

June 22, 2018

The Honorable Matthew J. Strickler
Virginia Secretary of Natural Resources
Via email to: Matt.Strickler@governor.virginia.gov

Re: Request to strictly enforce Atlantic Coast Pipeline “time of year restrictions” and other resource protections developed by Virginia agencies

Dear Secretary Strickler:

The Atlantic Coast Pipeline, as you know, will cross hundreds of miles of Virginia lands and waters, with myriad adverse environmental effects. FERC, with input from other federal and state agencies, studied those environmental effects in the Final Environmental Impact Statement developed and published for the project.

While we maintain that the Final EIS is deeply flawed and insufficient in its analysis of those effects and in its attempts to mitigate them, an important result of that process was the imposition of specific resource protection measures, many of which were developed in conjunction with Virginia agencies, including the Virginia Department of Game and Inland Fisheries. These include important “time of year” restrictions (TOYRs) on in-stream construction for waterbody crossings to protect fisheries (e.g., trout) and sensitive species resources (e.g., James Spiny mussel, Roanoke Logperch, freshwater mussels) during critical periods,¹ and TOYRs and buffers on tree-clearing and other work to protect nesting migratory birds and colonial wading bird rookeries,² among other protective measures.³ With respect to

¹ See Final EIS at 4-113 (“[a]gency-recommended TOYR would also be adhered to” to mitigate impacts on waterbodies); 4-210 (Table 4.6.1-2, setting fisheries and species TOYRs for stream crossings); Appendix K (listing waterbody-specific TOYRs).

² *Id.* at 4-182 (Fish and Wildlife Service tree-clearing TOYRs to protect migratory birds and VDGIF colonial wading bird rookery buffer and TOYR).

³ See, e.g., Final EIS at ES-4, 4-18 to 4-20 (Virginia Department of Conservation and Recreation and Virginia Cave Board and karst terrain), 4-238 (VDGIF and aquatic invasive species mitigation measures), 4-254 and 4-300 (prospective, pre-construction development with DCR of site-specific mitigation measures to avoid impacts to bats and Madison Cave isopod “if data suggests that construction

fisheries, the TOYRs were among the measures FERC relied upon in the Final EIS to “reduce potential impacts on fisheries of special concern” during ACP construction.⁴

Recently, through a Freedom of Information Act records request, it came to our attention that Atlantic Coast Pipeline, LLC and Dominion Energy requested in September 2017 waivers from the TOYRs on in-stream work for over sixty Virginia streams, including some of Virginia’s most pristine and sensitive waters.

Without public notice or input, VDGIF granted many of these waivers in January 2018. We have attached to this letter a copy of Dominion’s request and of VDGIF’s response.⁵ The waivers granted include rescission of the rainbow, brook, and brown trout TOYRs on the Jackson River, one of Virginia’s premier trout rivers, and permission to conduct in-stream construction on at least six Cowpasture River tributaries during the James Spiny mussel TOYR. For other streams, such as Stuart Run, Morris Run, Dowell’s Draft, and Back Creek (Augusta County), VDGIF agreed to totally rescind the applicable trout TOYRs. For thirteen Mill Creek tributaries, the agency offered to allow in-stream construction during the James Spiny mussel restricted period. In many cases, VDGIF made waivers more extensive than what Atlantic and Dominion had asked for.

These rescissions and alterations of TOYRs put in place to protect important public resources are not consistent with the Governor’s promise to protect Virginia rivers and streams from harm caused by pipeline construction and should be reversed. We further request that Virginia publicly commit to strict enforcement of the various resource protection measures imposed by state agencies, and that Virginia will not grant requests for alteration or waiver of these restricted periods and other protective measures without formal public notice and at least a 30-day comment period.

As Dominion falls farther behind its construction schedule for the Atlantic Coast Pipeline, we expect it to seek more waivers of time-of-year restrictions and

activities have the potential to impact subsurface karst features” connected to downstream habitat).

⁴ Final EIS at 4-236.

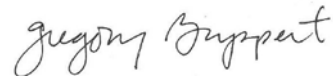
⁵ See Letter from Richard B. Gangle, Dominion Energy Services, Inc., to Amy Ewing, VDGIF, Re: Atlantic Coast Pipeline Waterbody Time of Year Restriction Waiver Request in Virginia (Sept. 8, 2018) and Email from Amy Ewing, VDGIF to Sara Thronson, Environmental Resources Management (Jan. 8, 2018) (attaching table with VDGIF responses to waiver requests) (together attached hereto as Attachment A).

other important mitigation measures. Virginia must hold the line against this pressure.

These measures should not be weakened, altered, or eliminated without public notice and the opportunity for public input.

Thank you for your attention to this important issue.

Sincerely,

A handwritten signature in cursive script that reads "Gregory Buppert".

Gregory Buppert
Jonathan M. Gendzier
Southern Environmental Law Center
201 W. Main Street, Suite 14
Charlottesville, VA 22902
(434) 977-4090

cc:

David Whitehurst, Bureau Director, Bureau of Wildlife Resources, VDGIF
Clark Mercer, Chief of Staff, Office of the Governor of Virginia