

Nos. 17-2399(L), 18-1012, 18-1019, 18-1036

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SIERRA CLUB, INC., APPALACHIAN VOICES, WILD VIRGINIA, INC., THE
WILDERNESS SOCIETY, PRESERVE CRAIG, AND SAVE MONROE

Petitioners,

v.

UNITED STATES FOREST SERVICE, UNITED STATES DEPARTMENT OF
AGRICULTURE, UNITED STATES BUREAU OF LAND MANAGEMENT,
AND UNITED STATES DEPARTMENT OF THE INTERIOR

Respondents,

MOUNTAIN VALLEY PIPELINE, LLC,

Intervenor.

On Petition for Review of Actions of the U.S. Forest Service and
U.S. Bureau of Land Management

PETITIONERS' EMERGENCY MOTION FOR INJUNCTION

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

On July 27, 2018, this Court vacated the authorizations granted to the Forest Service and BLM for construction of the Mountain Valley Pipeline (“the Pipeline”). Despite that ruling, Intervenor-Respondent Mountain Valley Pipeline, LLC (“MVP”) continues to proceed with construction of the Pipeline, including laying pipe and backfilling trenches for approximately 33 miles of the Pipeline route. Accordingly, Petitioners request an injunction against MVP, to halt all construction and ground-disturbing activities. This is necessary to ensure that the Forest Service and BLM can appropriately respond to this Court’s instructions and will prevent unnecessary, imminent, and irreparable harm. Pursuant to Local Rule 27(a), counsel for Petitioners informed the other parties of the intent to file this motion. The respondent federal agencies oppose the motion; MVP has not yet indicated its position.

In response to this Court’s ruling that the environmental impact statement (“EIS”) for the Pipeline is deficient, *see Sierra Club v. U.S. Forest Serv.*, No. 17-2399, slip op. at 23 (4th Cir. July 27, 2018), on August 3, 2018 the Federal Energy Regulatory Commission (“FERC”), which issued the Certificate for the entire pipeline, ordered MVP to halt construction on the length of the Pipeline. *See* Notification of Stop Work Order (“Stop Work Order”) (attached as Exhibit A). This was because under the Certificate Order, project construction is conditioned

on valid Forest Service and BLM authorizations. *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61043, at *76 (Oct. 13, 2017). The Forest Service and BLM decisions depend on the EIS, and the portions of the pipeline routed through the Jefferson National Forest are connected to and indeed are one project with the remainder of the pipeline.

Last Friday, August 10, however, FERC changed its stop work order and authorized MVP to lay pipe and backfill up to 33 miles of the pipeline right-of-way, including adjacent to the Jefferson National Forest. *See Partial Approval of the Temporary Stabilization Plan* (Aug. 10, 2018) (“Partial Approval of Stabilization Plan”) at 2-3 (attached as Exhibit B); *Temporary Stabilization Plan* (“Stabilization Plan”) at 8 (attached as Exhibit C). And although counsel for the Forest Service and BLM inform Petitioners’ counsel that currently only sedimentation and erosion control measures are occurring in the national forest, FERC’s order is vague. In regards to the national forest, FERC’s order states only that the relevant action (“All work stopped”) is “Pending.” *Partial Approval of Stabilization Plan* at 4.

The law is clear that construction must not occur anywhere unless and until a route across the Jefferson National Forest has been approved. Condition 9 of the FERC certificate order prohibits construction prior to receipt of all “authorizations required under federal law.” *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043,

at *76 (Oct. 13, 2017). As the Fourth Circuit explained in interpreting an analogous condition in the certificate for the Atlantic Coast Pipeline, vacatur of one of those federal authorizations means that construction violates the certificate. *Sierra Club v. U.S. Dep't of Interior*, No. 18-1082, 2018 WL 3717067, at *16 n.11 (Aug. 6, 2018).

More broadly, MVP cannot be permitted to constrain the Forest Service and BLM inquiries on remand by continuing to construct the proposed route outside the forest boundary. *See Md. Conservation Council, Inc. v. Gilchrist*, 808 F.2d 1039, 1042 (4th Cir. 1986) (remanding case involving county's construction of a road up to the boundaries of a park, the crossing of which required completion of an environmental impact statement, because "[t]he decision of the Secretary of the Interior to approve the project ... would inevitably be influenced if the County were allowed to construct major segments of the highway before issuance of a final EIS. The completed segments would 'stand like gun barrels pointing into the heartland of the park ...'" (citation omitted). Additionally, National Environmental Policy Act ("NEPA") regulations prohibit any action that would limit the Forest Service and BLM's choice of reasonable alternatives prior to their completion of NEPA review. 40 C.F.R. §§ 1506.1(a)(2), 1502.2(f).

Accordingly, Petitioners respectfully request the Court enjoin MVP from any further ground-disturbing activities, including clearing, digging, transporting

pipe to the right-of-way, stringing, welding, trenching, and construction of the pipeline (except for measures necessary to prevent further environmental harm such as run-off into streams, soil erosion and sedimentation control), in the Jefferson National Forest as well as along the length of the Pipeline route.

II. PROCEDURAL AND FACTUAL BACKGROUND

On October 13, 2017, FERC approved an Order Issuing Certificates and Granting Abandonment Authority for the Pipeline. *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (Oct. 13, 2017) (“Certificate Order”). Several of Petitioners moved for a stay of the Certificate Order and rehearing before FERC on November 13, 2017. On June 15, 2018, FERC issued an Order on Rehearing, 163 FERC ¶ 61,197 (June 15, 2018) (“Rehearing Order”) upholding the Certificate Order. FERC’s orders authorize MVP to construct a 303.5-mile large-diameter gas pipeline from Wetzel County, West Virginia to Pittsylvania County, Virginia. Pipeline construction is continuing and is causing irreparable harm to the environment along the route, including Petitioners’ members’ property and other areas they use and enjoy.

On January 8, 2018, Petitioners requested a protective stay from the D.C. Circuit in Case No. 17-1271. In that case, Petitioners challenge FERC’s Certificate Order as violative of NEPA and the Natural Gas Act. On March 2, 2018, Petitioners sought a stay from this Court of the authorizations granted by the Forest

Service and BLM for the Pipeline. This Court denied the stay motion without opinion on March 14, 2018.

On July 20, 2018, Petitioners filed a second motion for stay in the D.C. Circuit, following FERC's issuance of its Rehearing Order. That motion remains pending and Petitioners have filed an Emergency Motion to Expedite Petitioners' Motion for Stay in that case, for the same reasons Petitioners seek relief here: MVP continues to construct the Pipeline.

On July 27, 2018, this Court decided the authorizations granted by the Forest Service and BLM for the Pipeline were invalid, remanding to the agencies for additional work. Slip op. at 42. Notably, this Court ruled that the EIS relied upon by the Forest Service was deficient in several respects. *Id.* at 23. Accordingly, the Court held that "the Forest Service acted arbitrarily and capriciously in adopting the sedimentation analysis in the EIS." *Id.* The Court concluded that the Forest Service's decision "runs counter to the evidence before the agency," and directed the Forest Service on remand to "explain how [FERC's] EIS took a 'hard look' at the sedimentation issues ... considering its reliance on a superseded [Hydrologic Analysis of Sedimentation] report with which the Forest Service had grave concerns." *Id.*

The deficiencies in the sedimentation analysis apply not just to the portion of the Pipeline within the national forest, but to the entire project. The Court noted

that the Forest Service’s shift “from a 48% ceiling to 79%” estimate for effectiveness of sediment controls “is particularly concerning in light of MVP’s commentary at the May 9 meeting [with Forest Service representatives] that using the 48% figure would have ‘ramifications for the entire project analysis.’” *Id.* at 21. The “logical way to interpret th[is] statement is that MVP was troubled that using the 48% figure would undercut other studies and numbers supporting the project, causing the entire project to fail or be delayed.” *Id.* Indeed, using an accurate estimate of mitigation effectiveness will result in an increase in the estimate of the amount of soil lost and of sediment delivered into waterways, which could lead to different decisions by BLM and the Forest Service.

After this Court issued its decision, MVP continued to construct the Pipeline, including in areas directly adjacent to the Jefferson National Forest. *See* Hodges Decl. ¶¶5, 8-13, Ex. R (describing accelerated pace of construction-related activities on land adjacent to national forest in the days following this Court’s July 27, 2018 opinion, including delivery of pipe to the right-of-way, and bending and bracing of pipe). After rushing to transport pipe to the right-of-way even after this Court’s decision issued, MVP now claims that removing the pipe is “not practical” and that the “best course of action” is to install it. Stabilization Plan at 6; *see also id.* at 5, 8, 12; Ardison Decl. ¶¶2-3, 5, Ex. S (describing observation of truck transporting pipe segment to MVP corridor access road on August 13, 2018).

On August 3, 2018, following this Court's decision remanding the Pipeline approval to the agencies, FERC issued its order stopping work on the Pipeline.

Stop Work Order (Ex. A). Notably, the order states that:

Commission staff cannot predict when these agencies may act or whether these agencies will ultimately approve the same route. Should the agencies authorize alternative routes, MVP may need to revise substantial portions of the Project route across non-federal lands, possibly requiring further authorizations and environmental review.

Id. at 1. The stop work order concludes by stating:

MVP is hereby notified that construction activity along all portions of the Project and in all work areas must cease immediately, with the exception of any measures deemed necessary by those land managing agencies or FERC staff to ensure the stabilization of the right of way and work areas.

Id. (emphasis in original). Perhaps seeing an opening to continue construction, MVP then submitted a request to “stabilize” the Pipeline right-of-way by continuing to weld pipe, lower it into open trenches, and dig new trenches along the right-of-way. Stabilization Plan (Ex. C) at 5-6, 8, 12. On August 10, 2018, FERC responded to MVP's request by partially approving MVP's Stabilization Plan, authorizing the welding, placement of pipe in trenches, and backfilling of trenches for approximately 33 miles of the right-of-way. *See* Partial Approval of Stabilization Plan (Ex. B) at 2-3; Stabilization Plan (Ex. C) at 8. FERC's approval, and MVP's consequent construction activities, flout this Court's opinion, FERC's prior orders, and the obligation of all federal agencies to comply with NEPA prior

to proceeding with project construction. Indeed, as this Court found in the Atlantic Coast Pipeline case, vacatur of any federal approval required for the FERC Certificate means that any further construction violates the Certificate. *Sierra Club v. U.S. Dep't of Interior*, No. 18-1082, 2018 WL 3717067, at *16 n.11 (Aug. 6, 2018).

FERC's Certificate for this Pipeline contains the same mandatory condition. *See* Certificate Order at Environmental Condition 9 (“Mountain Valley and Equitrans must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Mountain Valley and Equitrans must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).”) (emphasis in original).

III. STANDARD OF REVIEW

The Natural Gas Act vests this Court with “original and exclusive jurisdiction” in this action. 15 U.S.C. § 717r(d)(1). The Court’s original jurisdiction includes the inherent power to grant injunctive relief. “When Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in the light of statutory purposes.” *Mitchell v. Robert De Mario Jewelry, Inc.*, 361 U.S. 288, 291–92 (1960);

Culpepper v. Reynolds Metals Co., 421 F.2d 888, 894 (5th Cir. 1970) (“[f]ederal courts have an inherent power to grant appropriate relief” including injunctions), *abrogated in part on other grounds by Del. State Coll. v. Ricks*, 449 U.S. 250 (1980). Moreover, the Court has authority under the All Writs Act to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a); *see also Cole v. United States*, 657 F.2d 107, 110 (7th Cir. 1981) (“Ancillary relief to preserve and protect a prior judgment is eminently proper....”); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1099 (11th Cir. 2004) (authorizing writs to protect “already-issued orders and judgments”).

This Court’s injunctive power in a case reviewing agency action includes third party intervenors whose activities are governed by an erroneous agency decision. *See, e.g., W. Va. Highlands Conservancy v. Island Creek Coal Co.*, 441 F.2d 232, 235-36 (4th Cir. 1971) (enjoining timber cutting and mining on Monongahela National Forest pending resolution of APA challenges); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211, 1216 (9th Cir. 1998) (extending preliminary injunction for “all future logging, road building and other ground disturbing activities” post judgment until the Forest Service satisfies NEPA); *Found. on Econ. Trends v. Heckler*, 756 F.2d 143, 160 (D.C. Cir. 1985) (enjoining university experiment funded by federal agency where agency failed to

complete NEPA first).

A party seeking an injunction must demonstrate: “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391(2006) (citation omitted).

Petitioners meet all four factors.

IV. ARGUMENT

Petitioners have already prevailed on the merits, for the reasons outlined in this Court’s July 27, 2018 decision. Accordingly, the key questions before this Court pertain to the balancing of harms and the public interest.

A. PETITIONERS WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

“When a procedural violation of NEPA is combined with a showing of environmental or aesthetic injury, courts have not hesitated to find a likelihood of irreparable injury.” *Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 24 (D.D.C. 2009) (citing *Fund for Animals v. Norton*, 281 F. Supp. 2d 209, 221 (D.D.C. 2003)). In this case, MVP will continue constructing and possibly finish construction of the Pipeline along at least 33 miles of the right-of-way if it is allowed to proceed under FERC’s partial approval order. This will risk

additional construction impacts, including but not limited to the sedimentation and hydrologic impacts cited by this Court in its July opinion.

Petitioners' members are suffering, and will continue to suffer, irreparable environmental harm from the construction and operation of the Pipeline.

Petitioners' members own land, live, and recreate near the path of the pipeline and have interests in aquatic resources that would be harmed by construction. For example, member James Gore owns two parcels of land crossed by the Pipeline, including stream and wetland crossings. *See* Gore Decl. ¶6, Ex. D. Pipeline construction threatens those water resources, which support Mr. Gore's livestock and wildlife that he enjoys viewing. *Id.* at ¶¶6-7, 10. The property of member Stephen Bernard likewise includes a creek crossing, and he is concerned about how sedimentation in the creek will affect the animals that depend on it. *See* Bernard Decl. ¶10, Ex. E. Member Tammy Capaldo owns the property on one side of the Pipeline's crossing of the Greenbrier River, one of five stream segments designated for protection under West Virginia's Natural Streams Preservation Act as possessing "outstanding scenic, recreational, geological, fish and wildlife, botanical, historical, archeological or other scientific or cultural values." Capaldo Decl. ¶¶5-10, Ex. F; W.V. Code §§ 22-13-2, 22-13-5. The pipeline crossing, including sedimentation impacts, will greatly reduce Ms. Capaldo's enjoyment of her property and may cause her to abandon her lifelong dream of living along the

river. Capaldo Decl., ¶¶19-27, 34. The pipeline route crosses three streams on member Maury Johnson's property that have a hydrologic connection to his drinking water well and support abundant wildlife, just 600 feet from Mr. Johnson's house. Johnson Decl. ¶¶7-16, Ex. G. In addition to the crossings on his property, the Project would also cross Indian Creek at or near the location where Mr. Johnson was baptized. *Id.* at ¶¶22-24. *See also* Apgar Decl. ¶¶14-15, Ex. H; Jones Decl. ¶¶11-12, Ex. I; Tobey Decl. ¶¶7-11, Ex. J; Jenkins Decl. ¶¶4-9, Ex. K.

In addition to impacts to water resources, pipeline construction has caused and will continue to cause substantial impacts to forest resources. FERC concluded that the MVP will have significant and long-term impacts on forests, affecting 4,453.1 acres of upland forest, including 2,500 acres of valuable contiguous interior forest the clearing of which would result in "conversion of about 17,194 acres of interior forest in West Virginia and 4,579 acres of interior forest in Virginia into edge habitat." EIS at 4-178, 4-191, 5-5. Those impacts "increase the potential for the introduction and spread of noxious and invasive plant species," and otherwise adversely affect suitability for wildlife. *Id.* at 4-177, 4-181 to -82. Many of these impacted forest resources are on property owned or regularly used by Petitioners' members. *See* Gore Decl. ¶¶ 5, 8-11, 13-15; Jarrell Decl. ¶¶ 6-10, Ex. L; Apgar Decl. ¶¶17-18; Bohon Decl. ¶¶7-8, 11, Ex. M; Cohen Decl. ¶¶6-14, Ex. N; Johnson Decl. ¶¶18-21; Jones Decl. ¶¶6-10; Tobey Decl. ¶¶14-17; Wilson

Decl. ¶¶ 6-7, Ex. O. MVP has already “clear[ed] a swath through the mountains ... destroying th[e] character” of one such area near the Appalachian Trail where member David Jenkins hikes and fishes. Jenkins Decl. ¶5.

Petitioners disagree with FERC’s assertion that “[t]here is no reason to believe that” federal agencies “will not be able to ... ultimately issue [a] new right-of-way” across federal lands. Stop Work Order at 1. As this Court explained, the EIS’s conclusion regarding mitigation and severity of sediment impacts were “counter to the evidence [that was] before the agenc[ies]” at the time of approval. *Sierra Club v. U.S. Forest Serv.*, No. 17-2399, 2018 WL 3595760, at *8 (4th Cir. July 27, 2018). Experience with actual construction further refutes the conclusion that pipeline construction can occur without causing substantial adverse effects to soil and aquatic resources: as MVP admits, many of its erosion control devices have experienced “continued failure,” Stabilization Plan at 14; *see also* Transcon Environmental, Non-Compliance Report prepared for U.S. Forest Service (April 17, 2018) (attached as Exhibit P); WVDEP, Notice of Violation No. W18-52-021-RDD (April 3, 2018); WVDEP, Notice of Violation No. W18-52-001-CP (May 9, 2018); WVDEP, Notice of Violation No. W18-17-065-TJC (June 6, 2018); WVDEP, Notice of Violation No. W18-52-002 (June 6, 2018); WVDEP, Notice of Violation No. W18-09-076-TJC (July 6, 2018); VADEQ, Notice of Violation No. 2018-CO-0001 (July 9, 2018) (notices of violation attached as Exhibit Q).

Accordingly, it is unclear how the Forest Service could determine, on remand, that the Jefferson Forest Plan can be amended in a way that will allow the project to proceed while also “maintain[ing]” and “restor[ing]” aquatic and soil resources. 36 C.F.R. §§ 219.8(a)(2), (a)(3)(i), or how BLM could conclude that the pipeline satisfies the requirements of 43 C.F.R. Part 2880.

In sum, MVP’s suggestion that completing construction is the most environmentally protective course of action entirely ignores these impacts by wrongly assuming that the company will eventually be permitted to construct its pipeline along its current route.

B. OTHER PARTIES WILL NOT BE SUBSTANTIALLY HARMED BY A STAY

In contrast to the real and permanent environmental harms discussed above, an injunction would pose only minimal or temporary injury to FERC and MVP. Although FERC has interests in defending its orders, “the effect of an injunction on these interests seems rather inconsequential.” *Ohio Valley Envtl. Coal. v. U.S. Army Corps of Eng’rs*, 528 F.Supp.2d 625, 632 (S.D.W. Va. 2007). For its part, MVP is likely to argue that delaying its construction schedule will result in economic harm. But such monetary loss is relevant to the balance of harms only when it “threatens the very existence of the movant’s business.” *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (citation omitted). *See also* Rehearing Order at ¶72; *Sierra Club v. U.S. Army Corps of Eng’rs*, 645 F.3d 978, 997 (8th

Cir. 2011). To the extent that such harm to MVP's economic interests is relevant, it is outweighed by the irreparable harm to the environment caused by pipeline construction. *See, e.g., Ohio Valley Env'tl. Coal.*, 528 F. Supp. 2d at 632.

C. AN INJUNCTION IS IN THE PUBLIC INTEREST

In cases involving preservation of the environment, the balance of harms generally favors the grant of injunctive relief. *See Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987), *abrogated in part on other grounds by Winter v. Nat. Res. Def. Council*, 555 U.S. 7 (2008). "There is no question that the public has an interest in having Congress' mandates in NEPA carried out accurately and completely." *Brady*, 612 F. Supp. 2d at 26. Here pipeline construction impacts to forests, streams, and wetlands, and the resulting loss of ecological services they provide, constitute injury to the public interest in protecting natural resources. If construction is allowed to continue it would defeat the purpose and intent of NEPA, as well as the National Forest Management Act and the Mineral Leasing Act, in contravention of the public's congressionally recognized interest in fully informed environmental decision-making.

Petitioners agree that MVP must take steps to stabilize and remediate the damaging conditions it has created. However, as explained below, Petitioners reject MVP's suggestion that the least damaging option is to complete construction on segments where pipe is already in the right-of-way. Even if FERC were to

accept this premise, that would not provide FERC with authority to allow further construction. As FERC's stop work order makes clear, MVP must only take actions that are "necessary . . . to ensure the stabilization of the right of way and work areas." Stop Work Order at 1. Under no circumstances is installation of pipe in the ground, much less digging new trench, "necessary" to proper stabilization. MVP argues that installing pipe at this time will reduce overall environmental impacts when compared with removing pipe from the right-of-way and immediately stabilizing, and then returning to complete construction once the Forest Service and BLM complete their processes. But as FERC and this Court have recognized, MVP may not simply assume that the agencies will ultimately grant the authorizations that MVP seeks—or, even if they do, that the ultimate decisions will allow construction along the same route. To comply with this Court's order, the conditions of FERC's Certificate for the Pipeline, and FERC's stop work order, MVP must not be allowed to undertake any further construction activities but rather must be limited to immediately stabilizing and revegetating currently disturbed areas.

D. REMEDIES AT LAW ARE INADEQUATE

"Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable." *Amoco*, 480 U.S. at 545. In other words, whether sufficient remedies

at law are available “is generally not at issue in environmental cases.” *Cottonwood Env'tl. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1090 (9th Cir. 2015).

In this case, nothing short of an order stopping the laying of pipe in trenches and the backfilling of trenches will remedy the harms threatened. Allowing MVP to continue constructing its pipeline would make a mockery of NEPA, the National Forest Management Act, the Mineral Leasing Act, and this Court’s merits opinion.

V. CONCLUSION

For the reasons set forth above, Petitioners respectfully request an injunction against MVP – a party to this case – forbidding construction unless and until the agency remands are completed.

Dated: August 14, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 3,868 words, excluding the parts of the motion exempted by Fed. R. App. P. 27(d)(2) and Fed. R. App. P. 27(a)(2)(B).
2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

Dated: August 14, 2018

/s/ Elizabeth F. Benson
Elizabeth F. Benson

CERTIFICATE OF SERVICE

I certify that on August 14, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Elizabeth F. Benson
Elizabeth F. Benson