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November 18, 2019

James Martin, Branch Chief
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Re: Mountain Valley Pipeline, LLC
Mountain Valley Pipeline Project
Docket No. CP16-10-000
Response to November 5, 2019 Letter from Sierra Club

Dear Mr. Martin:

On November 5, 2019, Sierra Club entered a letter (Letter) on the Federal Energy Regulatory Commission's docket for the Mountain Valley Pipeline Project requesting that the Commission suspend the Certificate issued to Mountain Valley Pipeline, LLC for the Project and require the cessation of all Project activities other than "those required to ensure stabilization of previously disturbed areas." There is no basis for Sierra Club's request.¹ Sierra Club relies on incorrect and outdated information, misconstrues the Commission's October 15, 2019 Cessation Order and other orders, and ignores that—pursuant to the Cessation Order— Mountain Valley already has suspended all activities other than those required to stabilize previously disturbed areas. The Commission therefore should deny the request.

Sierra Club's Letter is plainly rooted in its opposition to the Project rather than any noncompliance with the Commission's relevant orders. Sierra Club repeats its previous criticisms of Mountain Valley's now-superseded August 15, 2019 suspension (Suspension) protocol and its disagreement with the Commission's issuance of the Cessation Order and subsequent approvals of limited activities necessary to stabilize and restore the Project site without providing any credible basis for its position. Its solitary goal is to cause further disruption of all Project activities, even if that means interrupting the ongoing stabilization and restoration activities it claims to seek. As such, Sierra Club's attempt to establish itself as the arbiter of the Commission's management of the Project or Mountain Valley's compliance with the Commission's orders should be rejected.

Sierra Club's Letter begins by criticizing the Suspension that Mountain Valley developed and implemented following extensive discussions with the U.S. Fish & Wildlife Service and the Commission. Under that Suspension, Mountain Valley stopped all construction activities that

¹ Mountain Valley does not concede that the Commission has the legal authority to "suspend" Mountain Valley's certificate as requested by Sierra Club. In any event, Sierra Club's Letter presents no grounds to do so here. Mountain Valley reserves the right to address this issue, if the Commission deems necessary.

presented a potential risk to federally listed species or proposed critical habitat areas and completed activities necessary to perform final stabilization to minimize potential impacts, such as sedimentation, that could have resulted from leaving previously disturbed Project areas dormant. *See* Mountain Valley Suspension of Certain Construction Activities (Aug. 15, 2019) (Accession No. 20190815-5160). The Service independently reviewed the Suspension and, as it explained to Sierra Club on August 15, 2019, determined that it was sufficient “to avoid adverse effects to listed species.” *See* Letter from U.S. Fish & Wildlife Service to Sierra Club (Aug. 15, 2019). In addition, the Commission recognized that the Suspension was “subject to Condition 1 of the October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority*” and indicated to Mountain Valley that the activities identified in the Suspension “may not be resumed without prior approval of the Director of the Office of Energy Projects.” Letter from Commission to Mountain Valley (Aug. 16, 2019) (Accession No. 20190816-3023). Mountain Valley fully complied with the terms of the Suspension.

The Commission’s Cessation Order for the Project, issued on October 15, 2019 (Accession No. 20191015-3030), superseded the Suspension. Under the Cessation Order, the Commission directed “that construction activity along all portions of the Project and in all work areas must cease immediately, with the exception of restoration and stabilization of the right-of-way and work areas, which Commission staff believes will be more protective of the environment, including listed species, than leaving these areas in an unstable condition.” *Id.* The Commission explained that Mountain Valley may only complete work “necessary to stabilize and restore previously-disturbed areas along the entire route, provided that these activities do not impact listed species.” *Id.*

Mountain Valley is fully complying with the terms of the Cessation Order, just as it fully complied with the Suspension. Sierra Club does not question Mountain Valley’s compliance. Instead, it argues that the Commission’s orders are insufficient for several reasons, each of which lacks merit.

First, Sierra Club wrongly complains that the Cessation Order is premised on the impacts analysis in the Service’s November 2017 Biological Opinion for the Project. Sierra Club Letter at 4–5. The Cessation Order does not mention the Biological Opinion, and its geographic scope is broader than the Biological Opinion’s impacts analysis would dictate. As with the Suspension, the Cessation Order applies to all activities Project-wide with the potential to pose a risk to listed species.

Second, Sierra Club incorrectly suggests that Mountain Valley is given sole discretion to determine the activities that could pose a risk to listed species. Nothing could be further from the truth. As the Commission is aware, no Project activities may proceed unless the Commission independently reviews them to ensure, “in consultation with the [Service],” that they will not risk effects to listed species or proposed critical habitat. To that end, the Commission required Mountain Valley to provide, by milepost, “the status of project construction (e.g., clearing, grading, trenching, pipe installation, backfilling, and restoration) and an estimate of the time needed to get to the restoration and stabilization phase.” The Commission also required Mountain Valley to file for review and written approval “an updated interim right-of-way and work area stabilization plan for construction activities that have not yet reached restoration and stabilization efforts.” Mountain Valley fully complied with these requirements, enabling the Commission to independently review the submissions and consider additional activities that Mountain Valley

proposed to undertake to achieve restoration or stabilization of previously-disturbed areas of the Project site to protect listed species, human safety, and the environment. *See, e.g.*, Revised Construction Status, Stabilization Plan, and Request to Perform Additional Activities (Oct. 22, 2019) (Accession No. 20191022-5177); Request to Perform Additional Limited Activities (Oct. 16, 2019) (Accession No. 20191017-5013).

After carefully reviewing each of Mountain Valley's submissions, the Commission approved specific limited activities that it determined met the terms of the Cessation Order. On October 17 and 23, 2019, the Commission authorized Mountain Valley to complete certain activities necessary for stabilization and/or restoration that did not involve tree felling and would occur outside of watersheds containing listed species or proposed critical habitat. Commission, Approval of Additional Limited Activities (Oct. 17, 2019) (Accession No. 20191017-3109); Commission, Partial Approval of Additional Limited Activities (Oct. 23, 2019) (Accession No. 20191023-3050) (partially approving Mountain Valley's request to implement certain activities and explaining that it was continuing to evaluate the remaining items). The Commission concluded that these stabilization and restoration activities would be more protective of the environment and listed species. Based on this same rationale, the Commission authorized on October 29, 2019, additional activities necessary to achieve permanent stabilization along Project areas adjacent to steep slopes after inspecting the proposed work site and determining that permanent stabilization in that area provided the most reliable environmental and species protections. Commission, Partial Approval of Additional Limited Activities (Oct. 29, 2019) (Accession No. 20191029-3030).

Accordingly, the Commission has performed robust independent reviews of all proposed Mountain Valley activities under the Cessation Order and has allowed activities to proceed only after verifying that they pose no risk to protected species or their habitat, are necessary to allow for restoration or stabilization of already disturbed areas, and will be more protective of the environment. Sierra Club's bald claims to the contrary are baseless.

Sierra Club's arguments for why the Commission has erred or should do more fall flat. First, and most inexplicably, Sierra Club demands that the Commission limit Mountain Valley's activities to only "those required to ensure stabilization of previously disturbed areas," while simultaneously insisting that the Commission prohibit the activities necessary to do just that. Sierra Club Letter at 1. The Commission has correctly recognized that temporary stabilization on a dormant worksite—unlike permanent stabilization and restoration of that site, which Mountain Valley has sought to achieve wherever possible—creates long-term exposure to erosion and soil movement and threatens plant and wildlife habitat and adjacent waterbodies. *See* Commission, Partial Authorization to Resume Construction (Aug. 29, 2018) (Accession No. 20180829-3026). The Commission's approvals under the Cessation Order advance environmental and species protection as Sierra Club purports to want, while Sierra Club's request would undermine it.

Similarly, Sierra Club argues that Mountain Valley should have been barred from completing limited *upland* trenching along steep slopes that will allow for final stabilization and instead contends that the Commission should require *new construction* of sediment basins and traps "*adjacent to waterways*" and construction of a system of stormwater *channels* across the site. Sierra Club Letter at 6. The work required to undertake these actions is the same type of work Sierra Club is complaining about, except that, instead of achieving more protective permanent

stabilization, Sierra Club's proposed measures would require ground-disturbing activity in areas more likely to risk the direct sedimentation of waterways.

Next, Sierra Club repeatedly insinuates that the activities the Commission has approved to enable restoration and stabilization somehow could result in impacts to listed aquatic species and their habitat. As discussed above, however, the Commission fully analyzed each proposed activity and concluded that the activities it approved "would all be outside of the watersheds where threatened and endangered aquatic species or habitats are known to occur." *See supra* at 2–3. Sierra Club does not attempt to, and cannot, explain how any activity conducted outside of the watershed areas where these species and habitat occur might impact them.

Sierra Club is also wrong to suggest that Mountain Valley's activities have resulted in any increased sedimentation in Roanoke logperch habitat. Since October 15, Mountain Valley has fully complied with the Commission's authorizations and Virginia's independent standards and specifications, all of which are designed to prevent any increase in sedimentation due to the Project.

The pictures of turbid streams and runoff—taken and submitted by a committed opponent of the Project—do not show otherwise. Those pictures were taken on October 20, October 27, and October 31. On those days, Mountain Valley's nearby rain gauges show total rainfall of 2.1 inches, 1.6 inches, and 2.4 inches, respectively, amounts that cannot fairly be described as "relatively mild rain." Sierra Club Letter at Badger Decl. ¶ 16. Rain events of that magnitude will cause erosion along hillsides and turbidity in streams, even in areas undisturbed by construction.

Significantly, Mountain Valley's erosion and sedimentation control devices prevented the Project from causing any increase in erosion and sedimentation during those significant rain events. The Virginia Department of Environmental Quality (DEQ) has now investigated each of the allegations cited in Sierra Club's letter and has found no evidence of either the failure of erosion control devices or increased sedimentation caused by the Project. *See* Exhibits A–E (Investigation Report Nos. 292638, 291556, 291558, 292522, 292491), which are attached to this letter. The Project's system of erosion control devices is working.

Mountain Valley further notes that Sierra Club has omitted material facts that undermine its allegation that the Project's erosion and sedimentation control plan, unprecedented in its rigor and redundancy, is inadequate. Between August 15 and November 1, 2019, the declarant supporting Sierra Club's letter has repeatedly submitted complaints regarding the area in the vicinity of Bradshaw Creek and its confluence with the North Fork of the Roanoke River. Each time, Virginia DEQ investigated the complaint and found no evidence that Mountain Valley's work in this area is causing sedimentation above that which would otherwise occur. Virginia DEQ's investigation reports addressing these complaints are available to the public.² Sierra Club knows about them but has chosen not to acknowledge them.

Lastly, Sierra Club insists that the Commission should require Mountain Valley to engage more inspectors to patrol erosion and sediment controls on a regular basis. Sierra Club Letter at

² *See* <https://www.deq.virginia.gov/Programs/Water/ProtectionRequirementsforPipelines/Multi-facetedInspectionforOversightofPipelineProjects.aspx>.

6. As filings on the Project's docket clearly demonstrate, this already is being done. For example, as stated in the Interim Stabilization Plan, which the Commission approved on October 29, 2019, "Mountain Valley will maintain environmental inspection staff to conduct regular inspections of the right-of-way." Construction Status, Stabilization Plan, and Request to Perform Additional Activities at 6 (Oct. 17, 2019) (Accession No. 20191018-5011); Commission, Approval of Stabilization Plan (Oct. 29, 2019) (Accession No. 20191029-3030). This is in addition to the Commission's ongoing compliance monitoring program for the Project, where on-the-ground monitors are constantly and rigorously assessing and documenting Mountain Valley's compliance with the Commission's orders, including the Cessation Order. *See, e.g.*, Commission, Environmental Compliance Monitoring Program Weekly Summary Report (Oct. 13 – 19) (Accession No. 20191106-4002); Commission, Environmental Compliance Monitoring Program Weekly Summary Report (Oct. 20 – 26) (Accession No. 20191106-4003).

For each of the above reasons, there is no merit to the assertions in Sierra Club's November 5, 2019 Letter. The Commission should deny Sierra Club's request on that basis alone. That said, the Commission also should deny Sierra Club's requests because they are not timely given the remaining construction season. As Mountain Valley explained when it submitted the October 17, 2019 Construction Status Report (Accession No. 20191018-5011), it was "nearing completion of its activities and restoration and stabilization scope for the 2019 construction season." Mountain Valley anticipates completing construction activities for the year later this month. As such, it is unnecessary for the Commission to consider Sierra Club's request to suspend Mountain Valley's construction activities.

If you have any questions, please do not hesitate to contact me at (412) 553-5786 or meggerding@equitransmidstream.com. Thank you.

Respectfully submitted,
MOUNTAIN VALLEY PIPELINE, LLC
by and through its operator,
EQM Gathering Opco, LLC

By: 
Matthew Eggerding
Assistant General Counsel

Attachments

Cc: Elly Benson, Sierra Club
Kevin McArdle, U.S. Department of Justice
Jerome Brooks, Virginia Department of Environmental Quality