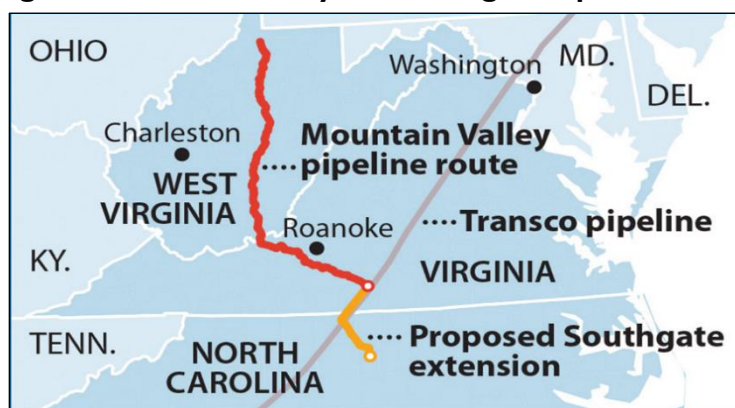


Mountain Valley Pipeline: Congressional Authorization

Updated June 9, 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**). Although the MVP is over 90% complete in terms of mileage, the project has faced numerous permitting challenges in federal court. As a result, construction repeatedly has been suspended. A separate pipeline, the proposed Southgate Project—[still in early development](#)—would extend the MVP into North Carolina. The MVP's permitting challenges, as well as recently enacted legislation to authorize its completion, are of continuing interest in Congress.

Figure 1. Mountain Valley and Southgate Pipeline Routes



Source: Courtesy of 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 like the MVP 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 for 10 years (a typical duration).
- **U.S. Fish and Wildlife Service (FWS).** Federal agencies approving certain parts of the MVP [must consult with FWS](#) under the Endangered Species Act (ESA). A Biological Opinion the FWS issued in 2020 purporting to satisfy ESA requirements 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, which also [faces litigation](#).
- **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’s water crossings 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 and is awaiting an agency decision.
- **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 must secure 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, requiring a new certification to be issued.

Legislative Proposals to Approve MVP

The MVP has been a controversial project since it was proposed, including in Congress. Opponents have [expressed concerns](#) about the need for the pipeline, its potential impacts on the environment, and its potential risks to the public, especially in minority and low-income communities (i.e., [environmental justice](#)). MVP’s proponents cite its [purported benefits](#) to the economy (e.g., jobs and lower energy prices), natural gas royalties, domestic gas supply reliability, and its potential role supplying gas exports to U.S. allies overseas. The Biden Administration also has been supportive of the pipeline. On April 21, 2023, Secretary of Energy Jennifer Granholm wrote a [letter to FERC](#) to “submit the view that the MVP project will enhance the Nation’s critical infrastructure for energy and national security.”

In the face of ongoing permit litigation and extensive agency reviews that have impeded completion of the MVP, legislation has been proposed in the 118th Congress requiring federal agencies to approve the pipeline. The Building American Energy Security Act of 2023 ([S. 1399](#)), the RESTART Act ([S. 1449](#)), and the Mountain Valley Pipeline Completion Act ([H.R. 3500](#)) all would require federal agencies to issue outstanding permits, biological opinions, rights of way, and any other necessary authorizations for the MVP, and would exempt these authorizations from further judicial review.

On June 3, 2023, President Biden signed the Fiscal Responsibility Act of 2023 ([P.L. 118-5](#)) which includes provisions to approve the MVP. Section 324 of the act finds that “the timely completion of 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, effectively shielding these actions from further litigation.

Although infrequent, such direct congressional authorization of major infrastructure projects has occurred in the past, 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. A Senate amendment (S.Amdt.101) to strip the MVP approval language from P.L. 118-5 drew 30 yeas votes. 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, with its federal permitting issues resolved under P.L. 118-5, the MVP’s developer intends to complete the pipeline and put it in service [by the end of 2023](#). As construction of the MVP continues, the status of the pipeline and its associated natural gas supplies may be an issue for Congress.

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