

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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No. 26-1044

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SIERRA CLUB, ET AL.,

*Petitioners,*

v.

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, ET  
AL.,

*Respondents,*

MOUNTAIN VALLEY PIPELINE, LLC, ET AL.,

*Intervenors.*

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On Petition for Review from the  
North Carolina Department of Environmental Quality  
(Certification No. WQC008395)

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**JOINT RESPONSE OF MOUNTAIN VALLEY PIPELINE, LLC, DUKE  
ENERGY CAROLINAS, LLC, AND DUKE ENERGY PROGRESS, LLC  
IN OPPOSITION TO PETITIONERS'  
MOTION FOR STAY PENDING REVIEW**

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**GLOSSARY**

Amendment Order	<i>Mountain Valley Pipeline, LLC</i> , 193 FERC ¶ 61,222 (2025)
Corps	U.S. Army Corps of Engineers
CWA	Clean Water Act, 33 U.S.C. § 1251 <i>et seq.</i>
Duke	Duke Energy Carolinas, LLC
FERC	Federal Energy Regulatory Commission
HQW	High Quality Water
Mainline	Mountain Valley Pipeline Mainline
Mountain Valley (or MVP)	Mountain Valley Pipeline, LLC
NCDEQ	North Carolina Department of Environmental Quality
NGA	Natural Gas Act, 15 U.S.C. § 717 <i>et seq.</i>
PSNC	Public Service Company of North Carolina, Inc.
SPCA	Sedimentation Pollution Control Act of 1973, N.C. Gen. Stat. § 113A-50 <i>et seq.</i>
USGS	U.S. Geological Survey

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<b>Exhibit</b>	<b>Description</b>
A	Declaration of Jeffrey Klinefelter (March 16, 2026)
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C	MVP Southgate Amendment Project: Individual Permit Application (April 2025) (figures, tables, and attachments omitted)
D	MVP Southgate Amendment Project: Individual Permit Application – Attachment A: NC DEQ WQC Information (April 2025) (Excerpt)
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K	John Tessier, Email to North Carolina Department of Water Quality (Oct. 28, 2025)
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O	MVP Southgate Amendment Project: Implementation Plan, FERC Docket No. CP25-60-000 (Jan. 30, 2026), Accession No. 20260130-5353 (attachments omitted)
P	MVP Southgate Amendment Project: Weekly Construction Status Report No. 1, FERC Docket No. CP25-60-000 (Feb. 6, 2026), Accession No. 20260206-5078 (appendices omitted)
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R	Anthony J. Willard, Letter to West Virginia Department of Environmental Protection (Jan. 11, 2024).
S	Response to Information Request, FERC Docket No. CP19-14-000 (June 21, 2019) (Accession No. 20190621-5150) (attachments omitted)
T	Southern Environmental Law Center, Comments on Mountain Valley Pipeline's Clean Water Act Section 401 Water Quality Certification Application for the Amended Southgate Project, Exhibit 13 (excerpt) (July 3, 2025).
U	West Virginia Department of Environmental Protection, WQC-21-0005 (Dec. 30, 2021)
V	Virginia Department of Environmental Quality, Summary of Public Comments and DEQ Responses, VWP Permit No. 25-0752 (Dec. 23, 2025)

## INTRODUCTION

This case involves North Carolina’s issuance of a water-quality certification for a short but vital pipeline segment that will bring natural gas from Virginia into North Carolina, to help two major utilities meet surging energy need. To minimize impacts, facilities in the Tar Heel State will be 60% collocated in a pre-existing utility right-of-way. And environmental conditions imposed by Respondent the North Carolina Department of Environmental Quality (“NCDEQ”) under Section 401 of the Clean Water Act are crafted to reflect best practices and meet or exceed North Carolina’s tried-and-true regulatory protections. *See* Pet’rs’ Ex. 7 at 4-8.

Petitioners seek the extraordinary remedy of a stay of the Southgate certification pending review. But many of their arguments relate to a different pipeline, built and placed into service years ago outside of North Carolina, by Respondent-Intervenor Mountain Valley Pipeline, LLC. Petitioners advance sweeping and unsubstantiated claims that construction of this “Mainline” caused catastrophic aquatic impacts. And they suggest that *any* Southgate construction—no matter the project’s minimal footprint, terrain crossed, or stringency of regulation—will have serious, permanent, water-quality impacts. *Cf.* Mot. 18-22. Petitioners draw strained parallels between North Carolina’s certification here, and actions taken by a different state (West Virginia), on a different record, concerning

the larger Mainline. They would subject NCDEQ's explanation to a uniquely stringent standard, due to facts (Mainline construction's alleged non-compliance with *other states'* water-quality requirements) outside NCDEQ's jurisdiction. And although Mountain Valley and NCDEQ agree that the 401 certification ensures that North Carolina's stormwater, erosion- and sediment-control requirements are enforceable as to Southgate, Petitioners offer a cramped and implausible reading of the certification, perceiving regulatory "gaps" where none exist.

Petitioners cannot satisfy the stringent standard for a stay pending review. To begin, their hyperbolic account of Mainline construction impacts has been disproven by data and scientific analysis. During and after Mainline construction, regulators collected and analyzed an exhaustive body of data, to determine whether project opponents' oft-repeated predictions of severe water-quality impacts materialized. *Compare* Mot. 18-19. The data showed ***no long-term adverse water-quality impacts*** from Mainline construction.<sup>1</sup>

From their mistaken initial premise about Mainline, Petitioners' arguments about Southgate veer off-course. NCDEQ addressed concerns about Mountain Valley's past compliance with other states' water-quality requirements. The agency explained why North Carolina's regulatory framework would protect *North*

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<sup>1</sup> *E.g., Mountain Valley Pipeline, LLC*, 193 FERC ¶ 61,222, at PP 81-82 & n.207 (2025); Ex. N at 7, 56-58.

*Carolina*'s waters for the limited facilities there. NCDEQ was not obliged to presume that Mountain Valley would violate the law, or that the state's proven safeguards would fail. Contrary to Petitioners' perceived regulatory gaps, NCDEQ's 401 certification clearly requires compliance with state stormwater, erosion, and sediment-control measures. Petitioners' alleged irreparable harms are unsupported and mostly temporary, and a stay would sharply undercut the public interest. *See Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

## **STATEMENT OF THE CASE**

### **I. Legal background**

#### **A. FERC's jurisdiction**

The Natural Gas Act ("NGA") gives the Federal Energy Regulatory Commission ("FERC") primary jurisdiction over interstate natural gas pipelines. 15 U.S.C. § 717f(a). Such facilities cannot be constructed or operated without a FERC-issued certificate of public convenience and necessity. *Id.* § 717f(c).

#### **B. Corps review**

Construction in streams and wetlands requires a Clean Water Act ("CWA") Section 404 permit. 33 U.S.C. § 1344. Crossing navigable waters requires authorization under Section 10 of the Rivers and Harbors Act. *Id.* § 403. The U.S. Army Corps of Engineers ("Corps") issues those authorizations. *Id.* §§ 1344(a), 1344(e); 33 C.F.R. pt. 325.

### **C. North Carolina's water-quality review**

Under CWA Section 401, states review applications for federal authorizations that may result in discharges to their waters and certify that state water-quality requirements will be met. 33 U.S.C. § 1341(a)(1); 15 U.S.C. § 717b(d)(3) (NGA preserving state CWA authority). If a state concludes that additional conditions are necessary to protect water quality, those conditions are included in the 401 certification and become enforceable conditions of the federal permit. 33 U.S.C. § 1341(d). NCDEQ issues 401 certifications pursuant to N.C. Gen. Stat. §§ 143-214.1A and 143B-282(a)(1)(u). *See also* 15 N.C. Admin. Code 02H .0500, 02B .0200.

North Carolina law provides robust protections against erosion and sediment during construction. Under the Sedimentation Pollution Control Act (“SPCA”), developers must implement a detailed “erosion and sedimentation control plan” as approved by NCDEQ. N.C. Gen. Stat. § 113A-54.1. Projects are also subject to requirements for post-construction stormwater management, outlined in NCDEQ’s Stormwater Design Manual and state regulations. *E.g.* 15A N.C. Admin. Code 02H .1001, .1003.

## **II. Factual background**

### **A. Southgate**

As initially approved by FERC in 2020, Southgate consisted of about 75 miles of pipe and a compressor station. *Mountain Valley Pipeline, LLC*, 193 FERC

¶ 61,222, at P 3 (2025) (“Amendment Order”). Due to then-ongoing litigation-related delays on the Mainline, Southgate was put on hold. Ex. A ¶7.

After Mainline was completed, Mountain Valley applied to amend the Southgate FERC certificate. As modified, Southgate will start at the Mainline’s Virginia terminus and proceed southwest into North Carolina, with two delivery points in Rockingham County. Amendment Order P 6. Southgate’s transportation capacity is 100% subscribed through long-term contracts with Duke Energy Carolinas, LLC (“Duke”) and Public Service Company of North Carolina, Inc. (“PSNC”). Amendment Order P 7. The amended project has a much smaller footprint than the original design, reflecting a 58% reduction in length (from 75 to 31 miles), and requiring no new compressor station. *See* Amendment Order P 6; Pet’rs’ Ex. 3 at 5. The North Carolina segment now comprises approximately 5 miles of pipeline (previously 47 miles) and involves 83% fewer crossings of waterbodies and wetlands. Ex. A ¶8. In North Carolina, more than half the pipeline (60% by length) will be collocated on existing utility rights-of-way. *Id.* ¶9.

FERC approved the amendment in December 2025, concluding that “the public convenience and necessity requires approval,” and that Southgate’s potential environmental effects, “as mitigated, would not be significant.” Amendment Order P 87.

## **B. NCDEQ's water-quality review**

On May 30, 2025, Mountain Valley submitted an application seeking 401 certifications from NCDEQ and Virginia, and permits from the Corps. The application addressed, among other things, each stream and wetland to be crossed in North Carolina; crossing techniques; avoidance and mitigation measures; and site-specific factors. Ex. C at 5-1 to 5-19; Ex. E at 37-41.<sup>2</sup> After a five-month review, which included supplemental information requests, a public hearing, and a Hearing Officer's Report responding to public comments, NCDEQ issued its 401 certification on November 12, 2025.

### **ARGUMENT**

Preliminary relief is “an extraordinary remedy never awarded as of right,” only “upon a clear showing that the plaintiff is entitled to such relief,” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008), “even if irreparable injury might otherwise result,” *Nken v. Holder*, 556 U.S. 418, 433-34 (2009) (citation omitted).

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<sup>2</sup> NCDEQ had previously concluded that the original Southgate Project, which included a nine-times-longer pipeline segment in North Carolina, was “not expected to violate water quality standards if the certification is issued.” *Mountain Valley Pipeline, LLC v. NCDEQ*, 990 F.3d 818, 825 (4th Cir. 2021). NCDEQ so concluded notwithstanding concerns raised about “violation[s]” and enforcement actions in Virginia and West Virginia associated with Mainline construction. *Id.* at 824.

**I. Petitioners have no likelihood of success on the merits.**

**A. NCDEQ included all necessary conditions in the 401 certification.**

Petitioners assert that NCDEQ violated CWA Section 401(d) by supposedly failing to include conditions in the certification requiring Mountain Valley to (1) comply with the Stormwater Design Manual, (2) coordinate construction schedules with a separate pipeline project being developed by Transcontinental Gas Pipe Line Company, LLC (“Transco”) in the area, and (3) implement certain controls suitable for High Quality Water (“HQW”) Zones. Mot. 14-18. These arguments fail.

As to stormwater issues, Petitioners raise one narrow claim of error: that Condition 3 of the certification, which requires Mountain Valley to “secure an approved stormwater management plan” from NCDEQ, does not require Mountain Valley to actually *comply* with that plan or North Carolina’s Stormwater Design Manual. Mot. 15-16. Petitioners note that the Stormwater Design Manual is not explicitly mentioned in the 401 certification, speculating that it might therefore be preempted. Mot. 15-16.

But Petitioners are mistaken, for several reasons.

First, Petitioners’ concern rests on a tortured reading of the certification. Condition 3 requires Mountain Valley to “secure an approved stormwater management plan” from NCDEQ, “before any impacts authorized in this Certification occur.” Pet’rs’ Ex. 1 at 6. It is inconsistent with the plain language of

the certification to read Condition 3 as requiring Mountain Valley to *obtain* a storm management plan and secure “*approv[al]*” of such plan (including any enforcement-related provisions), but somehow exempt Mountain Valley from *complying* with the plan. Rather, Condition 3 is most naturally understood to require that Mountain Valley *both* obtain an approved stormwater management plan, *and* comply with it. Indeed, Condition 3 expressly cross-references a regulation stating that “[t]he conditions included in [a 401] certification *shall become enforceable* by [NCDEQ].” 15A N.C. Admin. Code 02H .0507(c) (emphasis added).

Second, if there were any doubt about Condition 3’s interpretation, Condition 2 resolves it. That Condition states that “[t]he plans and specifications for this project are incorporated by reference as part of this Water Quality Certification.” Pet’rs’ Ex. 1 at 5. As indicated on the certification’s first page, the relevant plans and specifications include “[Mountain Valley’s May 30, 2025] application” and “the supporting documentation,” including “subsequent information [submitted] on July 15, 2025, September 12, 2025, and October 28, 2025.” Pet’rs’ Ex. 1 at 3. Section 5.2.4 of the May 30 application tracks the Hearing Officer’s statement regarding Mountain Valley’s obligations, stating in part that construction “*must comply* with the Stormwater Design Manual, which follows the Minimum Design Criteria outlined in the North Carolina Stormwater Rules and Regulations.” Ex. C at 5-15 (emphasis added). So the “plans and specifications” incorporated through Condition

2, specifying *what* Mountain Valley will build and *how* it will do so, require compliance with the Stormwater Design Manual and related requirements. *Id.* Incorporating application materials by reference is not uncommon in the CWA context, as it avoids conditions being phrased in an underinclusive or ambiguous manner, as might occur if NCDEQ restated application materials.<sup>3</sup> And reading all relevant documents together—Mountain Valley’s application, the Hearing Officer’s report, and the certification—reflects a clear meeting of the minds between NCDEQ and Mountain Valley, requiring compliance with the Stormwater Design Manual. *Cf. Ohio Valley Env’t Coal. v. Fola Coal Co.*, 845 F.3d 133, 138 (4th Cir. 2017) (“A court must interpret a[] [CWA] permit as it would a contract.”).

Petitioners raise no stormwater-related enforceability claim outside the Stormwater Design Manual and Condition 3, and they cannot introduce new issues on reply. *Hunt v. Nuth*, 57 F.3d 1327, 1338 (4th Cir. 1995). In a footnote, Petitioners question whether those requirements apply only post-construction. *See* Mot. 12 n.22. Even if Petitioners can be understood to question whether the 401 certification adequately requires erosion and sediment controls *during* construction, that concern

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<sup>3</sup> U.S. Environmental Protection Agency guidance has recognized that application materials, including (as here) the “project description,” can appropriately be where a permitting authority “include[s] ... the changes that are likely to be required [through permit conditions] anyway.” EPA, *Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes* 26-27 (2010), <https://tinyurl.com/2rscyemb>.

is easily dispatched. Condition 10, which Petitioners ignore, requires that “all construction activities shall be performed and maintained in full compliance with G.S. Chapter 113A Article 4,” the SPCA. Pet’rs’ Ex. 1 at 10. Among other things, the SPCA requires Mountain Valley to propose, obtain NCDEQ’s approval of, and implement, an erosion and sedimentation control plan. N.C. Gen. Stat. § 113A-54.1. Petitioners have not, and could not, identify any ambiguity in Condition 10’s incorporation of the SPCA, thereby ensuring enforcement of erosion and sediment control requirements *during* Southgate construction.<sup>4</sup>

Unrelated to sediment-control concerns, Petitioners note the Hearing Officer’s statement that Mountain Valley “will implement construction scheduling coordination with [a] Transco” pipeline under construction in the area. They speculate that Mountain Valley is not actually obligated to do so. Mot. 17; Pet’rs’ Ex. 7 at 7. Petitioners appear to view section 401 as a “gotcha” exercise, combing through the Hearing Officer’s explanation for any daylight with the conditions. That approach contravenes the deferential standard of review. Regardless, Mountain Valley’s September 12, 2025, submission—among the “plans and specifications” incorporated through Condition 2—states that “Mountain Valley is actively

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<sup>4</sup> The certification contains yet other conditions—which Petitioners ignore—mandating compliance with erosion and sediment-control protections. *See, e.g.*, Condition 11 (prohibiting installation of sediment and erosion control measures in wetlands or waters); Condition 12 (specifications for “[e]rosion control matting”).

coordinating with” Transco’s team “to coordinate and stagger construction activities within shared workspaces.” Ex. J at 4; *accord* Ex. L at 2.

Finally, in one sentence, Petitioners note the Hearing Officer’s statement that Mountain Valley had proposed controls more stringent than state law requires, by “commit[ing] to implementing the controls outlined in the NC Erosion and Sediment Control Planning and Design suitable for High Quality Water (HQW) even though the Amendment Project does not cross through a High Quality Water Zone.” Petitioners question whether the 401 certification encompasses this commitment. Mot. 17; Pet’rs’ Ex. 7 at 6. But Mountain Valley’s October 28, 2025, submission to NCDEQ, again among the Project’s “plans and specifications,” explained that Southgate will implement “erosion and sediment control measures that will provide protections suitable for HQW Zones,” providing a detailed list of controls. Ex. L at 5; Ex. K. Condition 2 incorporates that commitment into the certification.<sup>5</sup>

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<sup>5</sup> In a footnote, Petitioners cite post-certification developments as supposed proof that the certification is deficient. Mot. 17-18 n.35. They worry that Mountain Valley’s proposed erosion and sediment control plans, recently submitted to NCDEQ, should have included control measures designed to address a 25-year, not a 10-year, storm event. *Id.* But under the SPCA (enforceable via Condition 10), NCDEQ has a 30-day period (still ongoing) to review plans and provide comments, before deciding whether to approve them. N.C. Gen. Stat. § 113A-54.1(a). Mountain Valley is committed to obtaining NCDEQ’s approval of the plans, including resolving any comments NCDEQ may raise. This Court should not interrupt, or presume the outcome of, this ongoing state regulatory process.

This case is unlike *Sierra Club v. West Virginia Department of Environmental Protection*, 64 F.4th 487 (4th Cir. 2023) (“*WVDEP*”), on which Petitioners rely. There, citing preemption concerns, the Court rejected an argument that state regulators “maintain[ed] independent authority to enforce state regulations.” *WVDEP*, 64 F.4th at 506. West Virginia’s certification lacked any conditions comparable to Conditions 2, 3, or 10 here, which incorporate relevant requirements into the 401 certification. *See* Ex. U.

**B. NCDEQ reasonably concluded that Southgate will comply with state water-quality requirements.**

Petitioners separately argue that NCDEQ did not adequately address comments regarding sedimentation and erosion control issues experienced by Mountain Valley in different states (West Virginia and Virginia) during Mainline construction years ago (primarily in 2018-2019). Mot. 9-14. Petitioners are incorrect.

NCDEQ acknowledged and responded to commenters’ concerns about alleged “non-compliance with state and federal water quality laws, specifically with construction of the MVP Mainline Project.” Pet’rs’ Ex. 7 at 5-8. NCDEQ explained that the Southgate “application has been thoroughly reviewed,” that requirements specific to North Carolina law would guard against potential water-quality impacts, and that NCDEQ had ample resources to ensure compliance. *Id.* Among other things, NCDEQ confirmed that Project construction “must comply with the

Stormwater Design Manual,” which ensures compliance with “Minimum Design Criteria outlined in the NC Stormwater Rules and Regulations.” *Id.* at 8.

NCDEQ also enumerated the many measures ensuring “avoidance and minimization” of construction-related impacts on streams and wetlands. Pet’rs’ Ex. 7 at 5-6. For instance, Mountain Valley will use “trenchless crossing methods” (i.e., boring under waterways) “for larger streams and where sensitive species are present.” *Id.* at 5. For all crossings, Mountain Valley will use “Erosion and Sediment Control Best Management Practices,” including techniques that “isolate[] all construction activities from the surrounding waterbody.” *Id.* at 5. Additionally, “[t]he construction corridor has been narrowed to 75 feet within 50 feet of an aquatic resource crossing to preserve riparian vegetation.” *Id.* at 6. And Mountain Valley must implement numerous FERC protocols, crafted by that expert pipeline agency, to protect against sediment and erosion issues during construction. *Id.* (required compliance with FERC “Upland Erosion Control, Revegetation, and Maintenance Plan [and] the Wetland and Waterbody Construction and Mitigation Procedures”).

As to concerns about alleged past non-compliance, NCDEQ emphasized that it “maintains authority to address compliance concerns through the conditions included in 401 [certifications] and [the agency’s] statutory authority to protect water quality through surface water and wetland standards.” *Id.* at 6. An “environmental inspector will be present during all in-stream construction” and NCDEQ “maintains

a strong enforcement program.” *Id.* at 8. And NCDEQ explained the requirements imposed to ensure compliance, such as a pre-construction meeting, and prompt notification of violations or inability to comply. *Id.*

Petitioners show nothing arbitrary about the agency’s explanation. NCDEQ acknowledged concerns, and provided a careful response, rooted in its experience administering North Carolina’s water-quality laws. An agency can reasonably rely on a program of oversight and prompt corrective action to ensure that pipeline construction will comply with water-quality requirements. *See Sierra Club v. State Water Control Bd.*, 898 F.3d 383, 404-05, 407-08 (4th Cir. 2018). And here, NCDEQ had previously reviewed the same concerns about non-compliance during Mainline construction in 2018-2019, and concluded that a far larger Southgate would not violate North Carolina water quality standards. *Mountain Valley*, 990 F.3d at 824-25.

Petitioners invoke *WVDEP*. *See* Mot. 11. But there, West Virginia re-certified the Mainline following past judicial vacatur, faced with a record of erosion- and sediment-control issues *in that state*, involving the *state’s own requirements* for the *same Mainline facilities* being considered. *WVDEP*, 64 F.4th at 501-03. This case concerns a different project; no construction has ever taken place in North Carolina, and there is no record of non-compliance in North Carolina. Petitioners effectively argue that regulators from North Carolina (and, by implication, every state) face a

higher burden in certifying any project associated with Mountain Valley. The Court should reject that proposition, which goes far beyond *WVDEP*.

The record provides additional distinguishing grounds from *WVDEP*, bolstering NCDEQ's conclusion that Southgate would not violate North Carolina water quality standards. *See* Pet'rs' Ex. 7 at 1 (agency considered all materials in "the public record"). For instance, a report by the U.S. Geological Survey ("USGS") analyzed actual monitoring data from streams crossed during Mainline construction. Ex. N at 7; Ex. M. That multi-year study found no short-term or long-term effects on water temperature, or any long-term effects on turbidity, from Mainline construction. Ex. N at 7, 56-58. That study undercuts concerns, like Petitioners' here, that past Mainline non-compliance undermined NCDEQ's ability to certify Southgate here.

Petitioners suggest that NCDEQ could not rely on its longstanding, tried-and-tested water-quality framework, without demonstrating that North Carolina's regime goes beyond protections in Virginia or West Virginia for *Mainline* construction. Mot. 11-14. Not so.

To begin, Petitioners never timely presented that argument to NCDEQ, notwithstanding having ample notice of North Carolina's regulatory framework. In comments, Petitioners argued that NCDEQ was obliged to deny certification outright, due to Mountain Valley's alleged noncompliance history. Pet'rs' Ex. 11 at

18. Petitioners first raised their current argument (i.e., that NCDEQ could only certify if it showed that state protections are more stringent than Mainline's) in seeking a temporary administrative stay, after the 401 certification became final. Pet'rs' Ex. 5 at 4-6. The Court should not entertain challenges to an agency's rationale, to which the agency lacked opportunity to respond. *See Pleasant Valley Hosp., Inc. v. Shalala*, 32 F.3d 67, 70 (4th Cir. 1994).

In any event, the record here, and broader legal and regulatory context, defeat that concern. The record before NCDEQ shows what FERC and the D.C. Circuit have repeatedly concluded: that Southgate will be subject to stringent erosion- and sediment-control protections, tailored to protect water quality in the very different circumstances of a pipeline that is ten-times shorter than Mainline, and being installed on much flatter (less challenging) terrain. Ex. F at 11; Ex. N at 10. The record also shows that those protections go beyond the requirements in place for early Mainline construction—i.e., during the extreme rain events in 2018 and 2019 that resulted in the vast majority of the erosion- and sediment-control issues of which Petitioners complain.<sup>6</sup> For example, Southgate will use trenchless crossing methods

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<sup>6</sup> Mountain Valley improved its erosion- and sediment-control practices for Mainline over time, incorporating practical lessons learned from periods of intense rainfall in 2018 and 2019. Mountain Valley incorporated that enhanced suite of protections, among others, into its Southgate plans. *See* Ex. S at 1 (Mountain Valley “incorporated” supplemental measures into the Southgate Project to “account for stormwater and sedimentation . . . during construction,” and these “supplemental

at many waterbodies, with crossing-method determinations tailored to local conditions. *See* Ex. C at 5-1 to 5-13; Ex. H; Ex. I. Mountain Valley agreed to implement erosion- and sediment-control techniques suitable even for North Carolina's HQW Zones, although the project does not actually implicate those areas. *See* Pet'rs' Ex. 7 at 6; Ex. L at 5. Mountain Valley will use special soil stabilization products to stabilize areas of bare soil on slopes. Ex. L at 2, 5; Ex. C at 1-3, 1-4, 5-17. And environmental inspectors can impose supplemental measures when necessary to address particular field conditions. Ex. L at 3.

If the Court entertains Petitioners' forfeited argument, it should at most consider how Southgate's protections relate to those in place for Mainline *at the time of alleged concerns*, primarily the 2018-2019 period. Petitioners' evidence of supposed violations overwhelmingly involves that period, including a self-published "report" (Ex. T) dated 2023 but analyzing earlier incidents.<sup>7</sup> But Mountain Valley,

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actions ... exceed the minimum state design standards and application regulations.").

<sup>7</sup> Petitioners' only examples from beyond that period are one 2023 West Virginia notice of violation, Pet'rs' Ex. 9, and a \$1,750 fine imposed by Virginia DEQ related to compliance with "erosion and sediment control rules" in 2023, Pet'rs' Ex. 10. But West Virginia gave Mountain Valley 20 days to remedy the issues, which it did, fully resolving the matter. Pet'rs' Ex. 9; Ex. R. And the Virginia fine involved a handful of problems most of which were "corrected within a day," and which constituted a fraction of the "more than 47,800 state, federal and third-party environmental inspections and more than 72,000 inspections by MVP's internal environmental team" conducted since 2018. Pet'rs' Ex. 10 at 2.

working closely with regulators, improved construction techniques and water quality protections in response to that 2018-2019 experience.

As FERC has repeatedly recognized—responding to similar arguments challenging Southgate’s environmental reviews based on the same supposed “evidence” of Mainline incidents—sedimentation and erosion issues on the Mainline are not predictive of similar problems for Southgate, given that (1) the Mainline experienced record-breaking precipitation in 2018 and 2019 that is not likely to recur, and (2) Southgate is a smaller project traversing flatter terrain.<sup>8</sup> FERC credited Virginia regulators’ conclusions that most Mainline violations in Virginia involved a subset of erosion- and sediment-control measures concerning recordkeeping and other administrative issues, did not involve sediment leaving the right-of-way, and ultimately resulted in no actual violations of water quality standards.<sup>9</sup> The D.C. Circuit has twice upheld FERC’s reasoning distinguishing Southgate from the Mainline on these grounds.<sup>10</sup> Petitioners ignore this critical context.

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<sup>8</sup> Amendment Order P 81.

<sup>9</sup> *Id.* at P 82 & n.207.

<sup>10</sup> *Appalachian Voices v. FERC*, 139 F.4th 903, 908, 915-16 (D.C. Cir. 2025); *Sierra Club v. FERC*, 38 F.4th 220, 232 (D.C. Cir. 2022).

## II. Petitioners have not shown irreparable harm.

Petitioners must show that irreparable harm is likely, not just a “possibility.” *Nken*, 556 U.S. at 434 (citation omitted).

Data and analysis of Mainline construction disproves Petitioners’ assertions that pipeline stream crossings necessarily cause irreparable harm. *See* Mot. 18-19, 22. As Virginia regulators observed in certifying Southgate, “the Mainline [was] the most regulated, inspected and monitored linear utility construction project in Virginia in recent history, and perhaps ever.”<sup>11</sup> Despite such scrutiny, regulators have consistently concluded that “most of the violations that occurred during construction of the Mainline System did not result in resource impacts,”<sup>12</sup> and that “[n]one of the various inspection or monitoring programs for [the] Mainline identified any significant impacts to water quality attributable to Mountain Valley.”<sup>13</sup>

Those findings are supported by the USGS Report, which found *no* long-term impacts on water temperature or turbidity from Mainline construction. Ex. N at 7, 56-58. Environmental impacts that dissipate promptly are not “irreparable.” *See Mountain Valley Pipeline, LLC v. 6.56 Acres of Land*, 915 F.3d 197, 218 (4th Cir.

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<sup>11</sup> Ex. V at 32.

<sup>12</sup> *E.g.*, Amendment Order PP 81-82 & n.207.

<sup>13</sup> Ex. V at 32.

2019) (“temporary loss is not irreparable”); accord *Optimus Steel, LLC v. U.S. Army Corps of Eng’rs*, 492 F. Supp. 3d 701, 725 (E.D. Tex. 2020) (similar, for pipeline).

These data-driven, project-specific findings by expert agencies refute the assertions in the engineering report commissioned by Petitioners, which abstractly claims that Southgate’s stream crossings will cause “long-term impacts” to water quality. See Mot. at 18-19 (quoting Pet’rs’ Ex. 4 at 1-2). This Court’s order in *Sierra Club v. U.S. Army Corps of Engineers*, 981 F.3d 251 (4th Cir. 2020) (see Mot. 19-20), involved the ten-times-longer Mainline, and predated the empirical analysis now available.<sup>14</sup> This Court discussed potential environmental impacts of an earlier version of Southgate, in *Mountain Valley*, 990 F.3d at 822. But NCDEQ found that construction of even that larger project would not violate state water-quality standards. *Id.* at 825. Southgate was downsized after that opinion, and the North Carolina segment is only approximately 5 miles (originally 47), crossing 83% fewer waterbodies and wetlands. Ex. A ¶8.

Petitioners’ declarations cannot show irreparable harm. Gary Purgason expresses concern primarily about Southgate’s impacts on the Dan River. *E.g.*, Pet’rs’ Ex. 14 at ¶¶9-23, 40-45 (“Purgason Decl.”). But *Mountain Valley* will **bore**

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<sup>14</sup> In *Sierra Club v. Tennessee Department of Environment & Conservation*, No. 23-3682, 2024 WL 4472048 (6th Cir. Oct. 11, 2024), the panel later denied the petition for review, lifting the stay. *Sierra Club v. Tenn. Dep’t of Env’t & Conservation*, 133 F.4th 661 (6th Cir. 2025).

*under* that river, avoiding instream impacts. Ex. C at 4-1. And Mountain Valley will ensure that the Dan River (and Draper Landing) remain accessible for recreation and other uses throughout Southgate's construction. Ex. A ¶27. Mr. Purgason also mentions Town Creek, Sandy Creek, and the Banister River. Purgason Decl. ¶12. Southgate will not cross Town Creek. See Ex. A ¶27. And Sandy Creek and the Banister River are not located in North Carolina, and thus fall outside NCDEQ's jurisdiction. Ex. D at 21, 39. The Banister River crossing will also be trenchless. Ex. H. Mr. Purgason does not specify any other tributaries on Southgate's route, or planned crossing sites, where he spends time. See Purgason Decl. ¶¶12, 14. And the science shows that any impacts, from crossing the Dan River or its tributaries, will be minor and temporary. *Supra* p. 15.

Steven Pulliam is likewise primarily concerned with the Dan River, Pet's Ex. 14 at ¶¶6-28 ("Pulliam Decl."), which will be crossed using a trenchless method, Ex. C at 4-1. He mentions Dry Creek and Cascade Creek, and says that he samples the Mayo, Smith, and Banister Rivers. Pulliam Decl. ¶¶6, 13-14. Southgate will not cross the Smith or Mayo Rivers. See Ex. A ¶27. The Banister River (located outside North Carolina), Dry Creek, and Cascade Creek will have trenchless crossings. Ex. E at 12; Ex. I. Mr. Pulliam does not claim to spend time near the proposed crossings of any other waterbodies or wetlands. And again, any impacts will be temporary.

Neither declarant claims to be affected by site-preparation or other upland work, which Petitioners relegate to a footnote. Mot. 20 n.40. Tree clearing for construction does not necessarily constitute irreparable harm. *E.g.*, *Sierra Club v. U.S. Army Corps of Eng'rs*, 990 F. Supp. 2d 9, 39 (D.D.C. 2013); *Optimus Steel*, 492 F. Supp. 3d at 725; *cf. Earth Island Inst. v. Carlton*, 626 F.3d 462, 474 (9th Cir. 2010) (“squarely reject[ing]” notion “that logging is per se enough to warrant” equitable relief). Such concern is especially unwarranted where, as here, a pipeline is mostly installed within an existing right-of-way that was **already** largely cleared of trees. *See Sierra Club*, 990 F. Supp. 2d at 39; Ex. A ¶9.

Petitioners ultimately assume that stream/wetland crossings and other aspects of pipeline construction, of whatever magnitude and no matter how tightly regulated, necessarily constitute irreparable harm. That cannot be the law. *See Optimus Steel*, 492 F. Supp. 3d at 712, 725; *Sierra Club v. U.S. Army Corps of Eng'rs*, 482 F. Supp. 3d 543, 559-60 (W.D. Tex. 2020). Disturbed surface areas and potential wetlands impacts exist for construction projects of almost any kind—from housing to hospitals, power lines to wind farms—which are not subject to presumptive stays. The permanent impacts here are small. *See* Mot. 18 (“52 linear feet of stream and 3 acres of wetlands”). And Petitioners’ references to “trench[ing] or blast[ing]” (Mot. 1) ignore that Mountain Valley will bore **under** key streams, and all crossings are subject to robust regulation. Ex. C at 1-3, 5-16 to 5-17.

### III. The balance of the equities and public interest disfavor a stay.

Southgate's capacity is 100% subscribed by local utilities. Amendment Order PP 7, 87. Southgate will serve intensifying regional demand; bring supply and operational diversity to a region served by a single pipeline; facilitate Duke's retirement of higher-emitting coal-fired plants; and bolster electric reliability. *Id.* PP 23-24, 29; Ex. B ¶¶13-20, 22-26. As FERC found, "the public convenience and necessity requires approval of" Southgate. Amendment Order P 87; *see* Ex. A ¶35 (jobs and tax revenues).

Mountain Valley must observe a strict construction schedule to meet Southgate's in-service date. Ex. A ¶¶20-24, 28-30. Although Mountain Valley originally anticipated starting construction later in 2026, *see* Mot. 22, its current schedule accounts for the realities of permitting, logistical, and litigation-related delays that pipeline projects necessarily face—due partly to Petitioners' relentless litigation campaign. Petitioners ask this Court to freeze the project for 6-9 months or longer, by which time the in-service date will be around the corner. And delays are often non-linear. Regulatory and practical restrictions, and the potential unavailability of key contractors if schedules shift, mean that even a short delay can have cascading effects. Ex. A ¶¶28-37.<sup>15</sup>

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<sup>15</sup> Petitioners cannot profess surprise at construction timing, Mot. 1-2, 18. In January 2026, following receipt of key authorizations, Mountain Valley publicly announced its intent to start in March 2026. *See, e.g.*, Ex. O at 16; Ex. P at 3; Ex. Q at 3.

Mountain Valley has invested enormous capital to develop and permit Southgate—to date, some \$120 million, including about \$38 million for materials. *Id.* ¶¶32-34. A stay would force Mountain Valley to incur additional supply-related costs. *Id.* ¶¶28-29, 37. Mountain Valley cannot offset any costs or earn any return until Southgate enters service.

### **CONCLUSION**

The Motion should be denied.

Date: March 16, 2026

Respectfully submitted,

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### CERTIFICATE OF COMPLIANCE

This response complies with the word limit set in Federal Rule of Appellate Procedure 27(d)(2) because it contains 5,188 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) and 27(d)(2).

This filing complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that on March 16, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system, and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

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