and MVP itself. To date, DEQ has not compiled such assessments. The reports that agency personnel have given to the State Water Control Board and the public in recent years have been woefully incomplete and misleading as to the true impacts MVP has had on the environment and the people in its path.³²

Sinking Creek -

The violations and water and land impacts in Sinking Creek and its tributaries have been severe and have been repeated on numerous occasions in the last two months. As shown in Figures 1, 4, and 5, which depict conditions found by volunteer monitors just four days ago, there currently exists an urgent need for DEQ to force a stop to construction and insist that MVP's full attention be given to protecting water quality and affected landowners.

Monitors discovered that a spring flowing from an upland area where MVP construction is underway was filled with mud and has been flowing onto neighbor's lands and into Sinking Creek. The most recent citizen reports indicate that increased sedimentation is being measured more than 3 miles downstream and there is an indication that private water supplies are affected.

To the great detriment of Sinking Creek and local people, this current situation follows a long line of complaints and pollution incidents stretching back more than three months. Just a few of numerous incidents include:

- According to a FERC report, when a bore pit began filling with water on November 24, 2023, a hole developed in the stream bank that created a direct connection between the surface water and the boring operation underneath. This type of occurrence can have lasting effects and yet neither federal nor state regulators have apparently taken significant action to ensure that long-term damage is not caused or to make sure that additional, similar problems do not arise.
- As explained above, in numerous locations MVP has been faced with large volumes of groundwater entering the bore holes and pits through which the pipe is to pass under streams. Because of the volumes of water involved and a clear lack of preparation to then manage the water, illegal discharges of polluted water have been caused on multiple occasions into Sinking Creek and tributary streams. The results of these failures of design and management are shown in Figures 6-8.

For DEQ to fail to acknowledge the dire conditions shown repeatedly in this area as violations of water quality standards is beyond belief. To fail to use this evidence and make a strong enforcement response is an abdication of the agency's duty. DEQ must act now to prevent further

³² For example, to our knowledge, DEQ officials have never disclosed findings from its contract inspectors employed by McDonough Bolyard Peck (MBP). Information from these reports has only been disclosed publicly through citizen records requests.

degradation of water quality, further harm to nearby residents, and lasting damage to the ecosystems affected by MVP's pollution.



Figure 4 - a spring contaminated by upslope MVP work carrying heavy sediment loads to Sinking Creek, January 31, 2024.



Figure 5 - A heavily impacted spring branch carrying MVP sediment from a karst area affected by MVP upgradient to Sinking Creek, causing the plume of turbid water shown in Figure 4, in contrast to the relatively clear condition in the rest of the creek. The sediment plume then spread across the stream, affecting the entire flow channel downstream.

Figure 6 - Another view of Sinking Creek adjacent to the MVP sites on February 1, 2024, showing very heavy sediment levels near the stream bank and spreading across the channel.



Figure 7 - A view of Sinking Creek, more than six weeks prior to the photos above, showing pollution entering the stream from MVP sites upgradient. Volunteers first found the cloud of turbid water from sediment basins hugging the stream bank and in sharp contrast with the clear stream flow. December 14, 2023.



Figure 8 - Downstream from the area shown in Figure 7, less than one hour after that photo was taken. By this time, the turbid water had spread throughout the width of the stream, causing a cloudy condition in what had been a clear stream just before.

Bottom Creek Watershed -

As explained above, this brief discussion of recent impacts to Bottom Creek and its tributaries is not intended to be comprehensive. The visual impacts shown in the series of photographs clearly demonstrates that MVP activities are degrading conditions and causing violations of water quality standards.

As in the Sinking Creek area, the problem with management of groundwater from boring operations is causing serious damage to water resources. The following photographs trace the source of polluted runoff from the MVP filtering basin, which is clearly ineffective and is producing an illegal discharge of pollutants. The heavily sediment-laden water flows downstream into Bottom Creek (Figure 10) and then more than 3 miles downstream the now completely brown creek joins with Mill Creek, showing the contrast between clear water and the effects caused by MVP (Figure 11). Note that the location shown in Figure 11 lies less than one mile upstream from the segment of Bottom Creek designated as an exceptional resource water, which is supposed to be afforded the highest level of protection under the WQS. All of the affected stream segments shown here provide habitat for sensitive native trout and the Orangefin madtom, which Virginia has designated a threatened species.



Left, Figure 9 - sediment trap on MVP site discharging polluting water; Right, Figure 10 - Bottom Creek with sediment-filled flow channel downstream from the MVP work site. January 12, 2024

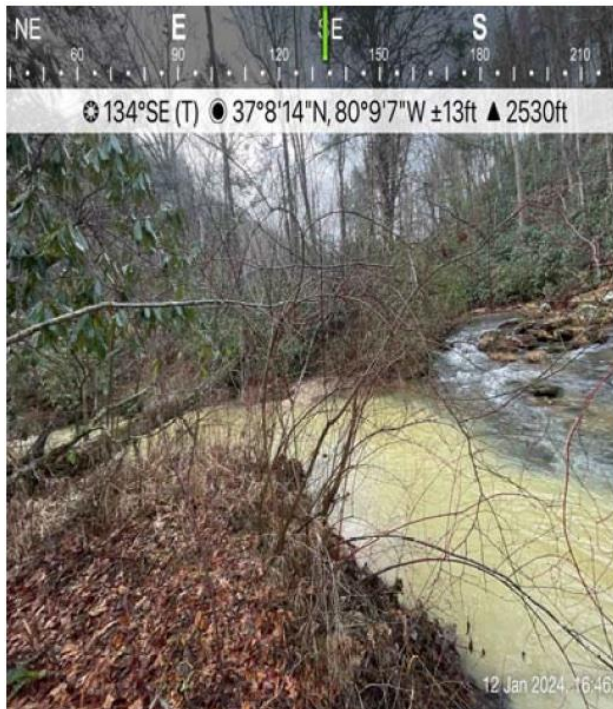


Figure 11 - Bottom Creek with heavy turbidity carried several miles downstream to the confluence with the clear water of Mill Creek. January 12, 2024.



Figure 12 - turbid conditions in Bottom Creek caused by MVP, looking downstream from the bridge near The Nature Conservancy Preserve at the beginning of the exceptional waters (Tier 3) segment. January 8, 2024.



Figure 13 - Big Laurel Creek, a tributary entering Bottom Creek near the site shown in Figure 12, also on January 8, 2024, and showing the contrast between a waterbody affected by MVP and a creek whose watershed is not affected by MVP.

In addition to pollution incidents shown above, which resulted from polluted discharges from MVP's mismanagement of groundwater, there are numerous other instances when Bottom Creek, Mill Creek, and multiple tributaries of each have been damaged by the results of erosion on upland construction sites, releases of sediment from open-cut pipeline crossings, runoff from access roads and work sites, and other sources.

The citizen complaints documenting these pollution problems, supplemented by DEQ reports are at the agency's disposal and need not all be cited and referenced here. Unfortunately, when these water quality impacts have should have been recorded, DEQ has made the same false claim as discussed above—that as long as BMPs are in place, water quality impacts and even violation of WQS are not a basis for enforcement action.

Also, as described at a Sinking Creek site, in at least two instances MVP boring operations under waterbodies have resulted in breakthrough between the bore holes and the surface waters. These are described in Federal Energy Regulatory Commission (FERC) environmental compliance monitoring reports. First, on December 14, 2023 the FERC report states that the "Compliance Monitor was notified of a hole within the bed of the stream S-SY8 [an unnamed tributary to Mill Creek] (MP 245.4) during the conventional bore crossing of this sensitive resource."³³ Then again on December 18, 2023 a hole in the streambed of Bottom Creek was reported, at a crossing designated S-IJ88.³⁴

Despite the fact that these structural failures reveal a fundamental flaw in the process of boring and supposedly protecting the streams, the inspectors merely noted repairs would be made at some unnamed future date, "when applicable permits/agency coordination are complete."³⁵ We can find no information to indicate that MVP, DEQ, or any other entity has undertaken an analysis to discover how many more of the incidents may have occurred, the cause of the failures, or the risk of future occurrences. And the fact that these constitute changes to the habitat, stream/groundwater flow patterns, and future stability of the stream beds has apparently not been addressed.

As described in the discussion of Sinking Creek above, activities related to boring underneath streams and wetlands are causing serious pollution problems and violating legal requirements. It is important to note that where MVP is attempting to cross under waterbodies by boring and inserting the pipe from pits on each side of the

Entire Virginia Segment of MVP

In addition to these brief looks at some of the more severe problems at two specific sites, including those currently ongoing and recently occurring, it is important to note again that the violations and damages to water quality have been and continue to be widespread and that they have been frequent in every period when MVP is under construction.

³³ FERC, Mountain Valley Project, Docket No.: CP16-10-000, Environmental Compliance Monitoring Program, December 10 Through December 16, 2023 Summary Report, at 6.

³⁴ FERC, Mountain Valley Project, Docket No.: CP16-10-000, Environmental Compliance Monitoring Program, December 17 Through December 23, 2023 Summary Report, at 4.

³⁵ Id.

A review of public complaints to DEQ made since last November shows a total of 58 reports, spread across MVP's entire length through Virginia as follows: Roanoke County 25, Giles County 19, Montgomery County 11, Franklin County 3. DEQ inspectors have "closed" 45 of the 58 reports, claiming there were no compliance issues found in each case. There is no recognition that in some of the sites sediment releases have occurred repeatedly, even though BMPs were supposedly in place and properly maintained at the time of each staff visit. It is notable that the average time between the report being made and a DEQ inspection was four days, so that it is likely that DEQ simply was too late to find the problems.

A revealing report just posted by FERC also shows that MVP's problems are far from solved. For just one week, between January 6 and January 12, 2024, MVP reported the following for Virginia sections of the project:

- 42 instances when pollution controls were "overwhelmed" or "undermined" and "sediment traveled off the" right of way.
- 8 instances where controls failed and allowed "sediment laden water" to enter waterbodies.
- 5 waterbodies where there were "bank failures."

Given that the deposit of sediment outside pollution controls is a basis for stop work instructions under Virginia law, the number of instances reported in such a short time must compel DEQ to take action. The discharge of sediment laden waters which affected waterbodies raises a significant likelihood that pipeline activities caused or contributed to WQS violations. The damage to aquatic habitats resulting from collapsed stream banks related to pipeline activity constitutes a serious degradation of these resources.

DEQ must respond to these finding by the company and examine more of these reports to assess the magnitude and continued frequency of violations and conditions that should prompt strong enforcement action, including stop work instructions.

Conclusions

We again stress the urgency of forceful and effective DEQ action NOW. While MVP construction may be in a later stage, significant work is yet to be completed and the threat of much more damage looms over the people and environments of the region MVP directly affects.

Thank you and we look forward to your response.

Sincerely,

/s/ Georgia Haverty
Georgia Haverty
Preserve Giles County

/s/ Russell Chisholm

Russell Chisholm
Protect Our Water, Heritage, Rights

/s/ David Sligh

David Sligh
Wild Virginia

/s/ Lynda Majors

Lynda Majors
Preserve Montgomery County VA

/s/ Pat Calvert

Pat Calvert
Virginia Conservation Network

/s/ Roberta Bondurant

Roberta Bondurant
Preserve Bent Mountain

/s/ Bonnie Law

Bonnie Law
Preserve Franklin

/s/ Ann Rogers

Ann Rogers
Blue Ridge Environmental Defense League

/s/ Pamela Goddard

Pamela Goddard
National Parks Conservation Association

/s/ Elizabeth M. Dudley

Elizabeth M. Dudley
Cowpasture River Preservation Association

/s/ Kimberley Homer

Kimberley Homer
New River Valley Group, Sierra Club Virginia Chapter

/s/ Lee Williams

Lee Williams
Green New Deal Virginia

/s/ Deborah Kushner

Deborah Kushner
Third Act Virginia

/s/ Victoria Higgins

Victoria Higgins
Chesapeake Climate Action Network

/s/ Jill Gottesman

Jill Gottesman
The Wilderness Society

/s/ Lee Francis

Lee Francis
Virginia League of Conservation Voters

/s/ Alissa Ganser

Alissa Ganser
Virginia Scientist-Community Interface

/s/ Chris Tandy

Chris Tandy
Loudoun Climate Project

/s/ Chad Oba

Chad Oba
Friends of Buckingham

/s/ Joshua Vana

Joshua Vana
ARTivism Virginia

/s/ Howdy Henritz

Howdy Henritz
Indian Creek Watershed Association

/s/ Irene Leech

Irene Leech
Virginia Citizens Consumer Council

/s/ Lib Hutchby

Lib Hutchby
Women's International League for Peace and Freedom - Triangle Branch

/s/ Karen Bearden
Karen Bearden
350 Triangle

/s/ Dr. Crystal Cavalier
Dr. Crystal Cavalier
7 Directions of Service

/s/ Bill Wolf
Bill Wolf
Preserve Craig, Inc.

/s/ Angie Rosser
Angie Rosser
West Virginia Rivers Coalition

/s/ Martha Girolami
Martha Girolami
Chatham Research Group

/s/ Cynthia Munley
Cynthia Munley
Preserve Salem