

Freeda Cathcart
Soil and Water Conservation District Director representing Roanoke City
February 21, 2023 via email to SM.FS.GWJNF-PA@usda.gov

Dr. Wilkes
Under Secretary for Natural Resources and Environment at USDA

RE: Mountain Valley Pipeline and Equitrans Expansion Project Supplemental EIS #50036

Dear Dr. Wilkes,

Please protect the Jefferson National Forest and select Alternative 1, the No Action alternative. The Mountain Valley Pipeline is inconsistent with the Forest Plan, and I urge you to reject the eleven proposed amendments and exceptions for the following reasons:

1. Location: Mountain Valley appears to admit that they are either unwilling or unable to execute their project at the current route location without polluting the water and harming the forest ecosystem.¹
2. Transparency and Accountability: Mountain Valley appears to be incapable of being able to execute the project responsibly.
3. New information must be evaluated and open to public comment before approving the proposed amendments and exceptions.

1. Location: Mountain Valley appears to admit that they are either unwilling or unable to execute their project with adequate erosion and sediment controls to keep [nonpoint source pollution](#) from entering the waterways and harming the forest.

Mountain Valley Pipeline's record of allowing [nonpoint source pollution](#)² into sensitive areas like the tributaries for the Roanoke River and the principal remaining habitat for the endangered [Roanoke logperch](#) is unacceptable.³ Instead of doing the necessary research and development to execute their project successfully, Mountain Valley continues to try to be exempted from the rules. In an apparent admission that Mountain Valley can't build the project without violating environmental laws, they tried to get an act of Congress to exempt their project from environmental protections.⁴

While Roanoke City isn't downstream from the Jefferson National Forest watershed, the harm Roanoke City has experienced downstream from the Mountain Valley project is a warning for the Jefferson National Forest. Roanoke City passed a [resolution](#) on September 28, 2017 that contained the following information:

- The Roanoke River & its tributaries are an essential economic component in the expansion of the

¹ April 20, 2021 letter from Mountain Valley Pipeline sent to Melanie Davenport, Director Water Division for the Virginia Department of Environmental Quality.

² Definition of nonpoint source pollution includes sediment from improperly managed construction sites.

³ Current threats to the Roanoke logperch are nonpoint source pollution and spills and accidents associated with chemical releases and destruction and degradation of habitat. Small logperch populations could go extinct with minor habitat degradation

⁴<https://biologicaldiversity.org/w/news/press-releases/750-groups-blast-manchin-plot-to-include-dirty-deal-in-defense-bill-2022-12-05/>

regional economy.

- The Upper Roanoke River and many of its tributaries have been listed on the United States Environmental Protection Agency's 303(d) list as "impaired" for excessive sediment loading.
- The FEIS prepared for the MVP Project estimates the MVP Project will increase the baseline sediment load in the Upper Roanoke River by at least 2%, a conservative estimate given that the FEIS does not include a study of the estimated sediment load increases resulting from project construction in areas located downstream of the Jefferson National Forest, even though the MVP Project construction area plans indicate that the project will cross the Upper Roanoke River and its tributaries as many as 100 to 120 times between the City of Roanoke and the Jefferson National Forest, potentially fouling the Spring Hollow Drinking Water Reservoir and the river's traverse into and through the City of Roanoke.

Roanoke City had valid concerns about the sediment load from the MVP harming the Roanoke River in 2017 when the MVP was projecting completion of their project by the end of 2018. Roanoke City taxpayers are expected to owe at least \$36 million for MVP's stormwater sedimentation cleanup. That cost estimate was predicated on MVP's assurance that they would protect our water quality. However, MVP has failed to protect our water quality, racking up \$2 million of fines based on hundreds of violations in Virginia.

The Virginia Association of Professional Soil Scientists have repeatedly requested federal and state agencies to make MVP complete an Order 1 Soil Survey with ground truthing to provide the necessary information for their sediment-control measures in order to design them to be highly effective.⁵ Even after hundreds of violations and over \$2 million of fines, MVP continues to ignore the recommendations of scientists and engineers to revise their erosion and sediment controls. Instead, MVP insists they are following Virginia's regulations. MVP's response to the repeated pleas to conduct an Order 1 Soil Study with ground truthing contained the following statement:

"No erosion and sediment control in existence can remove 100% of the sediment and dissolved materials in stormwater runoff, and Virginia's regulations do not require the impossible. If controls are implemented in accordance with the approved plan, then the discharge of stormwater from a site is authorized."⁶

Mountain Valley has lost their permits multiple times for the failure of their erosion and sediments controls that caused nonpoint source pollution to harm waterways. The sentiments expressed in the following communications would also apply to protecting the forest from harm due to the Mountain Valley Pipeline:

On October 28, 2020 the Chair of the Blue Soil and Water Conservation Board, Daphne Jamison, sent Director Paylor a letter that contained the following information:

"The Blue Ridge Soil & Water Conservation District has worked with landowners in Franklin County for 80 years to reduce soil erosion and to convince the landowners to adopt farming practices which protect highly erodible soils and steep slopes from land disturbing activities. In working with these landowners, we partner with Virginia and USDA agencies. There are always requirements and specifications (rules) in these practices and our clients (local farmers) are willing to abide by these rules."

⁵ Dec. 5, 2017 letter from VAPSS to Virginia State Water Control Board copied to other state and federal agencies and December 9, 2020 letter from VAPSS to Virginia State Water Control Board copied to other state and federal agencies.

⁶ April 20, 2021 letter from MVP to Melanie Davenport, Director Water Division with the Virginia Department of Environmental Quality

*Our citizen board expects the same of the Company building the Mountain Valley Pipeline. Disturbing soil for a farm would not be approved on mountains as steep as where this pipeline is being installed. The Blue Ridge Soil & Water Conservation District Board also expects our state and federal agencies to be diligent and forceful about enforcing regulations to prevent soil erosion on these highly erodible and **steep mountains in Franklin County.***

On November 10, 2020 the Chair of the Blue Soil and Water Conservation Board, Daphne Jamison, sent Director Paylor a letter that contained the following information:

“Our Board agrees with Roanoke County (letter sent October 6, 2020) that DEQ should grant no authorization for MVP to resume work until requirements to prevent erosion and sedimentation are in place and agreed to by MVP.”

For almost two years, I’ve documented nonpoint source pollution from the MVP project entering the tributaries to the Roanoke River where the Mountain Valley Pipeline corridor intersects with Yellow Finch Lane (a designated project access road) in Elliston. This is the same location where [Director Paylor said in a statement that the department was “appalled that construction priorities and deadline pressures would ever rise above the proper and appropriate use of erosion control measures.”](#) Since August 2019, the only construction work Mountain Valley Pipeline has done at this location has been installing and maintaining erosion and sediment controls (except in March, 2021 when Mountain Valley Pipeline felled the last remaining trees on their corridor).

Our region is often subjected to scattered rainstorms. Where one area might receive inches of rain, another may receive less than an inch. For instance this [slide presentation](#) containing GPS, date and time stamped documentation was recorded on June 10, 2021 (after several days of rain it only amounted to one inch of precipitation) and June 11, 2021 (there was only a half an inch of precipitation), yet MVP was still unable to keep the nonpoint source pollution from entering the tributaries for the Roanoke River. This [video](#) taken on June 11, 2021 substantiates the concerns of the Virginia Association of Professional Soil Scientists as it clearly documents the “tunneling” phenomena that happens when stormwater puts pressure on less dense soils creating a tunnel for the sediment filled water to flow into the tributaries. This [video](#) taken on March 28, 2021, before the leaves came out, conclusively connects the MVP project to the nonpoint source pollution entering the stream.

Mountain Valley chose to move the corridor route to go through the steep terrain. Since 2013, the EPA has designated the Virginia Department of Environmental Quality to enforce nonpoint source pollution.

The recent revised version of the Virginia DEQ Nonpoint Source Pollution Management Program Plan⁷ doesn’t appear to include poorly managed construction sites. The EPA definition of nonpoint source pollution includes: “Sediment from improperly managed construction sites, crop and forest lands, and [eroding streambanks](#)”⁸. The most recent version of the Virginia Nonpoint Source Pollution Management Program Plan was finalized on January 15, 2020. This was months before the [U.S. Supreme Court decision Maui v. Hawaii Wildlife Fund April 23, 2020](#) that included following:

⁷ [Virginia Nonpoint Source Pollution Management Program Plan final 1/15/2020](#)

⁸ [EPA Basic Information about Nonpoint Source \(NPS\) Pollution](#)

“Over the years, courts and EPA have tried to find general language that will reflect a middle ground between these extremes. The statute’s words reflect Congress’ basic aim to provide federal regulation of identifiable sources of pollutants entering navigable waters without undermining the States’ longstanding regulatory authority over land and groundwater. We hold that the statute requires a permit when there is a direct discharge from a point source into navigable waters or when there is the functional equivalent of a direct discharge. We think this phrase best captures, in broad terms, those circumstances in which Congress intended to require a federal permit. That is, an addition falls within the statutory requirement that it be “from any point source” when a point source directly deposits pollutants into navigable waters, or when the discharge reaches the same result through roughly similar means.”

While normally the Virginia DEQ Nonpoint Source Pollution Management Program Plan isn’t expected to be updated for another five years, the recent Supreme Court ruling after its last update would appear to necessitate an immediate update and enforcement of nonpoint source pollution incidents to protect Virginia’s waterways from poorly managed construction projects like the massive Mountain Valley Pipeline.

“The plan describes both “reactive” and “proactive” elements of Virginia’s NPS Management Program. DEQ is the lead agency for addressing known impairments given its expertise and resources for monitoring, assessment, TMDL development, implementation planning, and implementation projects. Water resource protection efforts are led by several partners, such as VDH (surface water source protection) and DCR (Healthy Waters). Notably, the Healthy Waters Program operates from a basic understanding that the conservation and protection of ecologically healthy waters is environmentally and economically prudent.”⁹

Melanie Davenport, Director of Water Permitting, wrote the following in response to my concerns regarding nonpoint source pollution from the Mountain Valley Pipeline project entering the habitat for the endangered Roanoke logperch:

“DEQ has never received a report of dead or distressed fish, nor has DEQ staffer its third party compliance contractor ever observed dead or distressed fish.”

However information from the Roanoke logperch Recovery Plan focuses on protecting the habitat for the fish instead of looking for dead or distressed fish:

“Excessive silt deposition reduces habitat heterogeneity and primary productivity; increases egg and larval mortality; abrades organisms; and alters, degrades, and entombs macrobenthic communities (Burkhead and Jenkins 1991).”¹⁰

2. Transparency and Accountability: Mountain Valley appears to be unwilling or unable to execute the project responsibly.

In 2021, our area had an unusually dry spring. However, on the day before thunderstorms were predicted in

⁹ Virginia Nonpoint Source Pollution Management Program Plan final 1/15/2020

¹⁰ Roanoke Logperch Recovery Plan prepared for Region 5 U.S. Fish and Wildlife Service Newton Corner Massachusetts March 20, 1992

the forecast, MVP decided to work on one of the steepest slopes along the corridor. The [Roanoke Times photographer documented MVP's work](#) on that slope known as Adney Gap on May 27, 2021. The slope was so steep that four bulldozers had to be cabled together. The next day we had severe thunderstorms as predicted.

This is not the first time MVP has ignored weather forecasts and conducted work making the slopes vulnerable to erosion and sediment pollution entering our waterways. Basic common sense should keep a contractor from risking a bad outcome that could jeopardize the success of the project. The photographer confirmed that there's a stream at the bottom of Adney Gap's steep slope and told me that MVP did have erosion and sediment controls in place. In November 2020, MVP commenced intensive land disturbance when the weather was forecasting two named large tropical depressions headed for our region. MVP's controls weren't sufficient to protect the waterways as this [documentation](#) proves on a slope not nearly as steep as Adney Gap. This is because the water goes under the controls as evidenced by this photograph:



MVP's lawyer claimed in the April 10, 2021 letter to Melanie Davenport that *"In this case, there is no stormwater issuing from the holes, which are high on the face of the fabric and appear to be above the portion of the fabric with staining from contact with stormwater. Thus, these controls were functioning as intended at the time of Ms. Cathcart's visit. As part of the regular maintenance program, the fabric on the super silt fence at this location was flagged for repair by a Mountain Valley inspector and replaced on March 31."* However on April 17, 2021, I showed a State Water Control Board member, James Lofton, the holes in the super silt fence which the GPS, date and time stamped photograph recorded on April 10. When the following photograph was taken at the same location on April 24, 2021, the holes were still there.



On May 15, 2020 I showed this same location to John McCutcheon and Cody Bain before the holes had developed because the water was going under the fence creating nonpoint source pollution on its way to the tributaries for the Roanoke River. Here's a [video](#) from June 17, 2020 with water pouring through the first holes in the fence. This incident was [reported to the DEQ on June 18, 2020](#). When I spoke to John McCutcheon this summer about the holes still being in the super silt fence, he dismissed my concerns claiming they were only pinholes. Here's a close up photo showing how large one of the holes were with the fabric stained with sediment:



Finally after 15 months of reporting MVP patched the fabric in the super silt fence, but I never found where DEQ issued any violations to the MVP for failure to maintain their erosion and sediment controls.

MVP's lawyer claimed in the same April 10, 2021 letter to Melanie Davenport that my reporting of the MVP's controls failing wasn't fair because MVP had to use heavy equipment to remove the tree sitters. I've been reporting the same nonpoint source pollution events at the same locations for over a year. As I explained to Mr. McCutcheon, it was frustrating to report the incidents only to discover that after MVP addressed the control failures, the nonpoint source pollution entering the tributaries was worse. For example MVP's lawyer said in his April 10, 2021 letter that *"Mountain Valley responded quickly and effectively to correct the damage caused by the extraction of the protesters."*

Unfortunately, as this [video](#) taken on June 11, 2021 shows: after a half inch of rain, MVP's "fix" diverted the runoff that used to go across the lane to a riparian buffer before going to the stream. Now MVP's new controls create a dam causing the runoff to go directly to a tributary that flows through the culvert under the lane and directly into the stream. Compare that to the [video](#) taken on March 31, 2021 after only 0.4 inches of rain where one can see the culvert through the bare branches. The solution to the build-up of water on the dirt access road should have been to have it graded so the water could drain towards the riparian buffer instead of diverting the water to the culvert. I've submitted multiple pollution reports documenting MVP's controls being the problem at this location as this [video](#) proves. MVP's land agent met the landowner at this location and told him they were just there to "check a box". The last time I visited the site, the MVP still hadn't fixed the problem and DEQ hasn't issued a violation to the MVP.

Law enforcement has also learned not to trust MVP. When state troopers refused to arrest citizen monitors who had permission to be on the property from the landowner, MVP still filed a charge with the county. The commonwealth attorney requested the charges be dropped and the court granted that request. A civil suit was filed against MVP and Global Security for conspiring to file charges with "malice, ill will and a conscious disregard" on behalf of the citizen monitors.¹¹ The suit was settled out of court with the contingent that the people who brought the suit couldn't discuss the case. MVP has a history of preventing people from exercising their first amendment free speech right after agreeing to a settlement.

One of MVP's contractors is suing MVP. U.S. Trinity urged that "Notice of Mechanic's Liens be enforced and that the Pipeline be sold to satisfy the sum determined to be due Trinity up to the value of its lien (\$102,469,189.65)."¹²

MVP's lawyer tried to explain to Director Melanie Davenport why MVP's erosion and sediment controls were allowing nonpoint source pollution into the tributaries for the Roanoke River at the end of March 2021 by claiming that, *"The occupants of the trees disobeyed a court order to come down, leaving law enforcement agencies no alternative but to physically extract them. The extraction was a complex operation involving*

¹¹ Roanoke Times article December 13, 2018 [Lawsuits claim false arrests by Mountain Valley Pipeline's security company](#)

¹² Pittsburgh Business Times article August 17, 2020 [Pipeline construction firm files lawsuit against Mountain Valley Pipeline](#)

numerous law enforcement personnel and vehicles operating at the site over two days (March 23 and 24). A 100-ton crane had to be brought up Yellow Finch Lane and staged onsite. As a result of the extraction operation, the road became heavily rutted, trees were cut, extensive ground disturbance occurred both on and off Mountain Valley's right-of-way, and many of the Project's erosion and sediment controls were damaged or destroyed."¹³

However, this [Roanoke Times article](#) clarifies that it was MVP who was responsible for the extraction and paid for it:

"He [the judge] also ordered the defendants to pay Mountain Valley the \$141,386 it cost for a lengthy extraction that involved using a crane to hoist two state police officers to where the protesters were chained to a chestnut oak and a white pine, on wooden platforms about 50 feet above the ground near the top of a steep slope."

MVP appears to fail to learn from the past and continues to use poor judgement to execute their project while misleading the DEQ. The tree sitters had been disobeying the court order since November 2020. The trees they were occupying were next to a stream and wetlands that MVP still doesn't have a permit to cross that had been clearly marked with an Aquarian Resource Buffer sign. MVP chose to extract the tree sitters when rain was predicted in the forecast leading to even more sedimentation entering the habitat for the endangered Roanoke logperch during their spawning season. This Roanoke Times article [Spring belongs to the Roanoke logperch](#) explains the importance of spring for the habitat of the endangered Roanoke logperch: *"From March 15 to June 30, nothing larger than a work boot should enter the river, said Chuck Van Allman, Salem's city engineer. That will clear the way for the April and May spawning season. "You don't do anything to interrupt the ..." Van Allman paused for the right word, "... expansion of the species. No one likes to be interrupted." That is just as true for construction work. Despite planning for the spring restriction on the Salem job, which will add two lanes to the Colorado Street bridge, accommodating the fish has required paperwork and patience."*

MVP left objects larger than a work boot in the stream after the extraction and during the endangered Roanoke logperch's spawning season. MVP left large logs and felled trees in the stream:



¹³ April 20, 2021 letter from Mountain Valley Pipeline sent to Melanie Davenport, Director Water Division for the Virginia Department of Environmental Quality.

MVP's rush to complete the project has even led to an unnecessary death. "Because MVP and Precision had a tight construction schedule, they opted out of waiting for the correct environmental permits and the green light to use heavy equipment and instead pushed for Beeghly and its workers to act fast, Amy Blough said in the lawsuit. Also, rather than marking danger trees, the trees were allowed to be felled by manual equipment, she said."¹⁴

Franklin County is still awaiting the answers to these questions:

1. *Did FERC require any verification of insurance for EquiTrans/MVP or its subcontractors?*
2. *Did FERC require EquiTrans/MVP or its subcontractors to post a performance bond for work in Virginia and/or Franklin County.*
3. *Did FERC require EquiTrans/MVP or its subcontractors to create a mitigation fund for activities in Virginia and/or Franklin County.*
4. *What other surety has FERC required to ensure that sites will be reclaimed/stabilized, pipe removed, etc. if the project is discontinued or abandoned?*

*"Franklin County feels that it is vital for FERC to have all the necessary sureties and bonding in place to protect its citizens and ensure completion of this project or provide FERC the ability to reclaim/restore properties should the project be discontinued or abandoned."*¹⁵

The manner in which MVP has been executing their project has created distrust with contractors, law enforcement, localities and elected officials. The evidence of MVP's lack of planning and poor execution of the project proves that MVP can't be trusted to cross our waterways or forest without inflicting further harm.

3. New information must be evaluated and open to public comment before approving the proposed amendments and exceptions.

Certified professional soil scientist, Nan Gray, filed the following new information and request for follow up:

"Sinking Creek Mountain seeps Water which follows the rock face, under unconsolidated and consolidated material, until it puddles on manmade benches, which are currently saturated and squishy wet during this freeze-thaw cycle of Winter, indicating water penetration and retention, which gets heavy on a near vertical rockface. The water flows year-round, not just at Winter.

I have not seen reports of small ground movement, slips, scarps forming in the mvp ROW in the JNF, and not sure why this most dangerous of erosion, at the top of the Sinking Creek Mountain, at the blast cut is under-reported.

Obviously, MVP blasted the Sinking Creek Mountain ridge from Craig County into the Jefferson National Forest, irreparably damaging the Jefferson National Forest and Sinking Creek Mountain and Craig County, Virginia.

-Mindful of the 2018 blasting through the toughest Tuscarora Sandstone that has armored Sinking Creek Mountain for millennia; there is no way mvp's unpermitted blasting through JNF lands left the rest of

¹⁴ Pittsylvania Record article August 15, 2019 [Widow blames pipeline companies after husband killed by falling tree.](#)

¹⁵ Letter from Franklin County to FERC dated March 26, 2021.

the surrounding ground, unimpacted. Blasting that hard spine of the mountain lasted for more than two days. Blasting vibrations and gravity would have accelerated ground movement of boulder fields to migrate downhill, bit by bit. Blasting vibrations were felt two miles away and reported to FERC and DEQ. Not until much later did mvp admit to overcharging blast holes to break the mountain's hard rock. LiDAR imagery would reveal how much ground movement has happened before any more disturbance adds to a dangerous situation. LiDAR should show displacement and possible strain of the boulder field debris flows.

LiDAR (composite) maps must be compared to measure how much ground movement has happened since 2017, after blasting in 2018 and the most current LiDAR, hopefully as recent as January 2023.

I am respectfully requesting "LiDAR" maps of these years (2017, 2019, 2023) so that the Public may study them for the debris flows to the west of the mvp ROW blast cut in Sinking Creek Mountain. I believe evidence of at least two of the boulder field debris flows are moving based on various observations of multiple indicators, on the ground, on site recorded early January 2023. Specific study area should include within 2 miles of Blast Zone along west side of ROW, on both Jefferson National Forest land and Private land sides of the Sinking Creek Mountain ridge, please. Southeast face of Sinking Creek Mountain is Jefferson National Forest and the northface of the mountain is Private land, also dangerously impacted by mvp project route. Many potential places for stress cracks to happen on both sides of the mountain.

Therefore; given the persistence of gravity, water and unstable slopes, further disturbance to the irreparable damage done to Sinking Creek Mountain by MVP will further degrade the land in the Jefferson National Forest and promote continuous erosion of disturbed ground. All pipe needs to be removed and ground repaired, and vegetated.

Current LiDAR maps would show where the ground has moved within the last five years within the area of interest of the two-mile radius of the pipeline, starting at the crest of Sinking Creek Mountain at the mvp ROW blast cut and west along the mountain ridge, showing both north face and south face slopes. Several boulder fields exist in the area of interest which could have had accelerated downslope migration initiated by 2018 blasting of the crest of the mountain. The boulder field may have become destabilized and evidence on the ground shows the debris flow is moving or has moved within the last five (5) years.

Ground movement can shear tree roots, reducing water and nutrient uptake of the tree and stunting its growth or reducing its anchor and its survival resilience. Ground movement can shear rocks. Sinking Creek Mountain lies within the Giles Seismic Zone, another area to avoid for the routing or construction of a pipeline.

LiDAR must be updated every three months and carefully reviewed and made Public because the dangers are real to people living downslope of these impacted landslide-trigger areas, that is, areas on Sinking Creek Mountain flank, close to blasting sites.

The mvp should not be allowed into the Jefferson National Forest along it's current preferred route due

to dangers wrapped in the Jefferson National Forest on Sinking Creek Mountain, Craig County/Montgomery Counties, VA.

MVP has created an unstable, regrettable, and dangerous situation at the very top of Sinking Creek Mountain. We need to know how much damage has been done, because the mountain is actively sloughing ground in unabated erosion. LiDAR can offer quantitative ground movement information for calculating soil erosion mass and qualitative LiDAR would hold mvp accountable for that mass wasting volume and LiDAR available for Public review could hopefully save lives.”

Conclusion:

There's substantial evidence, including my attached 2020 affidavit, for the USFS to select Alternative 1, the No Action alternative and reject the eleven proposed amendments and exceptions. The Mountain Valley Pipeline is inconsistent with the Forest Plan.

Sincerely,

Freeda Cathcart

Soil and Water Conservation District Director representing Roanoke City