

Equitrans' MVP Faces Significant Headwinds as it Strives for Completion

Companies: ALA, ED, ETRN, NEE, RGC0

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Research Question:

Will Equitrans Midstream successfully navigate its remaining legal hurdles and complete the Mountain Valley Pipeline?

Summary of Findings

- [Equitrans Midstream Corp.](#)'s (ETRN) [Mountain Valley Pipeline](#) (MVP) faces significant permitting and legal challenges before it can resume construction on the 8% to 10% of the project left to be completed. Sources were mixed, trending negative regarding the likelihood that Equitrans would successfully navigate all issues and complete the project by its new in-service date of early 2021—or at all.
- These findings are similar to Blueshift Research's findings in its [Sept. 26, 2019, EQM Midstream Partners report](#), with the exception that the mixed opinions in that report were trending positive for completion, just not by the mid-2020 in-service date.
- Issues Equitrans must navigate to resume construction include the reissue of its U.S. Army Corps of Engineers [Nationwide Permit 12](#) and securing permits from the Fish and Wildlife Service and the U.S. Forest Service for stream crossings and endangered species protection.
- The MVP is also under threat of additional litigation from the Sierra Club and activists, including those that successfully contributed to the cancellation of the Atlantic Coast Pipeline (ACP) project and are now focused on derailing the MVP. Another interesting issue raised by activists is the COVID-19 pandemic. If construction were to resume, up to 4,000 employees would be brought in. The concern for the health and wellbeing of communities and landowners along the pipeline path has been discussed and must be addressed.
- Equitrans also faces pressure from two potential pipeline customers that amended a 2016 agreement to terminate the deal if service does not begin by the end of 2021.
- Issues favoring completion of the MVP include the fact that it is already 90% to 95% complete. The cancellation of the Atlantic Coast Pipeline is creating additional demand for gas. The Federal Energy Regulatory Commission (FERC) [authorized](#) the construction of a 75-mile MVP extension, called MVP Southgate. And the MVP is considered Equitrans' marquee project which they will do and spend anything to complete.
- The EQM Midstream Partners LP (EQM) unitholder litigation, alleging the company omitted material information with respect to the merger with Equitrans, is not expected to have a meaningful impact on unitholders or the company. The attorneys interviewed said this type of litigation is common and rarely goes to trial.

Silo Summaries

1) Oil and Gas Pipeline Specialists

Five industry specialists had mixed opinions regarding the likelihood of Equitrans navigating the remaining challenges and completing the MVP. Two journalists for oil and gas trade publications were the most positive and expected the pipeline to be completed on time. One noted that the cancellation of the Atlantic Coast Pipeline has created more demand for gas; however, he did say the recently approved MVP Southgate expansion project could be at risk of never getting completed. The other said the MVP is the marquee project for Equitrans and it will spend and do what they must to complete it, as it is key to its future growth. **Two other sources think completion of the MVP is unlikely, citing declining demand for gas due to geographic regions committing to future reduced carbon footprints. They also suggested that the ongoing permitting and environmental challenges could continue to derail the project.** The fifth source was unsure about the MVP being completed but noted the permitting and legal challenges as significant issues that could be difficult to overcome. Two sources noted concern that any restart to construction would bring outside contractors into the community, risking COVID-19 spread to landowners and communities along the pipeline path.

2) Attorneys Commenting on EQM Unitholder Litigation

Two attorneys, one that had represented an EQM unitholder for a now dismissed case and one experienced in securities and class action litigation, do not expect the EQM merger-related litigation to have an impact on shareholders. Merger litigation brought by shareholders is considered common and typically results in settlement or dismissal, not a trial. Frequently, the alleged missing information is provided and cases are then dismissed, or a settlement is reached. **One attorney said there are still two EQM cases pending in the New York court system, but that no action is currently scheduled.**

Equitrans Midstream Corp./Mountain Valley Pipeline

	MVP Successful Completion	EQM Unitholder Litigation
Oil and Gas Pipeline Specialists	➔	N/A
Attorneys Commenting on EQM Unitholder Litigation	N/A	Not Significant

Background

Blueshift Research's [Sept. 26, 2019, EQM Midstream Partners report](#) found mixed opinions regarding the on-time completion of the Mountain Valley Pipeline project. The prevailing thought leaned toward successful completion—but not by its projected mid-2020 in-service date. Despite past problems, work stoppages, and what most sources consider poor project management, nine sources expected the MVP project to overcome its legal, permitting, environmental, and construction challenges and eventually be completed. Six sources were unsure or believed final construction of the MVP would be halted.

Blueshift's preparations for this report found EQM readying for the completion of the MVP amid a cascade of both positive and negative court rulings and news regarding pipelines around the nation. The company completed its merger with Equitrans in mid-June, making the combined organization one of the largest natural gas gatherers in the United States. However, the merger also led to unitholder litigation alleging EQM omitted material information with respect to the merger, rendering the joint proxy statement/prospectus false and misleading. Despite the MVP being 92% complete and the joint venture partners remaining loyal to the project, the pipeline still faces significant regulatory and environmental challenges that could prevent final completion.

In early June, the MVP, a joint venture of five energy companies—EQM/Equitrans, [RGC Resources Inc.](#) (RGC), [NextEra Energy Inc.](#) (NEE), [Consolidated Edison Inc.](#) (ED), and [WGL Midstream](#), a subsidiary of [AltaGas Ltd.](#) (ALA)—[announced](#) a schedule and timing update in preparation for the restart of construction and completion of its 303-mile natural gas transmission line. MVP now expects full in-service operations in early 2021, with the cost increasing to \$5.7 billion from the original \$3.7 billion. MVP has yet to secure all of the required permits to lift [a stop work order](#) and it still has to secure permits for crossing the Jefferson National Forest and Appalachian Trail. Management remains confident that it will be successful obtaining all of the required documents in the near future.

Recent positive business news and judicial decisions that could be favorable for the completion of the MVP include:

- In late June, the Federal Energy Regulatory Commission authorized construction of the MVP extension. Called MVP Southgate, it will start in Pittsylvania County and run south for another 75 miles.
- The June Supreme Court [decision](#) to allow the Atlantic Coast Pipeline to cross the Appalachian Trail could be a positive precedent for the MVP's permit to cross the trail.
- A June [announcement](#) that the MVP joint venture partners are sticking with the project and have no plans to exercise their right to withdraw from the contract.
- The U.S. Supreme Court [issued](#) a stay on July 6 of a Montana judge's decision to ban a fast-track permitting process that allows pipelines to cross bodies of water. The MVP needs such a permit to burrow under nearly 1,000 streams, rivers, and wetlands on its way from northern West Virginia to Pittsylvania County.

Recent negative news and court decisions that could continue to delay the MVP include:

- Virginia regulators [seeking](#) an additional \$86,000 in fines for environmental infractions from the MVP. This is on top of the \$2.15 million settlement reached last year.
- Atlantic Coast Pipeline developers [abandoned](#) their entire project due legal and regulatory battles that caused a 3½ year delay and added \$3 billion to the estimated cost.
- A U.S. District Judge in Washington, D.C. [ordered](#) the Dakota Access pipeline shut down pending additional environmental reviews more than three years after it began pumping oil.

Equitrans Midstream Corp./Mountain Valley Pipeline

Current Research

Blueshift Research assessed whether Equitrans Midstream could successfully navigate the remaining permitting and legal challenges to finish the MVP. We employed our pattern mining approach to establish three independent silos, comprising seven primary sources (including four repeat sources) and three secondary sources focused on gas and oil pipelines, specifically the MVP. Interviews were conducted July 20–24.

- 1) Oil and gas pipeline specialists (5)
- 2) Attorneys commenting on EQM unitholder litigation (2)
- 3) Secondary sources (3)

Next Steps

Blueshift Research will continue to research the MVP as it strives to reach completion. We will monitor the permitting process and the activists intent on derailing the project.

Silos

1) Oil and Gas Pipeline Specialists

Five industry specialists had mixed opinions regarding the likelihood of Equitrans navigating the remaining challenges and completing the MVP. Two journalists for oil and gas trade publications were the most positive and expected the pipeline to be completed on time. One noted that the cancellation of the Atlantic Coast Pipeline has created more demand for gas; however, he did say the recently approved MVP Southgate expansion project could be at risk of never getting completed. The other said the MVP is the marquee project for Equitrans and it will spend and do what they must to complete it, as it is key to its future growth. Two other sources think completion of the MVP is unlikely, citing declining demand for gas due to geographic regions committing to future reduced carbon footprints. They also suggested that the ongoing permitting and environmental challenges could continue to derail the project. The fifth source was unsure about the MVP being completed but noted the permitting and legal challenges as significant issues that could be difficult to overcome. Two sources noted concern that any restart to construction would bring outside contractors into the community, risking COVID-19 spread to landowners and communities along the pipeline path.

Key Silo Findings

Background

- 2 sources are journalists for oil and gas trade publications.
- 1 is a conservation activist.
- 1 is a former utility executive that is now an activist against the pipeline.
- 1 is a state government water permitting professional.

MVP Completion

- 2 said the MVP would be completed.
- 2 said completion of the MVP is unlikely.
- 1 said they were not sure.

MVP Project Headwinds and Roadblocks

- Permitting issues, legal issues regarding environmental concerns, partner withdrawals, and COVID-19 risk were all highlighted as roadblocks that could derail completion of the MVP.

MVP Partners and Customers

- 1 said demand for gas delivered by the MVP would increase because of the scuttling of the ACP.
- 1 said Equitrans needs to complete the MVP to ensure its future growth.
- 1 said demand for gas will decline, as regions are committing to reduced carbon footprint futures.
- 2 said two participating partners will drop out of the project if it is not completed by the end of 2021.

Equitrans Midstream Corp./Mountain Valley Pipeline

1) James Allen Willis, journalist covering MVP and other projects for Marcellus Drilling News; repeat source

The MVP project is nearly complete and has overcome nearly all of its legal challenges. Cancellation of a competing pipeline means there is strong demand for the gas the pipeline will carry.

Sept. 26, 2019, interview: The MVP project is nearly complete and has significant momentum that will drive the project to an on-time completion. Opponents' arguments are drawn from a familiar playbook, so MVP is unlikely to be surprised in court. There is strong demand for the gas the pipeline will carry.

Background

- Willis covers the shale industry. He has followed the MVP and other pipeline projects.

MVP Completion

- "[I anticipate an early 2021 completion because] it's already 92% done—in the ground, built, ready to go. There are just some final bits and pieces. They're important, of course, but I don't think they're going to further delay the completion of the project."
- "It's all wound up in various lawsuits. The permits had been granted, and everything was fine, and then the permits were challenged in court. So now the Fish and Wildlife Service and the U.S. Forest Service have to essentially rework the permits they had granted. They're in the process of that now. I'm confident they will go through. Of course, there will be more lawsuits on the day the permits are issued. The Sierra Club has already said they're going to challenge, but I think there will be a higher bar this time. There's also a delay in Nationwide Permit 12, which allows drilling and trenching through streams and that sort of thing, in lieu of Clean Water Act 401 permits. That was snagged in the lawsuit over the Keystone Pipeline. The U.S. Supreme Court has reversed that. Mountain Valley is now cleared to proceed, so that was a big victory."

It's already 92% done—in the ground, built, ready to go. There are just some final bits and pieces. They're important, of course, but I don't think they're going to further delay the completion of the project.

James Allen Willis, journalist covering MVP and other projects for Marcellus Drilling News

MVP Project Headwinds and Roadblocks

- "The original 303-mile Mountain Valley Project, I don't see any additional roadblocks. The MVP Southgate project would pick up from Pennsylvania County in Virginia and then go down to North Carolina. That just got approved in June by FERC. I have a little more pause for that one. There's nothing in the ground and, given all this intense opposition and court cases, that one may be a bit more problematic."

MVP Partners and Customers

- "No [oppositions or second thoughts], not at this point. In fact, I think it's the opposite. The Atlantic Coast Pipeline was recently dropped by [Dominion \[Energy Inc./D\]](#). Now that that one is no longer going to be built, there is more interest in the Mountain Valley Pipeline. Those two projects were essentially running along parallel paths. Some of the major customers are gas-fired power plants in Virginia and they have to get their gas from somewhere."

2) Jamison Cocklin, journalist covering MVP and other projects for Natural Gas Intelligence; repeat source

The Mountain Valley Pipeline project is mostly complete and looks on track to meet its revised timeline. However, further delays would not be fatal, given the current weak demand for natural gas.

Sept. 26, 2019, interview: While the project faces strong opposition and uncertainty, ownership seems committed to completing the project. If the MVP is built, it should see strong demand from utilities and others. Management has been responsive and cordial with analysts and the media through the delays in the project's timeline.

Background

- Cocklin is a journalist covering the natural gas industry. He has followed the MVP and other pipeline projects.

MVP Completion

- "I would say that timeline is realistic, given the fact that the last I checked the system was something like 95% complete. Another thing to keep in mind is that this project is essentially the last major greenfield pipeline left to build out of the basin, which could see bottlenecks in the next four or five years if production rises. For the time

Equitrans Midstream Corp./Mountain Valley Pipeline

being, there's excess pipeline capacity in Appalachia and that gives them some wiggle room to work through these challenges, especially as the gas market is soft right now with the pandemic. So they could even delay a bit longer and it might not matter much beyond the costs associated with further delays."

- "MVP is a marquee project for both EQM and [EQT \[Corp./EQT\]](#), which is the country's biggest gas producer. They need it to tap markets in the Southeast and get more volumes down to the Gulf for exports, so they're going to spend to get it done—whatever it takes. It's a path to further growth. MVP is a bit different from ACP in that regard, which was largely backed by utilities, which obviously have different needs than producers and midstream companies."

MVP Project Headwinds and Roadblocks

- "These environmental groups are going to do whatever it takes to slow this stuff down or stop it and getting these large pipelines in service up here has become extraordinarily difficult, making it anyone's best guess when exactly these things will get finished. MVP might be the last greenfield pipeline we see up here in a long time, but I think it'll get done."

MVP Partners and Customers

- "I haven't heard of anyone planning to back out and that would, of course, depend on the agreements they've signed with MVP."

“That timeline is realistic ... For the time being, there's excess pipeline capacity in Appalachia and that gives them some wiggle room ... the gas market is soft right now with the pandemic. So they could even delay a bit longer and it might not matter much.”

Jamison Cocklin, journalist covering MVP and other projects for Natural Gas Intelligence

3) Community activist involved in conservation groups; repeat source

It is very unlikely that Equitrans Midstream investors will continue to support the Mountain Valley Pipeline if the completion deadline has to be extended again. The MVP still has to get a number of permits, which, even if granted, will quickly be challenged by environmental groups to stall construction. Even if the builders want to resume construction to complete the MVP before winter and before too many new legal challenges are filed, Virginia might object to bringing in 4,000 workers to the state at a time when COVID-19 cases are rising. There is also a criminal investigation into possible violations of the Clean Water Act that might be brought forward after the presidential election—that would further discourage investors. Two of the pipeline's shippers/customers have said they will pull out if the pipeline is not completed by the end of 2021.

Sept. 26, 2019, interview: It is unlikely that EQM will meet their mid-2020 deadline and there is also uncertainty about whether the MVP will get completed at all. There are numerous pending cases without any clear timing to their resolution. The MVP is a very poorly planned project, with the route going through steep terrain and poor soil, leading to landslides—and in the middle of a seismic zone. Though the work has stopped, there have been documented violations that MVP continues to dig trenches. The rising cost of the MVP will increase the price of the natural gas sold by its owners, making it less competitive than natural gas from existing pipelines. Partners could pull out of the project if they get better offers. Contracts with customers signed five years ago might be coming up for renewal in the spring and contracts with landowners might also have to be re-examined over time. A challenge has stopped Roanoke Gas, the local gas company and a small customer of the MVP, from increasing utility rates to pay for connections to the MVP, finding that there was adequate supply to meet demand.

MVP Completion

- "They haven't gotten some of their permits back, but they have time because it's not going to take them very long to finish. However, if they don't get it all in by October [2020], winter season will be here."
- "The next question if they do get their permits back is if the governor is going to let them bring 4,000 workers in the state with COVID cases rising. There have been op-eds and publicity questioning why we'd want to bring in 4,000 extra workers at this time when there are still questions even about schools reopening and football season starting up."
- "In addition, now that the ACP has been stopped, many of those activists are helping us [because we helped them]. We're going to be getting more publicity east of the Blue Ridge [Mountains] because there will be less going to the ACP."

Equitrans Midstream Corp./Mountain Valley Pipeline

MVP Project Headwinds and Roadblocks

- “I believe the [criminal investigation](#) into possible violations of the Clean Water Act and other federal laws has not been resolved. It hasn’t been brought forward. I think they’re waiting to see what happens with the [presidential] election in November. If Trump loses, they would go forward with that litigation and that would really harm Equitrans. It would influence investors. Its borrowed money is the only thing that keeps the company afloat.”
- “There are several remaining permits. 1) They don’t have a U.S. Forest Service permit to cross Jefferson National Forest. 2) They don’t have a permit from the Bureau of Land Management to cross the Appalachian Trail. 3) They don’t have a biological opinion from the Fish and Wildlife Service. 4) They lack permits from the U.S. Army Corps of Engineers for water crossings. In the case with Keystone XL, Nationwide Permit 12, a Montana district judge said that instead of a nationwide permit they would have to issue individual permits for the different crossings. Though the Supreme Court upheld the ruling for Keystone XL, they said it would not apply to other pipelines. If the MVP gets their permits, environmental groups like the Sierra Club will contest again on grounds of the precedent with Keystone XL.”
- “I think they’ll be granted the different permits but I’m pretty sure there will be additional legal challenges after that. It’s impossible for them to follow the National Environmental Policy Act. They should never have been issued permits in the first place because they didn’t seriously follow the Act. For many of the permits, they were just sloppy.”

MVP Partners and Customers

- “If they don’t complete the pipeline by the end of 2021, [two of the pipeline’s shippers or customers will pull out of the deal](#). That would be a serious problem.”
- “Whether they complete it or not depends on how long the investors want to keep putting in more money. They’re only doing it for the dividends.”
- “They don’t have much to finish and it’s not that hard to finish. If they get their permits, I suspect they will try to work as fast as they can so they can outrun the courts. I think, in that case, there will also be a lot of direct action, like tree sitting and protests. That slowed them down before long enough to allow us to get the challenges into the courts.”
- “I think the elections could also have an impact on the completion. If the Democrats win, the MVP won’t have the same friends in high places and there will be loud voices in the party speaking up against it. The Trump administration has been their friend all along.”
- “We are in the sixth year of this. It’s a time issue and for us, the opponents, time is on our side.”
- “If there are enough stop work orders and they cannot finish by early 2021, if the Democrats win, and if the criminal fraud case goes forward, the investors might start to look to pull out.”

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Community activist involved in conservation groups

4) Former senior utility executive, responsibilities included regulatory approval and compliance issues; repeat source

It is unlikely that Equitrans Midstream can successfully navigate legal and economic hurdles to meet the new early 2021 deadline for completion of the Mountain Valley Pipeline. Permits have been thrown out by the courts because they have not met requirements. Taking shortcuts in the permitting process was also the main reason for the cancellation of the ACP. Major long-term trends, like the fall in demand for gas and competition with other investment opportunities, are also likely to discourage potential investors. Already, two of the MVP’s shippers have said they will exit the agreement if the pipeline is not in operation by the end of 2021. The merger has made it easier for Equitrans to raise money from

Equitrans Midstream Corp./Mountain Valley Pipeline

investors, but Equitrans' situation is particularly difficult, in part because it has practically no end users for the pipeline's output, leaving the partners obligated to pay for the MVP when it goes into service, and when at least two of the states it is supposed to serve are working toward a net zero carbon energy system by 2050. The litigation around the EQM and Equitrans merger will have no impact on investors now that the merger has gone through. Such litigation is often dismissed or settled privately and sealed, possibly with some payment to the unitholders bringing the lawsuit.

Sept. 26, 2019, interview: There are many reasons that EQM would halt completion of the Mountain Valley Pipeline. The cost of the MVP will put gas transported in that pipeline at a premium, up to 50% costlier, compared to gas using existing pipelines that have already been paid for. Besides their share of the cost of the construction, which is now at around \$5 billion, EQM and EQT would also be responsible for paying for two-thirds of the capacity at a time when there is already sufficient capacity and no rising demand. With its new management and board, EQT may decide to swallow its losses rather than continue to lose money. Partners will have a 30-day window to exit the contract around the June 2020 delivery date. There are indications that Consolidated Edison and Roanoke Gas might do so, and others could follow. It will not be possible for EQM to meet the June 2020 in-service date because even the process to test the pipeline takes one to two months, after completion.

MVP Completion

- “Based on what I’ve seen in the history of the MVP, and also the ACP, I think it’s unlikely that the MVP will be completed by early 2021.”

MVP Project Headwinds and Roadblocks

- “Of the major permits that are missing to complete the pipeline, the Nationwide Permit 12 approvals [one for West Virginia and one for Virginia] and the Biological Opinion from the Fish and Wildlife Services about endangered species are still very questionable. That was the issue that upset the Keystone XL Pipeline. Without that, they can’t cross any streams. They’re looking instead to drill underneath, instead of trenching, but that’s probably not possible for every stream. It’s a big deal. Regarding the Biological Opinion about the effects on endangered species, the Corps of Engineers still has to rewrite new permits based on the Opinion. In the ACP case, the courts threw it out twice. The big question is whether the Fish and Wildlife Service can issue a Biological Opinion that will meet the court’s requirements. Environmental experts say it may not be possible for the MVP to be built in the way it is proposed without it having an effect on endangered species. The permit has to meet court requirements.”
- “Having worked on the utilities side of permitting issues, I think there is a strong likelihood that the environmentalists are going to appeal any permit. If the court agrees to stay the permit until they have reviewed the appeal, nothing happens.”
- “[That’s why it’s unlikely.](#) There’s a very clear legal path of what has to happen for this to go forward. So far, the agencies have not conformed to the requirements and they may not conform to it because it might not be possible.”
- “The environmental groups were able to slow down and stop the ACP because they brought the suits. But the permits were thrown out, in fact, because the pipeline companies influenced top federal government officials to take shortcuts in the permitting process. The shortcuts were identified in the court process and that threw the permits out. It’s also what’s happened to the MVP. They did not properly follow the law in issuing the permits. They issued a new permit a few weeks later and the court said again they were not meeting permitting requirements.”
- “The only way to move forward is by meeting permitting requirements.”
- “In the two pipelines, the ACP and the MVP, the builders didn’t take that approach. They used their money and political clout to push it through and get what they wanted. And now things have shifted.”
- “In the utilities business, you have to think 15-plus years into the future by looking at major trends. You can’t predict week-to-week or month-to-month zigzags. The question, then, is if the project is going in the direction of the major trends and, if not, how will the trends affect it?”
- “There are two major trends affecting the MVP. One is what is happening [with gas](#). The second one is economic trends and pressure on capital. They still have to spend millions more on the MVP. This is while investors are making choices about where to put their money: investment A, which seems to have a strong future prospect, or investment B, which had a strong future prospect but may be more in question now than a year ago.”
- “Even if the MVP can get the investment, it still may be the wrong decision.”

Based on what I’ve seen in the history of the MVP, and also the ACP, I think it’s unlikely that the MVP will be completed by early 2021.

Former senior utility executive, responsibilities included regulatory approval and compliance issues

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- “Pipelines normally operate for 60 to 80 years. Both Virginia’s and North Carolina’s state policy is that they’re going towards a net zero carbon energy system by 2050. People who are investing in a pipeline that normally pays you back a 60-year stream of revenue and profits, which now becomes at most 30 years, may change their outlook.”
- “The gas industry has seen a [huge demand destruction](#). Gas has been cheap because we produced more than we could sell. When supply is greater than demand, you have to push demand by lowering the price. The last shale boom started in 2010. For the last 10 years gas producers, as an aggregate, have lost billions and billions of dollars. The only reason they’ve stayed in business is because people kept giving them money. With the economic situation and the pressure on funds as Wall Street looks at different places to invest, that money is harder to come by. And prices are lower than ever before because production hasn’t yet declined enough to bring supply in line with demand.”
- “After the last recession, energy use declined and never rose to the level before. It came back to 2007 levels in 2019. It took more than 10 years to get back to where it was.”
- “The economic setback we’re going to experience from COVID is going to be more severe, I think, and we’re going to see a lot of small to midsize businesses who are gas and electricity customers go out of business.”
- “As far as I know, the criminal investigation into the securities fraud is still ongoing. There were over 300 incidents where they didn’t meet the permit requirements. The Virginia Department of Environmental Quality slapped them with a [\\$2 million fine](#).”
- “The initial selling points for the pipeline were that it would provide access to a lower-price production zone in West Virginia and that it would provide additional pipeline capacity to a capacity constrained region [the mid-Atlantic and Southeastern United States].”
- “That plan was formulated in 2014 and much has changed. The West Virginia production zone was cheaper than the overall market at the time because of takeaway pipeline constraints. An overabundance of new pipelines have been built since then and prices have equalized between zones.”
- “While the ACP and MVP were hung up with legal difficulties, other pipeline projects proposed about the same time have been completed. Existing pipelines that serve the region [TC Energy Corp./TRP [Columbia Gas Transmission](#) and Williams Companies Inc./WMB [Transco pipeline](#)] have already added capacity that is greater than what the ACP and MVP would have provided together.”
- “Essentially, the MVP is an expensive solution to a problem that no longer exists.”

MVP Partners and Customers

- “After renegotiating a new [20-year] contract in May, [two of the shippers said they can terminate the deal if service doesn’t begin by the end of 2021](#).”
- “The merger has made it easier for Equitrans to lure investors but it’s still going to be a tough sell.”

5) State water permitting official

It is hard to predict if Equitrans Midstream can complete the Mountain Valley Pipeline. There are still federal permits that need to be resolved but the project is about 90% complete, much further along than the ACP was when it was cancelled. However, besides the permitting issues, as COVID-19 cases continue to rise, property owners who live near the right of way have expressed their opposition to bringing in out-of-state workers who might also bring in COVID-19. Based on the history of the project, it is also likely that, once the permits are granted, there will be further legal challenges from opposition groups.

MVP Completion

- “I have no way of weighing in on whether the legal challenges will be resolved.”
- “There are still federal permits that need to be resolved. I believe it’s about 90% complete. They [have to report](#) to FERC on the status of construction.”
- “I don’t have any way of making the prediction [that it will be completed on time].”
- “The ACP pipeline in Virginia had only just cleared trees. The construction part had not really started. There had been no trenching or grading. MVP, on the other hand, is complete to a high percentage.”
- “It’s all about federal permitting. States weigh in on whether the activity

If they resolve the legal challenges, there is a chance of further legal challenges. That has been the history of this project.

State water permitting official

Equitrans Midstream Corp./Mountain Valley Pipeline

will violate state water quality standards.”

- “In Virginia, there are no open or contested permitting issues.”
- “The majority of the work that remains in Virginia is to get the trench through wetlands and streams. Once they do that, they can tie everything together.”

MVP Project Headwinds and Roadblocks

- “There’s been a lot of back and forth in court over [a Montana court invalidating the use of Nationwide Permit 12 related to the Dakota XL]. There are still a lot of questions for the U.S. Army Corps of Engineers to answer.”
- “It has not been completely worked out in West Virginia [so there is no construction currently](#) that would have been authorized by Nationwide 12.”
- “My understanding is that if it gets resolved in West Virginia, then the other [U.S. Army] Corps districts will agree to move forward under Nationwide 12 and finish the crossings throughout the project.”
- “There has not been forward construction since they shut down in the winter.”
- “[The issue of out-of-state workers and COVID has](#) been raised by some of the property owners who live in and around the right of way. MVP has filed responses with FERC.”
- “If they resolve the legal challenges, there is a chance of further legal challenges. That has been the history of this project.”

MVP Partners and Customers

- Did not discuss.

2) Attorneys Commenting on EQM Unitholder Litigation

Two attorneys, one that had represented an EQM unitholder for a now dismissed case and one experienced in securities and class action litigation, do not expect the EQM merger-related litigation to have an impact on shareholders. Merger litigation brought by shareholders is considered common and typically results in settlement or dismissal, not a trial. Frequently, the alleged missing information is provided and cases are then dismissed, or a settlement is reached. One attorney said there are still two EQM cases pending in the New York court system, but that no action is currently scheduled.

Key Silo Findings

EQM/Equitrans Merger Litigation

- 1 said his case against EQM has been dismissed and he thinks the unitholders litigation was “a day late and a dollar short.”
- 1 said the EQM litigation is not likely to have any impact on unitholders.

Settlement/Dismissal vs. Trial

- 1 said there are no open cases against EQM regarding the merger.
- 1 said there are still two cases against EQM open in the New York courts, with no proceedings scheduled.

1) Counsel for an EQM unitholder

There are no active cases from unitholders against EQM, according to this attorney. In his estimation, the unitholders were a “day late and a dollar short” with their case. He added that unitholders voted for the merger and the chance of a unitholder action being successful if one is still open or if another is filed is very unlikely. He could not remember details of why his case was dismissed but said it could simply be that the board or management provided or corrected the information that was missing. When that happens, if the response is reasonable, the case is dismissed or, if it is not, the attorney could face sanctions.

EQM/Equitrans Merger Litigation

- “The case I was representing against EQM was dismissed and, to the best of my knowledge, there are no pending cases.”
- “In my opinion, the unitholders were a day late and a dollar short.”

Settlement/Dismissal vs. Trial

- “It is very difficult to succeed in a case where the shareholders vote for the merger and then bring litigation.”

In my opinion, the unitholders were a day late and a dollar short.

Counsel for an EQM unitholder

Equitrans Midstream Corp./Mountain Valley Pipeline

- “I can’t remember exactly why this case was dismissed. It usually means management responded with additional information or provided the missing information and it was satisfactory. In a case like that, if you don’t dismiss the case you could be open to sanctions.”

2) **Michelle A. Reed**, partner at Akin Gump Strauss Hauer & Feld LLP with securities and consumer class actions focus

Investors should not be affected by the unitholder litigation in the EQM/Equitrans merger. Mergers are very frequently challenged for the sufficiency of their disclosures, with complaints that the omissions could affect shareholders in making a more informed vote. Cynics sometimes argue that the challenges also serve to add to attorney fees. Typically, most cases end up settling or being dismissed. If there is a settlement, the company will make some payments to the plaintiffs, make additional disclosures, and then the merger can go through. Regarding the EQM/Equitrans merger litigation, there are only two remaining lawsuits in New York but there has been no action on them. It is extremely rare for this kind of complaint to go to trial following closure of a merger. Typically, they are settled and the money goes to the plaintiff.

EQM/Equitrans Merger Litigation

- “There are plaintiff firms that challenge almost every merger. They allege misrepresentations or omissions in the proxy statement. They essentially are saying something was left out and more needs to be disclosed. Almost all the complaints look like that. It’s not about challenging the fairness of the transaction itself or the price the shareholders were given in connection with the merger but rather challenging the sufficiency of the disclosures, so that investors can have an informed vote.”
- “Sometimes, when you read the filings more carefully, those things are disclosed and it’s a simple addition or subtraction problem.”
- “Everyone can speculate about why they do it. Some people say it’s so that shareholders can have an informed vote and cynics argue it’s so that the plaintiff lawyers can get attorney fees.”

Settlement/Dismissal vs. Trial

- “Typically, most of these cases end up settling or are dismissed. When they settle, it’s on an individual basis so they don’t have to get court approval for the settlement. The company will pay them some money to cover attorney fees and their trouble and will make some additional disclosures as part of the settlement agreement. Then the deal can go through.”
- “In my opinion, in this case [the Equitrans merger], it’s likely to have no impact on investors.”
- “It looks like the Delaware cases were all voluntarily dismissed. There are two remaining lawsuits in New York and there has been no action at all on the docket. That means they didn’t file for a preliminary injunction in any of the lawsuits. Essentially, all they’ve done is file the complaint.”
- “In theory, if they were to take these complaints all the way through, even following closure of the deal, arguing misrepresentation and that they were harmed in some way, there could be some recovery for the investors. But it is extremely rare for this kind of thing to go to trial. Typically, they’re just settled and the money just goes to the plaintiff.”

In my opinion, in this case [the Equitrans merger], it’s likely to have no impact on investors.

Michelle A. Reed, partner at Akin Gump Strauss Hauer & Feld LLP with securities and consumer class actions focus

Secondary Sources

These three secondary sources focused on an opinion piece that addresses the permitting challenges facing the MVP, the MVP Southgate project and its fate, and how the cancellation of the ACP cast a shadow over the MVP.

July 18, 2020 FrackCheckWV [commentary](#)

This opinion piece discusses the permitting challenges facing the MVP.

- “On Oct. 2, 2018, the U.S. Court of Appeals for the Fourth Circuit vacated Nationwide Permit (NWP) 12 for the Mountain Valley Pipeline (MVP). Upon losing this permit from the U.S. Army Corps of Engineers, MVP was forced to cease construction at all stream and wetland crossings in Virginia and West Virginia, leaving hundreds of crossings

Equitrans Midstream Corp./Mountain Valley Pipeline

outstanding. That the Corps has been unable to reinstate NWP 12 for twenty-one months, and counting, is truly incredible.”

- “Why has the Corps delayed reissuing NWP 12 to MVP for so long?”
- “It is likely the Corps has not been able to find a way to reinstate the permit that will withstand legal scrutiny. Since beginning construction in early 2018, MVP has lost numerous permits as a result of opponents’ successful legal challenges. In a number of these cases, the courts thoroughly rebuked the implicated agencies for failing to justify their issuance of permits for the MVP. For example, authorization from the U.S. Forest Service was deemed “silent acquiescence.” The Corps has assuredly seen the writing on the wall.”
- “The magnitude of the delay in reissuing NWP 12 to MVP is a stark indication the Corps never should have granted the permit in the first place.”
- “If reinstating NWP 12 was simply a case of dotting i’s and crossing t’s – a purely procedural matter – the Corps would have reissued the permit to MVP within weeks. Instead, the Corps finds itself facing the absolutely monumental task of rewriting a fatally flawed permit. This was confirmed by the April 15 ruling against the Keystone XL pipeline, which found the Corps acted “arbitrarily and capriciously” when it reauthorized the NWP 12 program in 2017.”
- “While the U.S. Supreme Court recently issued a partial stay of the lower court’s ruling – allowing pipelines other than Keystone XL to continue using NWP 12 during the appeal process – it does not solve the underlying permit issues for the MVP.”
- “Can the Corps refuse to reissue NWP 12 for the MVP?”
- “Yes. And while unlikely, it absolutely should. The text of the Corps’ suspension letter to MVP makes it clear the Corp has the authority to ‘reinstate, modify, or revoke the authorizations.’ Without NWP 12 in place, MVP is not allowed to impact waterways during construction, yet failed sediment and erosion control devices have been the source of dozens of water quality violations in Virginia and West Virginia. These violations have resulted in more than \$2 million in fines for MVP, and the Virginia Department of Environmental Quality recently announced more fines are on the way.”
- “The timing of the Corp’s reissuance of NWP 12 to MVP will communicate far more information than the text of the permit.”
- “One year after MVP lost NWP 12, the U.S. Court of Appeals for the Fourth Circuit granted a stay of the Biological Opinion issued by the U.S. Fish and Wildlife Service. This action effectively halted new construction along the entirety of the 303-mile-long MVP, leaving the project belly-up as it contends with the fact it is \$2 billion over budget and two years behind schedule. Even if the Corps is able to reissue NWP 12 in the near future, until the stop work order is lifted all forward construction remains at a standstill.”
- “However, the concurrent suspension of both NWP 12 and the Biological Opinion may actually prove to be a boon to MVP. Assuming both permits are reissued simultaneously, the largest barriers to project-wide construction will immediately evaporate. This leaves the public and courts little time to scrutinize the revised permit conditions before MVP embarks on a frenzy of new construction, knowing the project’s very existence may depend on it. MVP surely recognizes this opportunity.”
- “Since December, MVP and the U.S. Fish and Wildlife Service have slow-walked the consultation process on the Biological Opinion, extending the process by one- and two-month increments while NWP 12 remained in limbo. Although the consultation process was completed last month, the Biological Opinion still has yet to be reissued.”
- “Ultimately, regardless of how the Corps rewrites NWP 12 for the MVP, the permit conditions will have little to no effect on the ground. There is simply no way the damages wrought by the MVP can be contained. Any reissuance of NWP 12 is antithetical to the core function of the permit as a regulatory tool, and must be seen for what it is: a free license for MVP to pollute, damage, and desecrate any and all waterways in its path.”

July 11 *Winston Salem Journal* [article](#)

This article asks if the MVP Southgate extension project is in trouble.

- “Critics of a proposed natural gas pipeline through the Triad’s eastern perimeter say it could meet an end similar to the recently scrapped Atlantic Coast Pipeline.”
- “The same economic and societal forces that doomed the so-called ACP could affect the proposed MVP Southgate pipeline in Rockingham and Alamance counties, they believe.”

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- “The \$468 million Southgate project would be a 75-mile extension of another proposed natural gas project, the Mountain Valley Pipeline. Like the failed ACP, the MVP ‘mainline’ project originates in West Virginia and then crosses Virginia on a 303.5-mile route, before its Southgate spur enters North Carolina near Eden.”
- “Federal officials recently approved Southgate for future construction. But in a situation reminiscent of what stymied the ACP, backers of the North Carolina extension cannot begin building it until authorities lift a current stop work order stemming from lawsuits involving its parent project.”
- “Southgate supporters don’t see any red flags in the ACP cancellation.”
- “Mountain Valley spokesman Shawn Day noted that only last month the Southgate spur received a key go-head from the Federal Energy Regulatory Commission, widely known by its FERC acronym.”
- “The federal board approved the project’s required certificate of public convenience and necessity on June 18.”
- “Much of its mainline project already has been built. But the remainder is blocked by lawsuits and regulatory actions that so far have prevented it from going through Jefferson National Forest in Virginia and West Virginia, traversing certain areas where endangered species live and making a number of stream crossings.”
- “Published reports this week noted that a recent U.S. Supreme Court decision could soon resolve the stream issues, but the rest of the mainline still lacks approval by federal forest, fish and wildlife officials.”
- “The day they issue a permit will be the day we are back in court,” one Virginia protester told the Roanoke Times this week, the newspaper reported.”
- “Normally, last month’s FERC approval of the Southgate extension would mean the pipeline partners could start building it in Rockingham and Alamance counties.”
- “But in their decision, the four FERC board members who approved it said Southgate construction should not begin “until Mountain Valley receives necessary federal permits for the mainline system and the Director of Energy Projects ... lifts the stop work order and authorizes Mountain Valley to continue constructing the mainline system.”
- “Environmentalists say they are poised to challenge Southgate in court and in continuing public debate, taking an approach similar to that which contributed to the ACP’s demise.”

July 6 Financial Post [article](#)

The decision by Dominion Energy and its partner [Duke Energy Corp.](#) (DUK) to not proceed with the Atlantic Coast Pipeline casts a shadow over the Mountain Valley Pipeline. The MVP has two partners that have announced if it is not in service by the end of 2021 they will drop out.

- “To be an energy superpower, U.S. oil and gas requires a suitably gargantuan pipeline network that stretches for millions of miles. The country’s ability to expand that infrastructure is being tested like never before.”
- “In what’s possibly the biggest victory yet for an environmental movement targeting the conduits carrying fossil fuels, Dominion Energy Inc. and its partner Duke Energy Corp. said Sunday they’ll no longer pursue their US\$8 billion Atlantic Coast natural gas pipeline after years of delays and ballooning costs.”
- “It’s the third such project this year to be sidelined or canceled altogether amid mounting opposition to development of coal, oil and gas. Armed with experienced lawyers and record funding, environmental groups are finding enormous success blocking key pipeline permits in court. The keep-it-in-the-ground movement has increasingly turned its attention to the pipes, rather than the wells themselves, because they require various federal and state permits, which, for the most part, can be more easily litigated.”
- “A lack of new pipelines in areas like the U.S. Northeast, which faces gas supply constraints, may hobble some producers and potentially hasten the pace of transition to renewable energy. The demise of Atlantic Coast also casts a dark cloud on Mountain Valley Pipeline, a US\$4.7 billion gas project being developed by EQM Midstream Partners alongside utility giants NextEra Corp., Consolidated Edison Inc. and others.”
- “The Supreme Court victory for Atlantic Coast offered a glimmer of hope for Mountain Valley, which has also seen delays and cost hikes as it too seeks to carry Appalachian gas out of the Marcellus shale field. But its time may be running out after two customers in May amended a 2016 agreement to terminate the deal if service doesn’t begin by the end of 2021.”
- “Christi Tezak, managing director at ClearView Energy Partners, said she still expects Mountain Valley to get across the finish line, in part because the project is mostly constructed and faces slightly different circumstances than Atlantic Coast.”

Additional research by Eva Cahen and Jeff Ostrowski.

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