
No. 26-1044

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SIERRA CLUB, et al.
Petitioners

v.

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, et al.
Respondents

and

MOUNTAIN VALLEY PIPELINE, LLC, et al.
Intervenors

On Petition for Review from the
North Carolina Department of Environmental Quality's
Certification No. WQC008395 (November 12, 2025)

PETITIONERS' MOTION FOR STAY PENDING REVIEW

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INTRODUCTION

In 2021, this Court concluded that the North Carolina Department of Environmental Quality (“NCDEQ”) acted arbitrarily and capriciously in failing to provide a reasoned explanation for its decision to deny a permit to Mountain Valley Pipeline, LLC (“MVP”) for the original proposed Southgate Project. *See Mountain Valley Pipeline, LLC v. N.C. Dep’t of Env’tl. Quality*, 990 F.3d 818, 833 (4th Cir. 2021). The saga continues in this matter. The same pipeline. The same agency. A different permitting result (issuance)—but the same defect: a failure to provide a reasoned explanation.

Pending before this Court is Petitioners’ January 12, 2026 petition for review of the Clean Water Act (“CWA”) §401 Water Quality Certification (the “Certification”)¹ issued by NCDEQ to MVP for its Southgate Amendment Project (“Southgate” or “Southgate Project”).

At the time Petitioners filed the petition for review, the Federal Energy Regulatory Commission (“FERC”) docket for this project indicated that MVP would begin cutting trees on the Southgate route in the fourth quarter of 2026 and begin other construction activities in early 2027.² Had MVP adhered to that schedule, preliminary relief would not have been needed this early in this matter. However,

¹ A copy of this Certification is attached to this motion as Exhibit 1.

² Exhibit 2 at 9.

MVP has since indicated in public documents that it intends to begin construction on March 17, 2026,³ with North Carolina activities beginning in earnest on March 30, 2026. Because of MVP's change in plans, the irreparable harms associated with construction of Southgate are now imminent.

This Court has recognized the environmental degradation attendant to Southgate construction in North Carolina. *See Mountain Valley Pipeline*, 990 F.3d at 822. And, as established by expert engineers from Robinson Design Engineering, that degradation would be long term or even permanent.⁴

As explained below, NCDEQ's issuance of the Certification was arbitrary and capricious, leading to a failure to ensure protection of North Carolina's water quality standards. Consequently, a stay is necessary to prevent irreparable harm from activities authorized by the Certification.

Accordingly, pursuant to Fed. R. App. P. 18(a), Petitioners respectfully request a stay of the Certification pending review. NCDEQ, MVP, and Intervenors Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (collectively "Duke Energy"), oppose this motion.⁵

³ Exhibit 3 at 2.

⁴ *See* Exhibit 4 at 1.

⁵ On February 24, 2026 Petitioners asked NCDEQ to stay the Certification pending review. *See* Exhibit 5. On March 3, 2026, it refused. *See* Exhibit 6.

BACKGROUND

The Southgate Project

MVP proposes to build a 30-inch wide, high-pressure steel natural gas transmission pipeline, 5.2 miles of which would snake across Rockingham County, North Carolina.⁶ MVP would trench under or blast through 29 streams and wetlands in North Carolina (an average of one water body within every 1,000 feet of pipeline) using the open-cut, dry-ditch methods described in *Mountain Valley Pipeline*, 990 F.3d at 822.⁷ Moreover, MVP proposes to permanently impact 52 linear feet of intermittent streams and permanently convert just over 3 acres of forested wetlands into “herbaceous” wetlands.⁸

Because the proposed pipeline’s construction would involve the discharge of fill material into streams and wetlands along its path, the CWA requires MVP to obtain a CWA §404 permit from the U.S. Army Corps of Engineers. *See Sierra Club v. U.S. Army Corps of Eng’rs*, 981 F.3d 251, 255 (4th Cir. 2020). MVP was also required to obtain an amended Certificate of Public Convenience and Necessity from FERC for the pipeline project. *See* 15 U.S.C. §717f(c)(1)(a). Both federal authorizations trigger CWA §401’s requirement that MVP obtain a certification from NCDEQ that the pipeline will not result in violations of state water quality

⁶ *See* Exhibit 7 at 1.

⁷ Exhibit 1 at 3–5.

⁸ Exhibit 7 at 1, 2.

requirements. *See* 33 U.S.C. §1341(a)(1). To satisfy that requirement, MVP submitted an application for a §401 certification to NCDEQ on May 30, 2025. *See generally* 15A N.C. Admin. Code 2H.0500.

Under regulations promulgated by the Environmental Protection Agency (“EPA”), to issue §401 certifications states should conclude that “the activity will comply with water quality requirements.” 40 C.F.R. §121.7(c)(3). The water quality standards at issue here include North Carolina’s narrative and numeric water quality criteria and North Carolina’s antidegradation policy. *See* 15A N.C. Admin. Code 2B.0201-.0295.

North Carolina’s water quality standards provide numerical limits for turbidity, dissolved oxygen, and temperature to protect designated uses of Class C waterways. *See* 15A N.C. Admin. Code 2B.0211(21), (6), (18). North Carolina has also adopted narrative standards for solids and biological integrity, among other parameters. *See id.* §§2B.0211(1),(8); *id.* §2B.0202(13).⁹ Likewise, the State has adopted water quality standards for wetlands “to protect, preserve, restore, and

⁹ North Carolina courts and NCDEQ have consistently and repeatedly enforced violations of narrative water quality standards. *See, e.g., Champion Int’l Corp. v. U.S. Env’tl. Prot. Agency*, 850 F.2d 182, 184–86 (4th Cir. 1988) (explaining that North Carolina and Tennessee required color removal from discharged water to meet state narrative color and aesthetic criteria); *House of Raeford Farms, Inc. v. N.C. Dept. of Env’tl. and Nat. Res.*, 774 S.E.2d 911, 914, 916, 919, 922 (N.C. Ct. App. 2015) (recognizing that a “greasy, brown film” and “settleable solids and sludge” supported a narrative water quality violation).

enhance the quality and uses of wetlands,” including “[s]torm and floodwater storage”; “filtration or storage of sediments, nutrients, toxic substances, or other pollutants that would otherwise have an adverse impact ... on the quality of other waters of the State”; and habitat for aquatic species. *Id.* §§2B.0231(b)(1–7). State regulations require that a proposed project comply with water quality standards on a short-term *and* long-term basis. *Id.* §2B.0211(2); *accord Sierra Club v. W. Va. Dep’t of Env’tl. Prot.*, 64 F.4th 487, 503 (4th Cir. 2023) (holding water quality standards must be met at all times).

North Carolina’s antidegradation policy, set forth in 15A N.C. Admin. Code 2B.0201, provides in relevant part that “[t]he [Environmental Management] Commission shall protect existing uses ... and the water quality to protect such uses by classifying surface waters and having standards sufficient to protect these uses.” 15A N.C. Admin. Code 2B.0201(b). Moreover, “waters with quality higher than the standards” cannot be degraded below the “water quality necessary to maintain existing and anticipated uses of those waters.” *Id.* §2B.0201(c).

On November 12, 2025, NCDEQ granted the Certification to MVP for construction of the Southgate Project, asserting that “this activity will comply with water quality requirements.”¹⁰ On the same day, NCDEQ released the November 7, 2025 Hearing Officer Report (Exhibit 7) summarizing and responding to public

¹⁰ Exhibit 1 at 3.

comments. NCDEQ's determination that MVP will comply with water quality standards rests in part on its beliefs that MVP will comply with the Stormwater Design Manual, Minimum Design Criteria, and North Carolina stormwater rules and regulations; will coordinate construction with other pipeline companies working in the same area; and will use controls suitable for High Quality Waters.¹¹ NCDEQ also arbitrarily dismissed concerns regarding MVP's history of non-compliance during construction of its Mainline Project ("Mainline") in West Virginia and Virginia.¹²

Past is Prologue: MVP's History of Water Quality Requirement Violations

MVP has an egregious track record of violating water quality requirements during Mainline construction. Indeed, this Court noted that MVP's "record is replete" with evidence of multiple violations of West Virginia water quality standards. *W. Va. Dep't of Env'tl. Prot.*, 64 F.4th at 502–03. Over two years, MVP accumulated nearly 50 violations of water quality standards and more than one hundred other water permit violations. *Id.* That extensive violation history (and an agency's lackadaisical response to it) led this Court to vacate MVP's §401

¹¹ Exhibit 7 at 6–8.

¹² *See id.*

certification from the West Virginia Department of Environmental Quality. *Id.* at 509.¹³

Moreover, the adverse effects of MVP's stream crossings continued after the company regained authorization to construct Mainline through streams and wetlands in its path in the summer of 2023. For example, the West Virginia Department of Environmental Protection concluded that MVP violated water quality standards while constructing an open-cut stream crossing similar to those at issue here.¹⁴ And MVP accumulated more than \$100,000 in fines in Virginia for violations of water quality requirements while finishing Mainline construction there.¹⁵

NCDEQ's Erroneous Conclusion that Southgate Construction Will Comply With Water Quality Requirements Based on Incorrect Assumptions about MVP's Obligations

NCDEQ's determination that the Southgate Project will not violate water quality requirements rests heavily on irrational conclusions, such as the agency's belief that MVP will comply with stormwater and erosion control measures and commitments made in materials submitted to NCDEQ, notwithstanding that these are not conditions of the Certification. For example, in response to concerns about

¹³ MVP's Mainline violations were not limited to West Virginia; Virginia Department of Environmental Quality fined MVP more than \$2 million for violating a host of state water quality regulations during construction of Mainline in that state. Exhibit 8 at 11.

¹⁴ See Exhibit 9.

¹⁵ See Exhibit 10.

MVP's history of violations, NCDEQ assured the public that the Southgate Project "must comply with the Stormwater Design Manual, which follows the Minimum Design Criteria outlined in the NC Stormwater Rules and Regulations."¹⁶ Additionally, the Hearing Officer stated that MVP will coordinate construction with another company building a pipeline in the same area and during the same timeframe to minimize impacts to streams that both companies will cross.¹⁷ Finally, the Hearing Officer rejected concerns about construction activities on streams in part because "[t]he applicant is committed to implementing the controls outlined in the NC Erosion and Sediment Control Planning and Design [Manual] suitable for High Quality Water (sic) (HQW) even though the Amendment Project does not cross through a High Quality Water Zone."¹⁸ But nothing in the Certification requires MVP to comply with the Stormwater Design Manual, the Minimum Design Criteria, or the NC Stormwater Rules and Regulations, nor does the Certification require any communication with the other pipeline company or controls suitable for High Quality Waters.¹⁹

¹⁶ Exhibit 7 at 8.

¹⁷ *Id.* at 7. Transcontinental Gas Pipe Line, LLC intends to construct the Southeast Supply Enhancement Project along virtually the same route in Rockingham County. *See id.*; *see also* Exhibit 11 at 14-15.

¹⁸ Exhibit 7 at 6.

¹⁹ *See* Exhibit 1.

According to MVP, construction on Southgate will begin this month. A stay is necessary to prevent irreparable harm from activities authorized by the Certification before its validity can be adjudicated on the merits in this matter. MVP's haste to begin construction necessitates this stay motion.

STANDARD OF REVIEW

Four factors govern a stay pending review:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987). In Natural Gas Act (“NGA”) proceedings reviewing §401 certifications, this Court applies the Administrative Procedure Act’s standard of review. *Sierra Club v. State Water Control Bd.*, 898 F.3d 383, 403 (4th Cir. 2018). Under that standard, the Court must set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A).

ARGUMENT

I. Petitioners Are Likely to Succeed on the Merits.

Petitioners are likely to succeed on the merits for two reasons. First, the Certification is arbitrary and capricious because NCDEQ failed to provide a rational explanation for its prediction that the Southgate Project will not cause violations of

water quality requirements. *See Sierra Club v. W. Va. Dep't of Env'tl. Prot.*, 64 F.4th 487, 501–05 (4th Cir. 2023). Second, the Certification was arbitrary, capricious, and not in accordance with law because NCDEQ failed to include necessary conditions in the Certification. *See id.* at 505–06.

A. NCDEQ's Determination that the Southgate Project Will Comply with State Water Quality Requirements Despite MVP's History of Noncompliance was Arbitrary and Capricious.

As this Court has plainly stated, when an agency is faced with a noncompliance history like that of MVP, “it is arbitrary and capricious for an agency to predict compliance without a rational explanation.” *W. Va. Dep't of Env'tl. Prot.*, 64 F.4th at 502 (citing *Animal Legal Def. Fund v. Perdue*, 872 F.3d 602, 620 (D.C. Cir. 2017)). Here, CWA §401 required NCDEQ to make a predictive judgment about whether the activity allowed by MVP's federal authorizations (its FERC Certificate and §404 permit from the U.S. Army Corps of Engineers) “will comply with applicable water quality requirements.” 40 C.F.R. §121.7(c)(3).²⁰ Agency predictive judgments, like other agency actions, must be reasonable. *Cellnet Commc'ns, Inc. v. F.C.C.*, 149 F.3d 429, 441 (6th Cir. 1998). “[T]he deference owed agencies' predictive judgments gives them no license to ignore the past when the

²⁰ Likewise, North Carolina law required NCDEQ to ensure that “the proposed activity will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy.” 15A N.C. Admin. Code 2H.0506(b).

past relates directly to the question at issue.” *BellSouth Telecomms, Inc. v. F.C.C.*, 469 F.3d 1052, 1060 (D.C. Cir. 2006). Indeed, when confronted with MVP’s history of noncompliance with water quality requirements in the construction of its Mainline Project, this Court held that the relevant state agency had “a duty to give a reasoned explanation for its continued reliance on MVP’s compliance with [state water permits] in the face of MVP’s violation history.” *W. Va. Dep’t of Env’tl. Prot.*, 64 F.4th at 505. That agency, however, “failed to do so, and that failure was arbitrary and capricious.” *Id.*

So too was NCDEQ’s action at issue here. The Certification is materially indistinguishable from the agency action at issue in *West Virginia Department of Environmental Protection*: When presented with evidence of MVP’s noncompliance history, NCDEQ failed to give a reasoned explanation for its prediction that MVP would comply with all water quality requirements for the Southgate Project. Public comments alerted NCDEQ to MVP’s significant history of noncompliance during construction of Mainline.²¹ Those violations occurred during all phases of construction, including when constructing open-cut crossings like those that will be used in 29 streams and wetlands in North Carolina for the Southgate Project. Moreover, MVP’s violations came *after* the Corps issued an individual §404 permit to MVP that predicted compliance with water quality standards. That prediction

²¹ Exhibit 11 at 17–20.

proved demonstrably false.

In response to the overwhelming record evidence of MVP's long history of noncompliance with water quality requirements during pipeline construction, NCDEQ's Hearing Officer Report pointed to the following practices as assurance of the company's future compliance:²²

- The presence of an environmental inspector during in-stream construction;
- North Carolina's strong enforcement program;
- Preconstruction meetings with agency staff;
- Requirements that MVP self-report noncompliance; and
- Requirement for MVP to advise NCDEQ within 24 hours of anticipated noncompliance.²³

NCDEQ did not explain why these particular requirements would prevent violations from recurring. In particular, NCDEQ did not take the position that any of those processes or requirements are new or different from those in place during Mainline construction.

That failure alone renders the decision arbitrary and capricious under *West Virginia Department of Environmental Protection*. And that failure was

²² The Hearing Officer also identified his belief that “[t]he Amendment Project construction must comply with the Stormwater Design Manual, which follows the Minimum Design Criteria outlined in the NC Stormwater Rules and Regulations.” Hearing Officer Report, at 8 (Nov. 7, 2025). Notwithstanding the ambiguity about whether those elements of North Carolina law apply during construction at all (as opposed to post-construction), the Hearing Officer's reliance on those elements was misplaced because such compliance was not an actual condition of the 401 Certification, further rendering the Certification arbitrary and capricious. *See infra* Section I(B).

²³ Exhibit 7 at 7–8.

consequential because all the processes or requirements existed in materially similar form during the construction of the Mainline Project. MVP was required to ensure an environmental inspector was onsite during instream construction.²⁴ Hundreds of thousands of dollars in fines assessed by West Virginia's and Virginia's enforcement programs did not deter MVP from further violations.²⁵ MVP was required to hold pre-construction meetings during Mainline construction.²⁶ And MVP was required to report noncompliance and predicted noncompliance during Mainline construction.²⁷ Yet MVP amassed scores of violations of water quality requirements

²⁴ Exhibit 12 at App. B., § 3.1. Exhibit 12 includes excerpts of MVP's *Comprehensive Stream and Wetland Monitoring, Restoration and Mitigation Framework*, applicable to Mainline construction. Appendix B to that document "consolidates various existing construction and restoration procedures into one document." Exhibit 12 at 10; *see also W. Va. Dep't of Env'tl. Prot.*, 64 F.4th at 504 (observing that the Mainline "Mitigation Framework does not bolster anything. Rather, it merely re-packages the measures already in place" for Mainline activities). The Mitigation Framework was an exhibit to Petitioners' comments on MVP's application to the U.S. Army Corps of Engineers Section 404 permit for the Southgate Project, which was in turn incorporated by reference into Petitioners' comments on MVP's application for the Certification. *See* Exhibit 11.

²⁵ *See* Exhibit 8; *W. Va. Dep't of Env't Prot.*, 64 F.4th at 502. As this Court has recognized, civil fines for violations of water quality requirements are supposed "to remove or neutralize the economic incentive to violate environmental regulations." *U.S. v Smithfield Foods, Inc.*, 191 F.3d 516, 529 (4th Cir. 1999) (internal quotation marks omitted); *see also Sierra Club v. Simkins Indus., Inc.*, 847 F.2d 1009, 1113 (4th Cir. 1988) (holding that civil penalties "can be an important deterrence against future violations"). As established by MVP's continuing violations even after state enforcement actions, civil fines do not seem to serve their purpose with MVP.

²⁶ Exhibit 12, App. B, § 2.4.

²⁷ Exhibit 13, Conditions C.3, C.4, and F.2.

anyway. *See, e.g., W. Va. Dep't of Env'tl. Prot.*, 64 F.4th at 502.

In sum, none of the construction assurances cited by the Hearing Officer are new or additional steps that are different from what was required of MVP during Mainline construction. It is irrational—and arbitrary and capricious—for NCDEQ to offer those practices to justify its finding of a reasonable assurance of future compliance without investigating and/or explaining whether or how they might differ from Mainline requirements. *Id.* at 505; *see also Perdue*, 872 F.3d at 620. Indeed, NCDEQ's explanation of its acceptance of MVP's noncompliance history is so implausible it cannot be the product of agency expertise. *Defs. of Wildlife v. U.S. Dep't of Interior*, 931 F.3d 339, 365 (4th Cir. 2019) (citation omitted). Accordingly, Petitioners are likely to succeed on the merits of this claim.

B. NCDEQ Failed to Include Necessary Conditions in the Certification for Actions It Relied Upon to Conclude that the Southgate Project Will Comply with Water Quality Requirements.

CWA §401(d) provides that certifications “shall set forth any ... limitations[] and monitoring requirements necessary to assure” that the applicant will comply with state water quality requirements. 33 U.S.C. §1341(d). Interpreting that provision, this Court has explained that, “[i]f the state concludes that conditions on the operation of the project are necessary to ensure compliance with its water quality standards, those conditions *must* be set out in the §401 certification.” *N.C. Dep't of Env'tl. Quality v. FERC*, 3 F.4th 655, 661 (4th Cir. 2021) (emphasis added). Thus,

when a state determines that an applicant must perform some act to ensure compliance with water quality requirements, the §401 certification must include a condition requiring that act. The state cannot simply rely on an assumption that the applicant will voluntarily comply with protections necessary for the state's conclusions about project impacts. To do so is arbitrary and capricious, and a certification without all necessary conditions must be vacated. *See W. Va. Dep't of Env'tl. Prot.*, 64 F.4th at 506, 509.

Here, the Hearing Officer Report expressly noted that the agency's evaluation of a §401 application must examine, among other things, "protection of downstream water quality through stormwater control measures."²⁸ And in response to record evidence of MVP's record of non-compliance, the Hearing Officer expressly stated, "[t]he Amendment project Construction must comply with the Stormwater Design Manual, which follows the Minimum Design Criteria outlined in the NC Stormwater Rules and Regulations."²⁹ But nothing in the Certification requires MVP to comply with the Stormwater Design Manual, the Minimum Design Criteria, or the NC Stormwater Rules and Regulations. Rather, the Certification only requires MVP to "secure an approved stormwater management plan (SMP) from Division of Energy,

²⁸ Exhibit 7 at 4.

²⁹ *Id.* at 8.

Mineral, and Land Resources (DEMLR) before any impacts authorized in this Certification occur.”³⁰

The difference between requiring MVP to “secure an approved stormwater management plan” and requiring MVP to comply with that plan is significant in the context of an interstate gas pipeline. That is because the federal Natural Gas Act preempts all state environmental regulation of interstate pipelines beyond the requirements of the CWA, the Clean Air Act, and the Coastal Zone Management Act. 15 U.S.C. §717b(d). North Carolina’s stormwater management laws are not requirements of those three federal statutes.

Even if North Carolina’s Stormwater Rules and Regulations were part of the state’s federal CWA program, they would remain inapplicable to MVP because of 33 U.S.C. §1342(1)(2), which exempts stormwater runoff from gas transmission facilities from regulation under the CWA. Accordingly, for compliance with the state Stormwater Design Manual, Minimum Design Standards, and Stormwater Rules and Regulations to be enforceable against MVP for the Southgate Project, such compliance would have to be incorporated into the Certification. It is not.

Nonetheless, North Carolina relied on MVP’s compliance with those stormwater program components to reach its conclusion that Southgate will not lead to violations of water quality requirements. To properly do so, North Carolina must

³⁰ Exhibit 1 at 6.

include compliance with those programs as a condition of the Certification. 33 U.S.C. §1341(d).

Moreover, North Carolina failed to include a condition in the Certification requiring MVP to coordinate its stream crossing construction with that of another pipeline company building a pipeline in the same area and during the same timeframe.³¹ But, apparently thinking it was a condition of the Certification, the Hearing Officer relied on such coordination to conclude that MVP would not result in cumulative impacts that violate water quality standards,³² as required by 15A N.C. Admin. Code 2H.0506(b)(3).³³ Because it was not a Certification condition, however, NCDEQ's action was arbitrary, capricious, and not in accordance with law.

Finally, the Certification does not require MVP to implement controls suitable for High Quality Waters,³⁴ despite the Hearing Officer's reliance on such implementation to dismiss concerns about water quality violations related to instream construction.³⁵

³¹ *See generally* Exhibit 1.

³² Exhibit 7 at 7.

³³ *Id.*

³⁴ Exhibit 1.

³⁵ *See* Exhibit 7 at 6. The consequences of that failure became clear on March 5, 2026, when MVP filed its North Carolina erosion and sediment control plans with FERC. Those plans do not appear to contemplate the use of controls suitable for High Quality Waters. Such controls must be designed for 25-year storm events. North Carolina Erosion and Sediment Control Planning and Design Manual at 1.2,

This Court has made clear that “leaving out of the federal permit a central justification for [the agency’s] reasonable assurance determination . . . appears wholly unreasonable.” *W. Va. Dep’t of Env’tl. Prot.*, 64 F.4th at 506. Consequently, the Certification is arbitrary, capricious, and otherwise not in accordance with law, *see id.*, and thus Petitioners are likely to succeed on the merits.

II. Petitioners Will Suffer Irreparable Harm in the Absence of a Stay.

Absent a stay, MVP will complete many, if not all, of its stream crossings in North Carolina before resolution of the pending petition for review. Instead of breaking ground in the fourth quarter of 2026 as originally scheduled,³⁶ MVP intends to begin on-the-ground work in North Carolina by the end of March. Those circumstances justify a stay pending review.

The Certification indisputably authorizes permanent impacts to 52 linear feet of stream and 3 acres of wetlands, harms which are irreparable in nature. *See Sierra Club v. Tenn. Dep’t of Env’t and Conservation*, Nos. 23-3682 & 24-3831, 2024 WL 4472048, at *3 (6th Cir. Oct. 11, 2024). And as the Professional Engineers at

available at <https://www.deq.nc.gov/energy-mineral-and-land-resources/land-quality/erosion-and-sediment-control-planning-and-design-manual/erosion-design-manual-rev-may-2013-compressed/download>. MVP’s North Carolina plans are only designed for 10-year storm events. MVP Southgate Amendment Project, Docket No. CP25-60-000, Attachment IP-6: Updated Erosion and Sediment Control Plans for North Carolina at 4 (PDF) and 21 (PDF) (Mar. 2026), *available at* <https://perma.cc/5Z4G-SWUS>. Accordingly, NCDEQ’s failure was prejudicial and allowed MVP to avoid the “commitment” on which the Hearing Officer relied.³⁶ Exhibit 2 at 9.

Robinson Design Engineers warned NCDEQ, “Open-cut pipeline construction creates a swath of permanent disturbance that alters the hydrology of surface water and groundwater resources, impacts the geomorphic functions and forms of the streams they cross, and harms the chemical, physical, and biological integrity of aquatic ecosystems in perpetuity.”³⁷ The open-cut method requires dewatering active stream channels, which “can cause substantial, long-term impacts to habitat quality of sediment-sensitive endemic organisms.”³⁸ And even after the pipeline is installed impacts persist “upstream and downstream of the pipeline crossing, and perpetual sedimentation downstream as the channel seeks equilibrium.”³⁹

In this Court, irreparable harm need not be “incalculably great or small, just incalculable.” *Fed. Leasing, Inc. v. Underwriters at Lloyd’s*, 650 F.2d 495, 500 (4th Cir. 1981) (internal quotation marks omitted). Moreover, where losses are not recoverable at the end of litigation—as they would not be here—they are irreparable. *Cf. Mountain Valley Pipeline, LLC v. 6.56 Acres of Land*, 915 F.3d 197, 218 (4th Cir. 2019). Indeed, “[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.” *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 545 (1987). This Court has recognized that “[t]he dredging ... that may occur while the Court

³⁷ Exhibit 4 at 1.

³⁸ *Id.* at 2.

³⁹ *Id.* at 3.

decides the case cannot be undone and, if the end result is that the [permit should not have issued], irreparable harm will have occurred in the meantime.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 981 F.3d 251, 264 (4th Cir. 2020) (citation omitted); *see also Tenn. Dep’t of Env’t & Conservation*, 2024 WL 4472048, at *3 (holding, on a motion for stay pending review of a state §401 certification, that the petitioners were “at risk of considerable irreparable harm” if the pipeline company “commence[d] construction before th[e] Court renders judgment”).

Petitioners and their members have interests in the Dan River and its tributaries and connected streams that MVP will trench through, and harms to these water bodies cannot be remedied through monetary damages.⁴⁰

Gary Purgason, a member of Sierra Club, Appalachian Voices, and 7 Directions of Service, has lived in Rockingham County, almost uninterrupted, for over 60 years.⁴¹ Mr. Purgason was raised fishing in the Dan River and its tributaries and raised his sons to do the same.⁴² During those decades, Mr. Purgason has witnessed declines to the health and productivity of the river but still regularly fishes in the areas that will be impacted by MVP’s construction, including downstream of

⁴⁰ Indeed, even the pre-construction site clearing threatens Petitioners’ members with irreparable harm. *See League of Wilderness Defs. v. Connaughton*, 752 F.3d 755, 764 (9th Cir. 2014) (finding that the logging of mature trees constitutes irreparable harm); *see also W. Land Exch. Project v. Dombeck*, 47 F.Supp.2d 1216, 1218 (D. Or. 1999) (finding the same for old growth forests).

⁴¹ Exhibit 14, ¶¶3, 4, 45.

⁴² *Id.*, ¶¶14–17, 46.

Draper Landing.⁴³ Mr. Purgason's continued use and enjoyment of the Dan River, including areas downstream of multiple planned trenched crossings through tributaries of the Dan River between Draper Landing and the Virginia border, will be irreparably harmed by construction, including his access to fish, his peace of mind in nature, and the connection that he and his late son shared with the river.⁴⁴

Steven Pulliam is a member of Sierra Club, Appalachian Voices, and 7 Directions of Service.⁴⁵ Mr. Pulliam's ties to the Dan River and its tributaries are personal, professional, and deep. Mr. Pulliam's professional career is centered around protection of the Dan River and its tributaries.⁴⁶ Mr. Pulliam also grew up in the area, and use of and conversation around the Dan River has been a crucial part of his family's history and way of life.⁴⁷ Mr. Pulliam uses and values the reach of the Dan River between Draper Landing and the Virginia border, which is threatened by multiple open-cut pipeline crossings through tributaries of the Dan River. Each of these meaningful connections is threatened by the Southgate Project's construction, and none of those losses could be compensated monetarily.⁴⁸

⁴³ *Id.*, ¶¶19–31, 43.

⁴⁴ *Id.*, ¶¶45–47, 49–51.

⁴⁵ Exhibit 15, ¶2.

⁴⁶ *Id.*, ¶¶11–14, 16–17.

⁴⁷ *Id.*, ¶21

⁴⁸ *Id.*, ¶¶25–26.

There simply “is no adequate remedy at law to compensate the public for the harm caused by the disposal of fill material into waters ... or in wetlands.” *U.S. v. Malibu Beach, Inc.*, 711 F.Supp. 1301, 1313 (D.N.J. 1989). And the Southgate Project construction’s lethal effect on aquatic life “is, by definition, irreparable.” *Humane Soc’y v. Gutierrez*, 523 F.3d 990, 991 (9th Cir. 2008). Put simply, Petitioners, their members, the public, and the environment could never be made whole if the irreparable impacts of construction were to move forward this month.

III. Preliminary Relief Will Not Substantially Harm NCDEQ or Intervenors.

Equitable relief would pose only minimal injury to NCDEQ. Although an agency has interests in defending its permits, “the effect of an injunction on these interests seems rather inconsequential.” *Ohio Valley Env’tl. Coalition v. U.S. Army Corps of Eng’rs*, 528 F.Supp.2d 625, 632 (S.D. W.Va. 2007).

Moreover, as discussed above, MVP did not initially intend to begin tree clearing until the fourth quarter of this year or other construction activities until early 2027.⁴⁹ Any construction delays that might result from a stay, therefore, will not harm Intervenors. More importantly, potential economic harm to Intervenors from a stay does not outweigh the irreparable harm to the environment from these construction activities. *Sierra Club*, 981 F.3d at 264–65. Therefore, the balance of equities favors a stay.

⁴⁹ Exhibit 2 at 9.

IV. The Public Interest Favors Preliminary Relief.

“The public has an interest in the integrity of the waters of the United States, and in seeing that administrative agencies act within their statutory authorizations and abide by their own regulations.” *Ohio Valley Envtl. Coalition v. Bulen*, 315 F.Supp.2d 821, 831 (S.D. W.Va. 2004). Moreover, in the public interest analysis, “the [Natural Gas Act] yields to the CWA.” *Sierra Club*, 981 F.3d at 264–65.

CONCLUSION

For the foregoing reasons, this Court should stay the Certification pending review.

DATED: March 6, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE VOLUME LIMIT

This motion complies with the type-volume limits because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) (cover page, disclosure statement, table of contents, table of citations, statement regarding oral argument, signature block, certificates of counsel, addendum, attachments), this brief contains 5,104 words. This motion has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14 point.

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CERTIFICATE OF SERVICE

I hereby certify that, on March 6, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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PETITIONERS' EXHIBIT LIST

Exhibit No.	Description
1	North Carolina Individual 401 Water Quality Certification No. WQC008395 (Nov. 12, 2025)
2	<i>Excerpt of Mountain Valley Pipeline Southgate Amendment Project, Environmental Assessment, Fed. Energy Reg. Comm'n (Oct. 2025) (Docket No. CP25-60-000)</i>
3	MVP Southgate Discrete Facility Gantt Chart (FERC eLibrary 20260219-5029) (Feb. 19, 2026)
4	Robinson Design Engineers, Permit Application Review of Southgate Amendment Project (NAO-2018-1574) (May 30, 2025)
5	Letter from Counsel for Petitioners Requesting Administrative Stay Pending Judicial Review of North Carolina § 401 Water Quality Certification No. WQC008395 for Mountain Valley Pipeline, LLC's Proposed Southgate Project (Feb. 24, 2026)
6	Letter from Richard Rogers, NCDEQ, to Counsel for Petitioners (March 3, 2026)
7	Memorandum To Richard Rogers, Director, Division of Water Resources, From Michael Hall, Regional Supervisor, Raleigh Regional Office, RE: Hearing Officer's Report and Recommendations, MVP Southgate Project, Individual 401 Water Quality Certification, Rockingham County (Nov. 7, 2025)
8	Consent Decree in <i>David Paylor, et al. v. Mountain Valley Pipeline, LLC</i> , Case No. CL180006874-00 (Henrico Cty Circuit Court 2019)
9	W. Va. Dep't of Env'tl. Prot., Notice of Violation No. W23-32-002-JTL (Nov. 27, 2023)
10	Matt Busse, <i>Virginia levies another fine on Mountain Valley Pipeline</i> , Cardinal News (Nov. 14, 2024)
11	SELC & Appalachian Mountain Advocates Public Comments on Mountain Valley Pipeline's North Carolina Clean Water Act Section 401 Water Quality Certification Application for the Amended Southgate Project (July 3, 2025)

12	Mitigation Framework, Potesta & Assocs., Inc., Comprehensive Stream and Wetland Monitoring, Restoration and Mitigation Framework: Mountain Valley Pipeline Project (upd. Nov. 23, 2022)
13	W. Va. Dep't of Env'tl. Prot., General Water Pollution Control Permit No. WV0116815 (May 13, 2013)
14	Declaration of Gary Purgason (March 4, 2026)
15	Declaration of Steven Pulliam (March 4, 2026)