

Mountain Valley Pipeline: Permitting Issues

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The [Mountain Valley Pipeline](#) (MVP) is planned as a 303-mile natural gas transmission pipeline, currently under construction, which would link natural gas fields in the [Marcellus shale region](#) of West Virginia to the existing Transco gas transmission pipeline in south central Virginia (**Figure 1**). Although the MVP is over 90% constructed, several of its federal permits have been vacated in federal court; construction is currently suspended. A separate pipeline, the proposed [Southgate Project](#)—which is still in development—would extend the MVP into North Carolina. The MVP’s permitting challenges, as well as legislative proposals to approve it, are the subject of debate in Congress.

Figure 1. Mountain Valley and Southgate Pipeline Routes



Source: Courtesy of Institute for Energy Economics and Financial Analysis

MVP Federal and State Permit Status

Like many other large infrastructure projects, the MVP requires authorizations from a range of agencies under various federal statutes. Key agency requirements, and their status, are summarized below.

- **Federal Energy Regulatory Commission (FERC).** Because it is an interstate natural gas pipeline, the MVP requires a certificate of public convenience and necessity from FERC pursuant to Section 7 of the Natural Gas Act. FERC [issued a certificate](#) to the

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MVP in 2017, and has extended the MVP's construction deadline twice, [most recently to October 2026](#).

- **National Park Service (NPS).** The MVP crosses NPS lands under the Blue Ridge Parkway, so it requires an NPS right of way. The agency issued the right of way in 2017 and reissued it in 2020 for 10 years (a typical duration).
- **U.S. Fish and Wildlife Service (FWS).** Federal agencies approving certain parts of the MVP [must consult with FWS](#) under Section 7 of the Endangered Species Act (ESA). The FWS issued a biological opinion in 2020 purporting to satisfy ESA requirements for the project. However, that biological opinion was [vacated and remanded](#) by the U.S. Court of Appeals for the Fourth Circuit in 2022. The court denied a petition for rehearing en banc. FWS must now re-consider the project's potential impacts on certain species and issue a revised Biological Opinion.
- **U.S. Army Corps of Engineers (Corps).** The MVP requires from the Corps a permit under Section 402 of the Clean Water Act (CWA) and under the Rivers and Harbors Act to allow its crossings of waters of the United States. The Corps first decided that the MVP's crossings could be authorized by a general permit, but the Fourth Circuit rejected that option in 2018 and again in 2020. The MVP therefore [applied for an individual permit](#) in February 2021; there has been no agency decision as yet. The Corps has [indicated](#) that it will not grant the permit until there is a final Biological Opinion from FWS.
- **U.S. Forest Service (FS) and Bureau of Land Management (BLM).** The FS and BLM must approve rights of way for the MVP to cross federal land under their jurisdiction, including the Jefferson National Forest. This action also requires an amendment to planning documents for the Jefferson National Forest. The Fourth Circuit has twice vacated and remanded Forest Plans and associated BLM rights of way purporting to authorize the MVP, [first in 2018](#) and then [again in 2022](#). As a result, the pipeline currently lacks approval for a right of way through the forest.

In addition to federal agency authorizations, the MVP requires certain permits from state agencies under federal statute. Under CWA Section 401, state agencies must certify that the federal CWA Section 402 permit will not cause a violation of state water quality standards. The MVP's February 2021 permit application to the Corps included a [request for certification](#) under the Virginia Water Protection program. Virginia [granted the new permit](#) in December 2021. That approval is currently under review by the Fourth Circuit. West Virginia [granted its Section 401 permit](#) for the project also at the end of 2021. West Virginia's approval is the subject of ongoing litigation at the Fourth Circuit.

Legislative Proposals to Approve MVP

The MVP has been a controversial project since it was proposed, including in Congress. Opponents of the project have [expressed concerns](#) about the need for the pipeline, its potential impacts on the environment, and its potential risks to the public, especially in minority and low-income ([environmental justice](#)) communities. MVP's proponents cite its [purported benefits](#) to the economy (e.g., jobs and lower energy prices), domestic gas supply reliability, and its potential role supplying natural gas exports to U.S. allies overseas.

In the face of the ongoing litigation over federal permits and extensive agency reviews that have delayed completion of the pipeline, two legislative proposals in the 117th Congress would require agencies to approve the pipeline. Both the Simplify Timelines and Assure Regulatory Transparency Act (S. 4815) and the draft [Energy Independence and Security Act of 2022](#) (proposed for inclusion in a Continuing Resolution) would require federal agencies to issue outstanding permits, biological opinions, rights of

way, and any other necessary authorizations for the MVP within 21 or 30 days of enactment, respectively. Both proposals would exempt these authorizations from judicial review. The Energy Independence and Security Act would also give the U.S. Court of Appeals for the D.C. Circuit (rather than the Fourth Circuit) jurisdiction over any claim arising from its MVP provisions.

Despite its permitting setbacks, the MVP's developer remains committed to completing the project, targeting an [in-service date by the end of 2023](#). Whether the MVP can be completed on this schedule, or at all, without congressional action is uncertain, although some analysts assert that [the project remains viable](#) without such intervention. As the MVP's permitting process and related litigation continue, the status of the pipeline and its associated natural gas supplies may be an issue for Congress.

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