

## **ALERT** **ENERGY & NATURAL RESOURCES**



### **Federal Court Enjoins West Virginia County from Using Zoning Laws to Interfere with Construction of Compressor Station**

On August 29, 2018, the United States District Court for the Southern District of West Virginia issued a Memorandum Opinion and Order granting Mountain Valley Pipeline (MVP) summary judgment and permanently enjoining the County Commission of Fayette County, West Virginia, from using a zoning ordinance to bar construction of the Stallworth Compressor Station (CSS). The CSS is a vital part of the 303.5-mile long, 42-inch diameter, MVP pipeline project stretching from Wetzel County, West Virginia, to Pittsylvania County, Virginia. See *Mountain Valley Pipeline v. Matthew D. Wender, et al.*, Case No. 2:17-cv-04377, Mem. Op. and Order (S.D. W. Va. August 29, 2018).

The CSS is being constructed on property owned by MVP in an area that is currently zoned Rural-Residential under the County's Unified Development Code. MVP sought approval for the limited re-zoning of the area to Heavy-Industrial, while also seeking a FERC certificate of authority for construction of the station. FERC ultimately granted the certificate of authority during the re-zoning application process, but the County Commission nevertheless denied the re-zoning request. Violations of the zoning ordinance exposed MVP to potential civil and criminal penalties.

The FERC approval process, as noted by the District Court, requires an applicant to make a bona fide attempt to comply with state and local authorities, but this "rule of reason" is secondary to FERC's authority under the Natural Gas Act to preempt state and local authority over jurisdictional facilities authorized by FERC.

The Court dismissed the various theories relied upon by the County Commission and held the zoning ordinance was unenforceable due to field and conflict preemption pursuant to the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2. The Court noted the zoning ordinance specifically targeted oil and gas transmission lines and related facilities and therefore squarely conflicted with the federal authority granted to FERC. The Court also rejected the Commission's argument there was no "actual controversy" because MVP had not yet been cited or penalized for violating the ordinance, citing to well-established authority that when a party is faced with potential criminal penalties, that is sufficient to establish a case and controversy.

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This is the second time a federal court has enjoined efforts by the Fayette County Commission to bar or regulate oil and gas operations. In 2016, the Commission enacted an ordinance seeking to prohibit disposal of oil and gas wastes and operation of underground injection control wells in Fayette County. EQT Production Company filed a legal challenge and the District Court held the ordinance was preempted due to conflict with West Virginia's state-wide regulation of the oil and gas industry. That case was appealed and affirmed by the Fourth Circuit Court of Appeals in 2017. See *EQT Prod. Co. v. Wender*, 807 F.3d 322 (August 30, 2017).

Timothy M. Miller and Christopher B. Power of Babst Calland served as counsel for MVP in the recent case, and as counsel for EQT in the earlier matter. The August 29, 2018 decision in the *Mountain Valley Pipeline* matter can be found [here](#).

If you have any questions about the *Mountain Valley Pipeline* decision or its impact on the oil and gas industry, please contact Timothy Miller at (681) 265-1361 or [tmiller@babstcalland.com](mailto:tmiller@babstcalland.com), or Christopher "Kip" Power at (681) 265-1362 or [cpower@babstcalland.com](mailto:cpower@babstcalland.com).

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