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Federal court rules that DEQ acted legally in denying MVP Southgate permit, but must explain itself

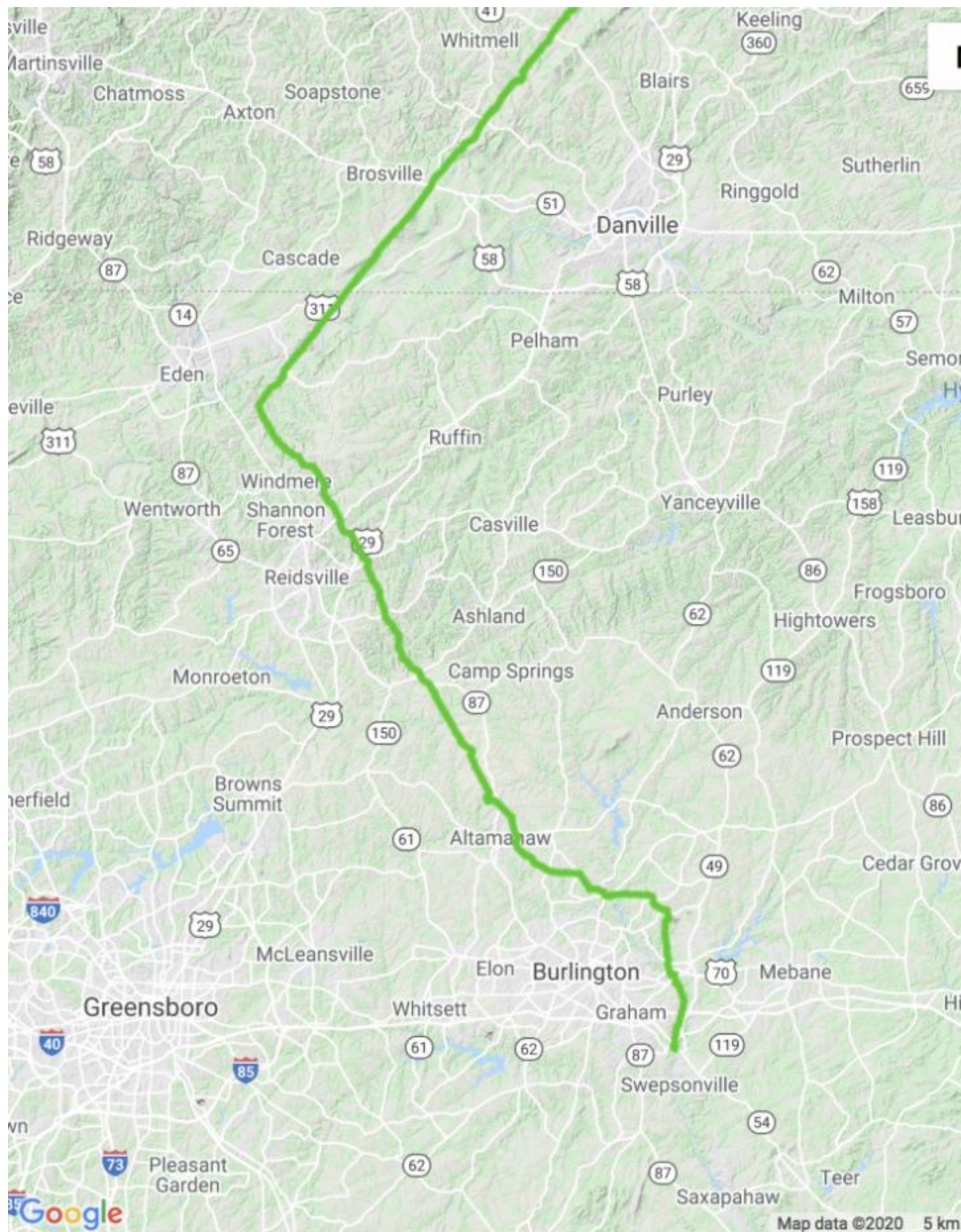


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NOTE: Map is accurate as of October 2019

Approximate route of the Mountain Valley Pipeline Southgate project

State environmental officials acted within their legal authority when denying a water quality permit for the Mountain Valley Pipeline Southgate project, but part of their justification was insufficient, a [federal appeals court ruled yesterday](#).

A three-judge panel from the Fourth Circuit Court of Appeals in Virginia struck the denial and sent it back to the NC Department of Environmental Quality for additional explanation.

In the ruling, judges determined that DEQ's decision was consistent with state and federal law. The agency also adequately explained its concerns about the viability of Southgate in the context of the delayed mainline project.

But where DEQ erred, the court said, is that it failed to fully explain why it chose to deny the permit outright rather than granting a conditional one, contingent on the successful construction of the main line.

“The Fourth Circuit ruling vindicates DEQ's concerns about the MVP Southgate pipeline extension and the uncertainty of the mainline project,” said DEQ spokeswoman Anna Gurney. “The ruling upholds the state's authority to determine that building the Southgate extension at this time poses unnecessary risk to North Carolina's streams, lakes, and wetlands. DEQ's next steps currently are under review.”

The Southgate project is meant to be an extension of the larger 303-mile Mountain Valley Pipeline, which runs from northwest West Virginia through Virginia. The Southgate portion would start in Chatham County, Va., enter North Carolina in Eden, and would traverse nearly 50 miles of land in Rockingham and Alamance counties before ending near Graham.

MVP is owned by EQM Midstream Partners, headquartered near Pittsburgh.

Last August, [DEQ denied a key water quality](#) permit for the pipeline. The agency cited several reasons: environmental damage, environmental justice — the route turns through several low-income communities — and concerns that if the main Mountain Valley Pipeline isn't built, the degradation of streams, and [destruction of wetlands and forests](#) during construction would have been for naught.

In total, the North Carolina segment [would cross 207 streams](#), three ponds and temporarily affect [17,726 linear feet of streams](#), 6,538 square feet of open waters, and [14 acres of wetlands](#); another 0.02 of an acre of wetlands would be permanently damaged. Nearly 14 acres of riparian buffers would also be affected. MVP Southgate would cross the Dan River, home to endangered and threatened species, and Stony Creek Reservoir, the main drinking water supply for the City of Burlington.

“This pipeline poses serious risks to water quality throughout the Haw River watershed, with no benefits to the public,” said Emily Sutton, the Haw Riverkeeper, one of the intervenors in the case. “In denying the certification, the department prioritized the health of our communities and

our rivers and streams over an unnecessary fossil fuel project. We are glad that the court found the agency has the authority to do so, and we look forward to the department continuing to protect our waters by again denying the pipeline's certification."

The Southgate project relies on the main Mountain Valley Pipeline. However, construction on the mainline has been delayed because of successful legal challenges to its permits that would allow the route to cross sensitive waterways and forests, some of it federal park land. Contractors for the mainline in Virginia have also been cited with hundreds of environmental violations related to the construction.

MVP Southgate appealed the decision to the Fourth Circuit Court.

During oral arguments in January, attorneys for MVP Southgate said that DEQ's decision to deny was inconsistent. The agency found that if MVP Southgate complied with permit requirements and adequately restored or offset environmental damage, the impacts would be "minimal."

However, MVP attorneys argued, "all of those things were thrown out the window in favor of a determination based on whether the main line may or may not go forward. That's a re-examination of the project's purpose that is outside DEQ's lane."

MVP attorneys also argued that DEQ's denial was "arbitrary and capricious" because it failed to adequately explain its decision."

Attorneys for DEQ countered that the case is about "whether a state can require an applicant to provide reasonable assurance that water impacts will not be objectively unnecessary."

The most significant environmental damage would occur during the pipeline's construction. [Huge swaths of private land were damaged](#) during the construction of part of the Atlantic Coast Pipeline in eastern North Carolina before Duke Energy and Dominion Energy canceled the project.

"Allowing that construction to commence conflicts with clean water rules that environmental impacts must be minimized," DEQ argued.

The judges' ruling largely agreed with DEQ and accepted only part of MVP Southgate's argument: that DEQ must fully explain its reasoning when compared to a hearing officer's report issued after the public comment period ended.

Public comments about MVP Southgate were overwhelmingly opposed to the project. The hearing officer for the public hearings acknowledged that environmental impacts could be minimized to meet permit requirements. However, "in the absence of the MVP main line ... the MVP Southgate project has no independent utility. In essence it would be a pipeline from nowhere to nowhere incapable of carrying any natural gas, and certainly not able to fulfill its basic project purpose."

The hearing officer noted recommended that DEQ either issue MVP Southgate a conditional water quality certification, making it contingent on the resolution of the main line's court cases, or to deny the certification.

DEQ chose the latter.

The Southern Environmental Law Center already had filed to intervene in the case on behalf of DEQ. "We are pleased that the court affirmed the department's ability to protect North Carolina's rivers and streams from needless harm," said Jean Zhuang, attorney at Southern Environmental Law Center. "The only task remaining is for the state to explain its decision more fully and again deny certification for this unnecessary, destructive pipeline."

The Haw River Assembly, Sierra Club Appalachian Voices and Center for Biological Diversity had already filed as intervenors in the case in support of the agency.

"It's a false victory for MVP. The court specifically noted that North Carolina regulators' denial of the permit aligned with federal and state water quality standards, they just didn't explain it well. We do expect the agency to correct this quickly enough, and in the meantime, the half-finished MVP mainline remains an over-budget boondoggle mired in legal setbacks," said Amy Adams, Appalachian Voices North Carolina program manager.

Perry Slade, landowner and farmer in Alamance County, whose land would be crossed by the pipeline, applauded DEQ's earlier decision. "I'm thankful that the Department of Environmental Quality made this call. It's obvious that this project would have been a major threat to my communities' water supply and the health of our land. In denying the 401 permit, the DEQ showed legitimate doubt about the Mountain Valley Pipeline project as a whole. I'm hopeful that other state governments will take this hint, so we can finally bring this dangerous project to a halt."

The Appellate Court justices in the case were Chief Judge Roger Gregory, originally appointed by President Bill Clinton and reappointed by President George W. Bush; James Wynn of North Carolina, an President Obama appointee; and Stephanie Thacker, who was also appointed by Obama.