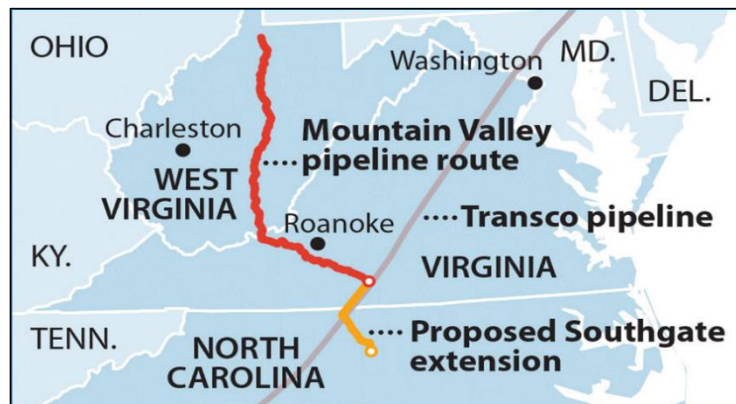


Mountain Valley Pipeline: Congressional Authorization

Updated July 12, 2023

The [Mountain Valley Pipeline](#) (MVP) is a 303-mile natural gas transmission pipeline, currently under construction, which would link natural gas fields in West Virginia to the existing Transco pipeline in Virginia (**Figure 1**). The project has faced numerous permitting challenges in federal court, which has repeatedly caused construction to be suspended. A separate pipeline, the MVP Southgate Project—[still in development](#)—would extend the MVP into North Carolina. The MVP’s permitting challenges, as well as recent legislation to authorize its completion, are of continuing interest in Congress.

Figure 1. Mountain Valley and Southgate Pipeline Routes



Source: Institute for Energy Economics and Financial Analysis.

MVP Federal and State Permit Status

Like 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.

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- **Federal Energy Regulatory Commission (FERC).** Interstate natural gas pipelines require a certificate of public convenience and necessity from FERC pursuant to the Natural Gas Act. FERC [issued a certificate](#) to the 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.
- **U.S. Fish and Wildlife Service (FWS).** Federal agencies approving parts of the MVP [must consult with FWS](#) under the Endangered Species Act (ESA). A Biological Opinion the FWS issued in 2020 was [vacated and remanded](#) by the U.S. Court of Appeals for the Fourth Circuit in 2022. FWS issued a revised [Biological Opinion](#) on March 1, 2023.
- **U.S. Army Corps of Engineers (Corps).** The MVP requires a Corps permit under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act for its water crossings. The Corps first authorized the MVP by general permit, but the Fourth Circuit rejected that option twice, in 2018 and 2020. The MVP therefore [applied for an individual permit](#) in February 2021. The Corps [issued the permit](#) on June 23, 2023.
- **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. The Fourth Circuit has twice vacated and remanded Forest Plans and associated BLM rights of way for the MVP, in 2018 and 2022. FS and BLM issued [new records of decision](#) and approved rights of way for MVP in May 2023.

In addition to federal agency authorizations, under CWA Section 401, the MVP requires water quality certification from the states. In 2021, Virginia granted its certification, which was subsequently upheld by the Fourth Circuit. West Virginia also granted its certification in 2021, but that certification was vacated by the Fourth Circuit in April 2023. West Virginia [reissued](#) its certification on June 8, 2023.

Legislation to Approve MVP

The MVP has been a controversial project since it was proposed. Opponents have [expressed concerns](#) about the need for the pipeline, its potential environmental impacts, and its potential safety risks, especially in minority and low-income communities (i.e., [environmental justice](#)). MVP’s proponents cite its [purported economic benefits](#) (e.g., jobs and lower energy prices), natural gas royalties, gas supply reliability, and its potential role supplying gas exports to U.S. allies. The Biden Administration also [has supported](#) the pipeline.

In the face of ongoing permit litigation and agency reviews, bills in the 118th Congress (S. 1399, S. 1449, and H.R. 3500) have sought to approve completion of the MVP. On June 3, 2023, President Biden signed the Fiscal Responsibility Act of 2023 (P.L. 118-5) which includes language to approve the pipeline. Section 324 finds that “construction and operation of the Mountain Valley Pipeline is required in the national interest.” Under the act, “Congress ... ratifies and approves all authorizations, permits, verifications, extensions, biological opinions, incidental take statements, and any other approvals or orders issued pursuant to Federal law necessary for the construction and initial operation at full capacity of the Mountain Valley Pipeline.” The act further directs the relevant federal agencies “to continue to maintain” such authorizations and declares that “no court shall have jurisdiction to review any action taken” by these agencies to approve the pipeline, seeking to shield these actions from further litigation. The act also gives the U.S. Court of Appeals for the District of Columbia Circuit “original and exclusive jurisdiction over any claim alleging the invalidity” of Section 324. Notwithstanding these judicial provisions, on July 10, 2023, the Fourth Circuit [granted a motion](#) to stop construction of MVP through the

Jefferson National Forest while it considers the constitutionality of the act. On July 11, 2023, the Fourth Circuit also [granted a motion](#) to stay the FWS Biological Opinion.

Following enactment of P.L. 118-5, on June 15, 2023, the MVP’s developer [wrote to FERC](#) requesting a three-year “extension of time until June 18, 2026 to complete construction of the MVP Southgate Project.” Because the act does not apply to Southgate, the project must continue through its own regular permitting process, which also faces challenges, including North Carolina’s initial [denial](#) of a CWA Section 401 water quality certification in 2020.

Although infrequent, direct congressional authorization of major infrastructure projects has occurred before, notably under the Trans-Alaska Pipeline Authorization Act of 1973 (P.L. 93-153). However, some in Congress [continue to oppose](#) completion of the MVP. Some Members [object](#) to the act’s perceived special treatment favoring the project outside the regular permitting process, the impact of its construction on landowners, and its potential contribution to [climate change](#), among other concerns. Nonetheless, given the MVP’s permitting provisions in P.L. 118-5, the pipeline’s developer intends to complete construction [by the end of 2023](#). As development of the MVP continues, the status of the pipeline, potential [safety issues](#) due to its construction pauses, [market demand](#) for its associated natural gas supplies, and the ongoing Fourth Circuit litigation may be oversight issues for Congress.

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