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Pipeline sues Dividing Waters

BY JOHN BRUCE • STAFF WRITER

MONTEREY — Owners of a designated state historic site have been sued by Atlantic Coast Pipeline LLC, while federal regulators received another round of criticism from the Cowpasture River Preservation Association recently.

On July 30, ACP filed papers in the Highland Circuit Court Clerk's Office against Dividing Waters Farms, and its owners, seeking legal authority to allow ACP to enter the Hightown property.

The farm, owned by descendants of the late Jacob Hevener, is located on one of the paths identified as a corridor for building the proposed 11-foot-circumference interstate natural gas transmission line that would cross Highland County.

In three separate lawsuits, ACP alleges Dividing Waters refused to allow ACP on the property. In the process of being served were defendants listed separately as Dividing Waters, Nancy Hevener Thorn and Anne Hevener Viera.

No hearing date was set as of earlier this week.

Included in the papers was an opinion by Virginia Attorney General Robert McDowell, who wrote that “a natural gas company may enter onto the property of a landowner where such landowner has not responded to notices given by the natural gas company provided the company complies with the notice requirements.”

The company earlier dropped lawsuits against owners of other Highland properties due to a technical error, but was expected to refile the suits.

Monday, the Cowpasture River Preservation Association issued a 22-page response to the Federal Energy Regulatory Commission in response to ACP's water use and quality report, which was issued under a National Environmental Policy Act-mandated effort to prepare a Draft Environmental Impact Statement for the proposed pipeline project.

CRPA said the water quality report submitted by ACP “presents a proforma and primer-level description of water resources and then ... leapfrogs into a discussion of cookbook derived mitigation measures without addressing in between a substantive assessment, evaluation, analysis, appraisal or prediction of the environmental impacts both negative and positive.”

CRPA addressed nine deficiencies in the pending draft EIS that primarily dealt with ground and surface waters, and secondarily with geology and wildlife. Emphasis is placed on science-based decision making, which CRPA said is lacking in the ACP report. Failure to use computer-based modeling for sedimentation and enrollment control, accepted valuing systems for ecosystems, or establishing riparian and karst buffer areas, are among deficiencies cited.

The ACP project lacks a “credible science-based and durable mitigation program,” and FERC “appears as the handmaiden of the oil, gas and electric utility industries,” the CRPA said.

CRPA suggests corrective actions such as establishing karst and riparian buffer distances based on science, with six factors taken into account including soil characteristics and erodibility, slope gradient or percent, slope length or distance, vegetative cover and condition, karst sinkhole depth and direction, plus a three-zone buffer design.

ACP’s Karst Terrain Assessment, Construction, Monitoring, and Mitigation Plan prepared by GeoConcepts Engineering Inc., “holds more promise for meaningful environmental protection than any other proposal by Dominion Resources over the last 13 months,” the CRPA said.

However, the plan appears not to have a “boots-on the ground” approach, which CRPA believes is necessary. CRPA acknowledged GeoConcepts will undertake a field reconnaissance at a future date and the results will be presented in a final report.

CRPA questioned the working relationship between ACP and GeoConcepts: “This cozy and inbred situation is roughly analogous to commissioning a canine-proof chicken coop for Mr. and Mrs. Wiley Coyote, financed by the Silver Wolf Bank Holding Company, designed by Red Fox Architects LLC., and constructed by Grey Fox Enterprises Unlimited.”

Hydrological and dye tracing studies were among corrective actions recommended by CRPA.

The CRPA said several wetlands in Highland and other counties have not been subject to delineation studies and mitigation left up to the U.S. Army Corps of Engineers is unacceptable. Corrective action should include appropriate sties with public oversight, CRPA said.

The CPRA goes on to identify pollution hotspots the ACP’s draft spill plan failed to address.

“The CRPA believes that the Federal Energy Regulatory Commission will be knowingly negligent if the FERC delegates compliance to the Virginia Department of Environmental Quality because it knows, or reasonably should know, that Virginia does not have the resources necessary to monitor effectively spills along the pipeline route and in rugged mountainous terrain, and to correct problems in a timely manner,” the report said.

Either missing or incomplete in the ACP report are the Karst Terrain Assessment, Monitoring and Mitigation Plan, Wetland Delineation Reports for All Wetlands Crossed, Upland Erosion Control, Revegetation, and Maintenance Plan, Wetland and Waterbody Construction and Mitigation Procedures, Forest and Grasslands Restoration and Rehabilitation Plan, Spill Prevention, Control, and Countermeasures, Virginia Site-specific Erosion and Sedimentation Control Plan, Pollution and Contamination Hotspot Descriptions and Locations, a Hierarchical Mitigation Plan, the CRPA said.

CRPA called on ACP to provide site-specific and publicly vetted plans for crossing water bodies, including Cowpasture River and Shaws Fork Sinks, Wilson Hollow Draft, 100-year flood plain of the Cowpasture River, Bullpasture River and Crab Run.