No. 19A1053

IN THE

Supreme Court of the United States

U.S. ARMY CORPS OF ENGINEERS AND LIEUTENANT GENERAL TODD T. SEMONITE, CHIEF OF ENGINEERS,

Applicants,

v.

NORTHERN PLAINS RESOURCE COUNCIL, ET AL.,

Respondents.

On Application For A Stay Pending Appeal
To The United States Court Of Appeals For The Ninth Circuit
And Pending Further Proceedings In This Court

To The Honorable Elena Kagan, Associate Justice Of The Supreme Court Of The United States And Circuit Justice For The Ninth Circuit

MOTION FOR LEAVE TO FILE IN COMPLIANCE WITH RULE 33.2, MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF, AND *AMICUS CURIAE* BRIEF OF NEXTERA ENERGY, INC.

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MOTION FOR LEAVE TO FILE IN COMPLIANCE WITH RULE 33.2

Proposed *amicus curiae* NextEra Energy, Inc. moves for leave to file the attached *amicus curiae* brief on 8.5" x 11" paper in accordance with Rule 33.2. Such a filing is consistent with this Court's April 15, 2020 order providing that, for "every document filed in a case prior to a ruling on a petition for a writ of certiorari," a paper copy of the document "may be filed" formatted on 8.5" x 11" paper instead of in booklet form.

Dated: June 29, 2020

Respectfully submitted,

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

NextEra Energy, Inc. ("NextEra") has a significant interest in submitting this *amicus curiae* brief in support of the application for a stay pending appeal of the U.S. Army Corps of Engineers ("Corps").

NextEra is a substantial owner of Mountain Valley Pipeline, LLC ("MVP").[1] MVP is currently constructing the Mountain Valley Pipeline, a 303-mile natural gas pipeline that, upon completion, will run from northeastern West Virginia to southern Virginia. Construction of the pipeline began in 2018, following a several-year permitting process; today, 264 miles of pipeline are welded and in place, and the project is 92% complete.

[1] The views expressed herein are the views of NextEra alone and do not necessarily reflect the views of MVP.

To meet the requirements of the Clean Water Act during construction, MVP has relied on the Nationwide Permit 12 ("NWP 12") program, which is the subject of the district court's vacatur and injunction in this case. As reflected by initial interpretations from the Corps, the Corps may conclude that MVP's 92%-complete project is covered by that ruling, because the order vacates, on a nationwide basis, NWP 12 "as it relates to the construction of new oil and gas pipelines" and enjoins the Corps from relying on NWP 12 to authorize "any dredge or fill activities for the construction of new oil and gas pipelines." App'x 42a.[2]

If the district court's order is not stayed, NextEra therefore has an appreciable concern as to whether MVP will be able to use NWP 12 to finish its pipeline, which sits on the verge of completion following billions of dollars of investment in substantial reliance on NWP 12. MVP's inability to continue to rely on NWP 12—as it has done since the very inception of the project—will inevitably generate substantial delays and cost overruns for the project.

[2] The district court's order never defined the term "new oil and gas pipeline[ ]," leaving a question as to whether MVP's remaining wetlands construction work constitutes "construction of [a] new . . . gas pipeline[ ]" within the meaning of the order. As discussed in the accompanying brief, as a result of renewed and historically unprecedented environmental analysis by several federal agencies, MVP will need the Corps to issue a new verification of its ability to rely on NWP 12 to complete its remaining wetlands crossings. While NextEra believes that a 92%-complete gas pipeline project is not "new," this lack of clarity as to the scope of the order is yet another example of the facially arbitrary nature of, and procedural irregularities in, the district court's order. NextEra reserves its right to assert in the future that the vacatur and injunction do not, as a matter of law, apply to the MVP project.

Accordingly, NextEra has a direct and concrete interest in the outcome of these proceedings.

Dated: June 29, 2020

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AMICUS CURIAE BRIEF OF NEXTERA ENERGY, INC. IN SUPPORT OF APPLICANTS

INTEREST OF *AMICUS CURIAE*

NextEra Energy, Inc. ("NextEra") respectfully submits this *amicus curiae* brief in support of the application for a stay pending appeal of the U.S. Army Corps of Engineers ("Corps").[1]

[1] Pursuant to this Court's Rule 37.6, NextEra states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than NextEra funded the preparation or submission of this brief. Because of the timing of the application for a stay, NextEra was not able to provide notice to the parties more than ten days before filing this brief as provided for under this Court's Rule 37.2(a). Counsel for Applicants and Plaintiffs did not respond to NextEra's request for consent to file. Counsel for TC Energy Corporation consented. Counsel for the State of Montana and for the American Gas Association took no position.

NextEra is a substantial owner of Mountain Valley Pipeline, LLC ("MVP"). MVP is currently constructing the Mountain Valley Pipeline, a 303-mile natural gas pipeline that, upon completion, will run from northeastern West Virginia to southern Virginia. MVP received a Certificate of Public Convenience and Necessity from the Federal Energy Regulatory Commission ("FERC") in 2017. Construction of the pipeline began in 2018 following several years of permitting; today, 264 miles of pipeline are welded and in place, and the *project is 92% complete*. Once operational, the pipeline will connect areas of natural gas production in the Appalachian Basin with growing markets in the Mid-Atlantic and Southeastern United States. *See* Fed. Energy Regulatory Comm'n, Mountain Valley Project Final Environmental Impact Statement at ES-2, 1-8 (June 2017).

To meet the requirements of the Clean Water Act during construction, MVP has relied on the Corps' Nationwide Permit 12 ("NWP 12") program, which provides Clean Water Act authorization for pipeline projects to traverse wetlands, such as streams and rivers, that are considered waters of the United States. Prior to commencing construction, MVP obtained its first authorization from the Corps to use NWP 12 in 2017 following extensive dialogue with the Corps to demonstrate that the project met the requirements of NWP 12, including General Condition 18. This authorization was obtained only after the U.S. Fish and Wildlife Service first issued a Biological Opinion that MVP's pipeline was "not likely to jeopardize" endangered species. *See* Fish & Wildlife Serv., Biological Opinion 38–39 (Nov. 21, 2017) (Dkt. CP16-10-000) ("Biological Opinion"). The Fish and Wildlife Service reached that

determination following completion of its own multi-year, comprehensive examination, as required by General Condition 18, of the project's potential impact on endangered species, which encompassed voluminous environmental submissions by MVP, in-depth consultation with federal and state environmental officials, and consideration of an unprecedented amount of public input.

With NWP 12 and other authorizations in hand, MVP commenced construction and submitted documents to continue to rely on NWP 12 until construction was complete. In January 2020, MVP requested that the Corps authorize the use of NWP 12 following the expected successful conclusion of reinitiated consultation with the Fish and Wildlife Service and subsequent issuance of a revised Biological Opinion. But in response to the District of Montana's ruling in this challenge to an *entirely different* pipeline, the Corps has now indicated that it is not currently processing any such requests. The nationwide scope of the District of Montana's order accordingly appears, at least in practicality, to extend to MVP's pipeline more than 1,500 miles away (even though the court never defined what it meant by "construction of [a] new . . . gas pipeline," *see* Mot. for Leave at vi n.2).

Accordingly, if the district court's order is not stayed, NextEra anticipates that MVP will be unable to rely on NWP 12 to complete construction of the remaining 8% of the project. MVP's inability to rely on NWP 12 will generate substantial delays and cost overruns for the $5.7-billion project. A fifteen-month delay in completing construction—which is a realistic possibility if the district court's order remains in force—has been estimated to cost MVP up to $300 million. And the district court's

order could even put at risk the final completion of the project as MVP undertakes, anew, an alternative (and redundant) permitting process that will not provide any additional protections for endangered species.

These outcomes are particularly unfair to MVP because it was blindsided by the district court's order. Based on representations by Plaintiffs and assurances from the district court, NextEra believed that this litigation presented a narrow issue regarding the use of NWP 12 in the construction of the Keystone XL pipeline. MVP had no notice that its ability to rely on NWP 12 to complete construction in West Virginia and Virginia was remotely in jeopardy as a result of this proceeding in Montana, until the district court issued its nationwide vacatur and injunction. The district court initially applied its nationwide order to *all* "dredge or fill activities" associated with the construction of "utility lines," App'x 66a, 68a, a term defined to include not only electrical and communications wires but also oil and gas pipelines, *Issuance and Reissuance of Nationwide Permits*, 82 Fed. Reg. 1860, 1985 (Jan. 6, 2017). Then, upon further consideration, the court scaled back its order to apply only to "the construction of new oil and gas pipelines," without any meaningful explanation as to why a pipeline poses more environmental risks than a powerline (each of which can be either above ground or below ground or some combination thereof). App'x 42a. Nor did the court explain why a pipeline that is nearly complete and that has undergone extensive environmental reviews (like MVP's pipeline) should be treated the same as a pipeline on which construction and environmental assessment have not even commenced. *Id.*

Accordingly, NextEra, as a partial owner of MVP, has a substantial interest in supporting the government's stay application.[2]

SUMMARY OF ARGUMENT

The Court should stay the District of Montana's order in its entirety. The district court erroneously concluded that the Corps' NWP 12 permitting program violates the Endangered Species Act ("ESA") by disregarding the substantial protections NWP 12 provides for endangered species, as evidenced by the comprehensive Biological Opinion issued for MVP's project and MVP's extensive NWP 12-required interactions with the Corps, FERC, and the U.S. Fish and Wildlife Service on endangered species. The district court also improperly issued a nationwide injunction that exceeded its Article III and equitable powers by impairing the rights of MVP and other nonparties.

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[2] The government states that NWP 12 "would not presently authorize construction of" MVP's pipeline, Gov't App. 39, in light of *Sierra Club* v. *U.S. Army Corps of Engineers*, 909 F.3d 635 (4th Cir. 2018), which vacated the Corps' NWP 12 verification for the pipeline on the ground that the project did not comply with certain state "special conditions" incorporated into NWP 12 by the State of West Virginia. *Id.* at 639, 652–53. After the West Virginia Department of Environmental Protection thereafter revised those special conditions through a notice-and-comment process, the Corps adopted them as part of the NWP 12 program in West Virginia, and MVP now satisfies those NWP 12 requirements. *See* U.S. Army Corps of Eng'rs, *Nationwide Permits for the State of West Virginia*, Pub. Notice No. LRH-2016-00006-WV (Jan. 24, 2020), https://bit.ly/37U89yp. Accordingly, until the district court entered its order, MVP was anticipating imminent re-issuance of a NWP 12 verification by the Corps, which Plaintiffs agree would be likely in the absence of the district court's nationwide ruling. *See* D. Ct. Dkt. 144-2 ¶ 8 (May 6, 2020) (declaration stating that the "Corps will likely re-issue its [NWP] 12 verifications" for the MVP project).

The balance of equities favors a stay. The district court's order is causing immediate and irreparable harm to MVP's pipeline project, which will take far longer and be far more costly to complete if MVP is unable to rely on NWP 12. Those delays will not, in any conceivable manner, result in any increased protection for endangered species, as the unprecedented environmental scrutiny that this project continues to undergo using NWP 12 would not be any more intensive under any available alternative. Moreover, the district court's order is fundamentally unfair to nonparties such as MVP, who had no notice that the district court—in response to Plaintiffs' request for only narrowly targeted relief limited to the Keystone XL pipeline and after severely restricting participation by interested nonparties—would issue an order that would purport to apply nationwide. That procedural deficiency is compounded by the fact that, without evidence or meaningful explanation, the district court somehow concluded that pipelines invariably cause greater environmental impacts than electrical and communications lines (all of which can be either above ground, below ground, or both), and applied its order only to pipeline projects, while exempting all other utility lines eligible for authorization under NWP 12.

ARGUMENT

I. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE CORPS' NWP 12 PROGRAM WAS UNLAWFUL AND IN GRANTING NATIONWIDE RELIEF.

The serious legal flaws in the district court's ESA analysis and in its issuance of nationwide relief warrant a stay.

A. The Court Erred In Concluding That NWP 12 Violates The ESA.

The district court concluded that the Corps' re-issuance of NWP 12 "may affect" endangered species and thus triggered the ESA's consultation requirement. App'x 55a; *see also* 16 U.S.C. § 1536(a)(2). In so doing, the district court erroneously discounted the impact of General Condition 18 of NWP 12 and other endangered-species-focused regulatory requirements, which provide comprehensive legal protections for endangered species and obviated the need for the Corps to undertake formal consultation with federal wildlife agencies before re-issuing NWP 12.

The Corps incorporates General Condition 18—which requires full ESA consultation with the U.S. Fish and Wildlife Service, including the production of a Biological Opinion when warranted—into all of its NWP 12 permits specifically to comply with the ESA. Under General Condition 18, permittees must give the Corps pre-construction notification if any endangered species "might be affected" and "shall not begin work" until the Corps grants authorization. 82 Fed. Reg. at 1999. General Condition 18's notification requirement is broader—and thus more protective of endangered species—than the ESA's threshold for consultation. *See* Gov't App. 11.

In addition, General Condition 18's protections for endangered species trigger other regulatory requirements under the Natural Gas Act applicable to the construction of gas pipelines. For example, if a pipeline construction project "may affect" endangered species, the ESA requires FERC to initiate consultation with the relevant federal wildlife agency, which—after an exhaustive examination that typically lasts multiple years and involves lengthy environmental submissions, public

notices, public meetings, and extensive consultation with federal officials, state agencies, the project's proponent, and other interested parties—produces a Biological Opinion addressing the proposed action's likely impact on endangered species. *See* 16 U.S.C. § 1536. A Biological Opinion is the most extensive process federal wildlife agencies undertake to review effects on endangered species.

The MVP pipeline is only one example of the exhaustiveness of the Corps' NWP 12 permitting program and General Condition 18. Just to initiate the NWP 12 licensing process, MVP submitted pre-construction notifications to the Corps pursuant to General Condition 18 because MVP concluded that a construction activity "might" affect an endangered species. By law, MVP could not move forward with those aspects of construction until the Corps granted authorization.

After notification, the Fish and Wildlife Service conducted a full-blown, three-year review of whether MVP's pipeline "might" affect endangered species. The Fish and Wildlife Service's review encompassed the submission of multiple, voluminous environmental analyses by MVP, frequent meetings between federal and state environmental officials and MVP representatives, public notice, public comments, and, finally, an extensive study of the habitats through which the pipeline would pass. MVP developed and submitted more than a dozen resource-specific mitigation plans—including a sediment control plan, organic farm protection plan, landslide mitigation plan, and unanticipated mine pool plan—to facilitate FERC's environmental impact study and ultimately the FWS's Biological Opinion. *See* FERC, Mountain Valley Project Final EIS at 1-8. As a result of this process, the Fish and

Wildlife Service issued a 46-page Biological Opinion in 2017 that studied the effects of MVP's project on the five relevant endangered species and concluded that MVP's pipeline was "not likely to jeopardize" any of them. Biological Opinion 38–39.

The Fish and Wildlife Service's involvement did not stop with its issuance of the Biological Opinion. As MVP constructed the pipeline, it regularly conferred with the agency about the project's potential to affect endangered species, responded to agency requests for information, and agreed to alter certain construction plans—such as avoiding felling trees in bat habitats—to protect wildlife. Then, in the fall of 2019, the Fish and Wildlife Service reinitiated consultation with FERC to collect more data and update its analysis of the pipeline. That formal consultation process lasted another eight months and culminated in MVP's submission of 2,000 pages of data and analyses in response to the agency's questions. MVP finally expects to receive the revised Biological Opinion within the next month or so.[3]

In sum, the Fish and Wildlife Service—in full consultation with FERC, the Corps, and MVP—has been reviewing the MVP project for the past five years. Underscoring the efficacy of the NWP 12 process, the Corps was waiting for the Fish and Wildlife Service to complete its Biological Opinion before re-authorizing MVP to proceed with construction under NWP 12. The NWP 12 process—and, specifically, its required review of effects on endangered species—has provided extensive

[3] The Fourth Circuit granted a stay of the Biological Opinion for the MVP project and further granted the Department of the Interior's motion to hold the litigation in abeyance until completion of the re-consultation process and issuance of a new Biological Opinion. *See* Order, *Wild Va.* v. *U.S. Dep't of Interior*, No. 19-1866 (4th Cir. Oct. 11, 2019); Order, *id.* (4th Cir. Apr. 28, 2020) (extending abeyance).

protections for endangered species during the construction of MVP's project, as it has done during countless other projects over the last forty years.

The district court's order ignores these robust regulatory protections.

B. The Court Erred In Issuing Nationwide Remedies.

In addition to misconstruing the ESA's consultation requirement, the district court exceeded its powers under Article III and transgressed settled principles of equity by vacating NWP 12 on a nationwide basis and issuing a nationwide injunction.

The serious legal problems inherent in district courts' issuance of nationwide relief are manifest here. A federal court's "constitutionally prescribed role is to vindicate the individual rights of the people appearing before it." *Gill* v. *Whitford*, 138 S. Ct. 1916, 1933 (2018). Nationwide equitable relief exceeds the constitutional limitations on judicial power, deviates from longstanding historical practice, impedes reasoned discussion of legal issues among the lower courts, and undermines public confidence in the judiciary, among other flaws. *See*, *e.g.*, *Dep't of Homeland Sec.* v. *New York*, 140 S. Ct. 599, 599–600 (2020) (Gorsuch, J., concurring in grant of stay).

In this case, Plaintiffs confirmed that they did "not seek to vacate NWP 12, but rather s[ought] vacatur and injunctive relief only as to Keystone XL approvals." D. Ct. Dkt. 52, at 3 (Oct. 29, 2019). Thus, to provide complete relief to Plaintiffs, the district court needed only to vacate NWP 12 and enjoin the Corps' reliance on that permit in connection with the Keystone XL pipeline. By instead issuing nationwide relief that reached from a Montana courtroom to preclude MVP and other nonparties across the country from relying on NWP 12, the district court vastly overstepped the

constitutional and equitable bounds of its remedial powers. *See Lewis* v. *Casey*, 518 U.S. 343, 357 (1996) ("The remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established.").

II. THE DISTRICT COURT'S ORDER WILL DISRUPT THE CONSTRUCTION OF PIPELINES ACROSS THE COUNTRY AND WAS ISSUED WITHOUT ANY NOTICE TO AFFECTED NONPARTIES.

The balance of equities favors a stay. The district court's order vacating and enjoining the Corps' NWP 12 program will substantially disrupt the MVP project—resulting in months or years of unanticipated delays and hundreds of millions of dollars of costs to MVP—and deprive consumers of the benefit of new energy supplies. These harms are especially insupportable and inappropriate because they were imposed with no notice to nonparties such as MVP—whose project was on the verge of completion in reliance on NWP 12—and are unnecessary to award Plaintiffs the relief they filed suit to obtain.

A. The Order Imposes Substantial Delays And Costs On MVP And Similar Projects.

Throughout MVP's lengthy and complex process of developing and constructing a natural-gas pipeline, it has relied on the availability of NWP 12 to satisfy its Clean Water Act obligations. Now, with the project 92% complete, MVP may be compelled by the district court's order to seek other means of establishing its compliance with the Clean Water Act, instead of continuing to rely on NWP 12 to complete construction of the pipeline. Those alternative compliance mechanisms will inevitably be far more time-consuming and costly for MVP, but, at the same time, no more protective of endangered species than NWP 12.

If MVP is compelled by the district court's order to obtain individual Clean Water Act permits for the remainder of its pipeline, it will have to apply for and obtain individual-permit approval from each of three applicable Corps districts to complete construction. Not only will those applications be unnecessarily costly and redundant to prepare, but it will likely take the Corps nearly a year, if not longer, to review the applications and issue the individual permits, *see* Gov't App. 36—even though the pipeline has already been subjected to extensive environmental reviews by FERC, and the most extensive review possible by the Fish and Wildlife Service, on repeated occasions over the past five years. That delay will be extraordinarily costly for MVP—resulting in cost overruns that have been estimated to be up to $300 million—because, as long as the pipeline remains non-operational, MVP will be required to expend substantial funds maintaining and winterizing the completed portions of the pipeline.

These are exactly the types of irreparable harms that justify a stay. *See Amoco Prod. Co.* v. *Vill. of Gambell*, 480 U.S. 531, 545 (1987) (vacating injunction in part because oil company "had committed approximately $70 million to exploration"). Crucially, these delays and costs would not be offset by countervailing environmental benefits: the individual permitting process requires, at most, a Biological Opinion and is therefore no more protective than the ESA review already conducted for the past five years under NWP 12.

B. The Order Harms Energy Consumers.

The district court's order also threatens to deprive consumers of access to a valuable, clean-burning, and cost-effective source of energy.

Historically, the mid-Atlantic and Southeastern United States have been supplied with natural gas from the Gulf Coast. *See* FERC, Mountain Valley Project Final EIS at 1-8. But Gulf Coast supplies are declining, while mid-Atlantic and Southeastern market demand is rising. *Id.* At the same time, natural-gas production in the Appalachian Basin has increased more than sevenfold in the last decade. *Id.*

MVP's pipeline seeks to provide an efficient way for the Appalachian Basin's natural gas to reach consumers. The pipeline—which upon completion will be able to transport two million dekatherms per day of natural gas—will add important infrastructure for conveying Appalachian Basin natural gas to the East Coast. *See* FERC, Mountain Valley Project Final EIS at 1-8. MVP's pipeline will facilitate the use of domestic energy supplies and enhance the pipeline grid's connections.

The district court's order invalidating the Corps' NWP 12 program, however, will likely deprive mid-Atlantic and Southeastern consumers of crucial energy infrastructure by delaying completion of MVP's pipeline for either the duration of the appellate process or the length of time that it takes MVP to identify and implement an alternative to NWP 12. Because a "delay in [MVP's] construction" means "a delay of the benefits of the pipeline," *Mountain Valley Pipeline, LLC* v. *W. Pocahontas Props. Ltd. P'ship*, 918 F.3d 353, 367 (4th Cir. 2019), a stay would serve the public interest by facilitating energy consumers' realization of those benefits more quickly.

C. The Order Burdened Nonparties Without Fair Notice.

The burdens imposed by the district court's order are particularly problematic because nonparties had no notice that the court might issue a nationwide order.

Plaintiffs specifically disclaimed throughout the district court proceedings that they sought relief applicable to any project other than the Keystone XL pipeline. *See*, *e.g.*, D. Ct. Dkt. 107, at 56 (Jan. 29, 2020). Similarly, the district court provided assurance, before issuing its ruling, that any relief would be limited to the Keystone XL pipeline. App'x 72a–73a. In fact, the district court denied nonparties intervention as of right and limited the scope of their permissive intervention precisely because "Plaintiffs d[id] not ask the Court to vacate NWP 12" and thus nonparties "could still prospectively rely on the permit . . . even if Plaintiffs prevail." *Id.*

Contrary to these assurances, the district court went ahead and did, in fact, vacate the Corps' NWP 12 program nationwide for *all* purposes. App'x 68a. Only after the district court's unanticipated and unsolicited issuance of a nationwide order did Plaintiffs pull an abrupt about-face and defend the propriety of nationwide relief. Even then, Plaintiffs did not fully embrace the district court's decision, and instead proposed a new remedy that would limit the vacatur and injunction to oil and gas pipelines. D. Ct. Dkt. 144, at 2 (May 6, 2020).

The district court accepted Plaintiffs' proposal, App'x 42a, changing course without meaningfully justifying its disparate treatment of pipeline projects. The court did not explain why, for example, the construction of pipelines "may affect" endangered species any more than the construction of fiber-optic cables, which remain eligible to rely on NWP 12. 16 U.S.C. § 1536(a)(2). Nor did the district court explain why MVP's pipeline project, which is 92% complete and has been subjected to multiple, rigorous environmental reviews over more than five years, should be

treated the same as a pipeline on which construction has not yet started and that has been subjected to far less environmental scrutiny. These deficiencies should not, of course, be surprising given that none of these issues was litigated in the district court, no relevant evidentiary record was developed, and the views of MVP and other affected nonparties were not heard. The district court's vacatur and injunction nevertheless apply to new pipeline projects while exempting all other NWP 12-eligible projects, an exercise in arbitrary line-drawing that underscores the impropriety of the nationwide remedy it ordered.

MVP had no notice of the district court's impending ruling, no opportunity to be heard, and no incentive to participate in this case prior to the district court's issuance of a sweeping nationwide order that calls into question the completion of a pipeline in which MVP has already invested billions of dollars and years of work. It would be profoundly inequitable to MVP's equity holders to leave the district court's order in force before an appellate court has had the opportunity to assess its validity.

CONCLUSION

The district court *sua sponte* entered a nationwide remedial order that threatens to disrupt the construction of new oil and gas pipelines across the United States. Because the ruling rests on a flawed understanding of the Corps' NWP 12 program, transgresses constitutional and equitable restrictions on district courts' remedial powers, is arbitrary and capricious, and is fundamentally unfair to MVP and other nonparties, this Court should stay the district court's order in full.

Dated: June 29, 2020

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