

Appalachian Chronicle Then & Now from the Blue Ridge Mountains to the Allegheny

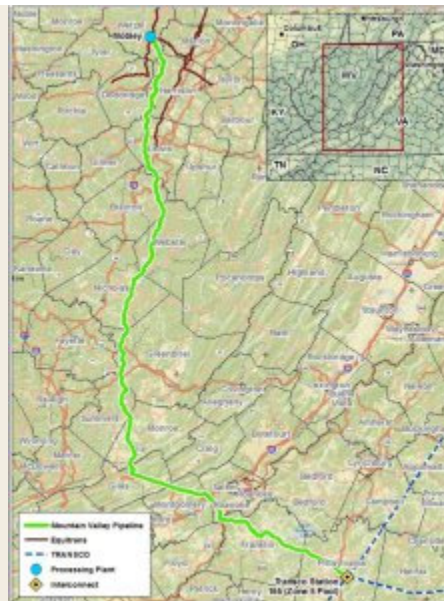
A Pivotal Moment for West Virginia's Eminent Domain Law

By Michael M. Barrick on April 4, 2015

Mountain Valley Pipeline, LLC petitions U.S. Court to access private property for surveys

By Michael M. Barrick

BRDIGEPORT, W.Va. – Mountain Valley Pipeline, LLC (MVP), has sued 103 West Virginians that have refused to allow the company to access their land to survey for the proposed Mountain Valley Pipeline. The company is seeking to construct the 330-mile proposed pipeline from Wetzel County, W.Va., adjacent to the Mason-Dixon line in the north, moving south through the heart of West Virginia until it finally would cross into Pittsylvania County, Va. – after traversing the pristine Greenbrier River and cross some of the tallest peaks of the Allegheny Front.



Mountain Valley Pipeline
Courtesy: FracCheckWV

If approved, the 42” pipeline would transport at least two billion cubic feet of natural gas. MVP is owned by EQT and NextEra Energy Inc. EQT and its partners have yet to submit a formal

application with FERC. It is expected to do so later this year. The companies hope to begin construction in late 2016. Construction is estimated to take about two years. The Mountain Valley Pipeline and other pipelines such as the proposed Atlantic Coast Pipeline are the direct result of the fracking boom in West Virginia, Pennsylvania and Ohio.

While environmental and property rights lawyers have been arguing that the use of eminent domain is premature – and hence, illegal – because FERC approval has not yet been granted, Mountain Valley Pipeline, LLL apparently has determined that West Virginia State Code regarding eminent domains grants them the right in advance of FERC approval to survey private property, arguing that the survey results are essential for seeking FERC approval.

Indeed, company officials said so in letters the company sent out to the landowners demanding access to survey their property. EQT Corporate Director of Communication Natalie Cox [said](#), “I cannot emphasize enough, the importance of conducting these survey activities, which are designed to evaluate the proposed pipeline routes currently under consideration and ultimately determine the route that has the least overall impact on the environment, landowners, and cultural and historic resources.” She added, “As referenced in the landowner letters, we rely upon West Virginia Code Section 54-1-1, *et seq.*, to provide us the right to enter land for survey purposes.”



This sentiment as expressed by citizens of southern West Virginia on the Preserve Monroe website may be in jeopardy because of the MVP lawsuit

In the Civil Action (5:15-cv-3858), filed on March 27 in the United States District Court for the Southern District of West Virginia, Mountain Valley Pipeline, LLC, argues, “This is an action for declaratory judgment and injunctive relief against respondents which seeks the right of entry and survey, as permitted by W.Va. Code 54-1-1, *et seq.*”

In paragraph 9, the petitioners argue, “There is justiciable controversy between the parties regarding whether MVP is authorized to enter the respondents’ properties pursuant to W.Va. Code 54-1-1, *et seq.*, to survey the properties to fix the location of a route for a natural gas pipeline.”

Later, in paragraph 82, MVP asserts, “W.Va. Code 54-1-1, *et. seq.*, vests the power of eminent domain in companies such as MVP seeking to construct pipelines for a public use.” Two paragraphs prior, it argues, “While the Natural Gas Act does not expressly outline the procedure for natural gas companies to gain survey access to properties in connection with such pipeline projects, the West Virginia legislature has recognized the importance of pre-construction surveys, vesting private corporations with this authority, where, as here, private property ‘maybe taken or damaged for public use.’”

Is MVP correct? [Here](#) is what W.Va. Code 54-1-1 says: “The United States of America, the state of West Virginia, and every corporate body politic heretofore or hereafter created by the constitution or statutes of the state, and every corporation heretofore or hereafter organized under the laws of, or authorized to transact business in, the state, for any purpose of internal improvement for which private property may be taken or damaged for public use as authorized in section two of this article, shall have the right of eminent domain, and may exercise the same to the extent and in the manner provided in this chapter, and subject to the restrictions and limitations provided by law.”

Obviously, contends MVP, that provision is open to interpretation by the courts.

If the company establishes that this provision does grant them eminent domain, then the next question is whether or not surveys of the pipeline project are a legitimate purposes under the law. MVP is clear in referencing the proposed pipeline. “MVP is in the process of surveying properties as part of a project to construct a 300-mile, 42-inch natural gas pipeline through West Virginia.” It concludes, “It is necessary to enter the respondents’ properties to survey to appropriate necessary rights-of-way, obtain a FERC Certificate, and construct the pipeline.”

MVP also references [section 54-1-3](#) of the state code. “As part of its rights of eminent domain, MVP’s right of access for survey is clear as West Virginia Code 54-1-3 specifically vests authority to ‘[a]ny incorporated company or body politic, invested with the power of eminent domain under this chapter, by its officers, servants and agents [to] **enter upon the lands for the purpose of examining the same, surveying and laying out the lands**, ways and easements which it desires appropriate.’ (emphasis added).”

MVP also claims that further delays will cause it “irreparable harm.”

Essentially, MVP has accurately quoted the West Virginia law guiding the use of eminent domain. The question is whether they have accurately interpreted it. Heretofore, attorneys advising landowners regarding these letters have argued that the gas companies could not exercise their eminent domain rights absent of FERC approval for the pipelines.

We can hope for justice, and trust that the court will rule in favor of the landowners. However, the law is sufficiently vague. And, corporations have received preferential treatment in the federal courts, especially since *Citizens United*. All of those who believe in individual liberty, property rights and the importance of environmental preservation should monitor this case closely. Furthermore, as has been [pointed out](#) by a landowner in Harrison County, W.Va., we should be suspicious of the relationship between FERC and the natural gas industry.

Should the court rule in favor of MVP, it will be a clear call to citizens to realize that elections have consequences. West Virginia's eminent domain law is not geared towards protecting individual property rights. It is, however, particularly protective of the rights of the energy extraction industry.

We will soon know just how protective.