

LA13-1
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resources and its residents. However, in the event that the Commission erroneously chooses, contrary to substantial evidence in the record, to approve this ill-conceived project, the County considers the Slussers Chapel Conservation Site Avoidance Concept Alternative route alternative² proposed by the Virginia Department of Conservation and Recreation to be the least environmentally damaging of the other options under consideration.

As discussed in these comments, significant portions of the DEIS are alternatively inadequate or inaccurate, thereby precluding meaningful public review in violation of the National Environmental Policy Act (NEPA). The DEIS is legally deficient as well: among other things, it lacks robust discussion of project need or public purpose³ which is an integral part of NEPA review and the certificate approval process under the Natural Gas Act; fails to evaluate project impacts under the Commission's siting guidelines in 18 C.F.R. §380.15, relies on an incomplete assessment of karst along the pipeline route and does not address the adequacy of MVP's proposed mitigation of karst-impacts, does not consider climate change impacts as required by the recent CEQ guidance,⁴ and ignores the substantial effects of the pipeline on directly impacted landowners and the surrounding community in the form of loss of property values, increased insurance premiums and heightened safety risks.

For all of these reasons, the Commission must rescind the DEIS and deny a certificate for the MVP project. Moreover, given the deficiencies in the DEIS, neither the Forest Service nor the Bureau of Land Management -- which are cooperating agencies -- can rely on the DEIS finding of no significant impact and as such, may not approve either the Land Resource Management Planning (LRMP) amendments or a right-of-way (ROW) through forest service lands.

These comments are filed pursuant to the Commission's Notice of Availability of the DEIS issued September 16, 2016 FERC Accession No. 20160916-3014 (*see also* 81 FR 66268 (September 27, 2016)) and the Joint Forest Service/BLM Notice of Availability of

² See FERC Accession No. 20160909-5315 (September 9, 2016).

³ As will be discussed, Equitrans Midstream is a partner in the MVP, its affiliate EQT Energy is the dominant subscriber, and its parent Equitrans, which is the sponsor of the EEP Project, will operate the MVP pipeline. Application 5, 16.

⁴ CEQ, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* (CEQ GHG Guidance), 81 FR 51866 (August 5, 2016) online at <https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance> (last visited December 7, 2016).

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the DEIS, 81 FR 71041 (October 14, 2016), which also invited comments on the proposed LRMP amendment and ROW and instructed the public to submit them to the Commission. Both notices established a deadline for comments as December 22, 2016.

LA13-2

I. BACKGROUND

A. Overview of Montgomery County, Virginia's Interest in Proceeding

Montgomery County, Virginia, an intervenor in this proceeding, is located in southwestern Virginia, with a population of approximately 98,000 residents. The pipeline as proposed would run through nineteen miles of the northeast section of the County, utilizing a 125-foot easement for construction and a permanent 50-foot easement for operation of the pipeline (DEIS 2-24).⁵



The pipeline would cross through 104 residential and agricultural properties, deflating the value. The pipeline would also pass close to Blacksburg, the largest town in the County and home to Virginia Polytechnic Institute, a major university and research center with 33,000 students.

Montgomery County also enjoys a wealth of natural and cultural resources which contribute to the County's \$139.5 million tourism industry as of 2015.⁶ Roughly sixty percent of the County is forested, with seven percent located in the Jefferson National Forest, managed by the United States Forest Service.⁷ Some forested areas are also located in the Catawba Valley

⁵ As discussed, *infra* at Part IV.A.3, the DEIS does not mention that the pipeline corridor through the Jefferson National Forest will be 500 feet in width. See FERC Notice of DEIS, 81 FR 66268-66271, at 66269 (September 27, 2016) online at <https://www.gpo.gov/fdsys/pkg/FR-2016-09-27/html/2016-23237.htm> (last visited November 24, 2016); accord, Forest Service Notice of DEIS 81 FR 71041, at 71042 (Oct. 14, 2016) online at <https://www.gpo.gov/fdsys/pkg/FR-2016-10-14/pdf/2016-24833.pdf> (last visited December 20, 2016).

⁶ Tourism Strategy Plan for Montgomery County Virginia (2013), online at http://www.montgomerycountyva.gov/filestorage/16277/16344/16671/19450/TourismStrategicPlan_2013.pdf, updated as of 2015.

⁷ See Virginia Department of Forestry Website, <http://www.dof.virginia.gov/locations/montgomery.htm> (last visited November 21, 2016).

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See the response to comment IND12-1 regarding property values. See the response to comment IND62-1 regarding Dr. Kastning's report. See the response to comment CO2-1 regarding benefits. As listed in table 4.9.2-3 of the draft EIS, Montgomery County would collect about \$1.7 million in ad valorem taxes annually.

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Special Project Area, also in Montgomery County - designated for special protection under Virginia Outdoors Foundation (VOF) due to its high conservation value.



A depiction of the proposed pipeline crossing through Montgomery County, showing forested areas, steep terrain and proximity to population centers (2015 Route). This approximates what was originally proposed in the application but has changed since issuance of the DEIS.

The pipeline will cut 191.3 acres of these forested areas, permanently destroying the conservation value and scarring the viewshed. DEIS Table 4.8.1-8.

The pipeline will also plow through conservation sites in the County managed by the Virginia Department of Conservation and Recreation, including Craig Creek Conservation Unit, Slussers Chapel Conservation Site and Old Mill Conservation Site (DEIS at 4-225).

Established in 1777, Montgomery County, not surprisingly, has many historic sites and structures, including the North Fork Valley Rural Historic District. This district will be impacted by the pipeline.

Finally, a large portion of the County's topography is characterized by karst terrain, sink-holes and caves. As discussed in expert geologist Dr. Ernst Kastning's report, the pipeline will cross through this karst-ridden terrain -- including the Mount Tabor Karst Sinkhole Plain - "perhaps the most intensive karst terrain along the entire route."⁸ Construction of the pipeline through this unstable and unsuitable terrain would

⁸ Expert Report on Geologic Hazards in the Karst Regions of Virginia and West Virginia, Ernst Kastning, PhD. (dated July 3, 2016) at 4, FERC Accession # 20160713-5029 ("Kastning Report").

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give rise to numerous geologic hazards including potential groundwater contamination, accelerated erosion and slope instability, as well as hazards to the pipeline itself. *Id.*⁹

In exchange for destruction of its natural resources, devaluation of property and endangerment of its residents, the County derives no benefits whatsoever from the pipeline. Instead, as discussed below, the pipeline appears to have been constructed largely for the benefit of EQT Midstream Partners, parent to Equitrans - a private corporation that through affiliates will profit in its multiple roles as an investor, subscriber and operator of the pipeline.

B. Description of Project and Sponsor

LA13-3

The MVP was originally conceived as a joint venture between affiliates of EQT Midstream Partners (the parent company of Equitrans, the company that owns the EEP),¹⁰ NextEra Energy, WGL Midstream, Vega Midstream, RGC Midstream. Application at 3. Since the application was filed, WGL Midstream acquired Vega's interest, and ConEdison Gas Midstream is now an investor. *See MVP Website.*

The MVP application describes that the project would also be operated by Equitrans, which the application states as having 125 years of pipeline operational experience (Application at 4). MVP's assertion regarding the pipeline operator's experience is not accurate. The Operating Agreement for the Project (Exh. M to Application) states that EQM Gathering OPCO LLC -- a company incorporated in 2013¹¹ -- and not Equitrans would operate the project.

As proposed, the MVP Project would consist of 301 miles of 42-inch diameter greenfield pipeline, three new compressor stations totaling 171,600 horsepower of compression and various other facilities. Application at 2. The MVP pipeline would run from Wetzel County in West Virginia (which is also the point of interconnection with the

⁹ In addition to groundwater contamination, the report does not address the impact of the project on aquifers or headwaters. DEIS at 4-77, 4-116.

¹⁰ *See* Equitrans Project Website at <http://equitransproject.com/> (last visited November 20, 2016).

¹¹ *See* Company Profile, online at <http://www.bloomberglp.com/research/stocks/private/snapshot.asp?privcapId=262870409> (last visited November 22, 2016).

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Environmental reviews of future Blanket Certificate actions are discussed in section 1.0 of the EIS.

LA13-3
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EEP)¹² to Virginia, and would transport 2 million dekatherms/day (dth/d) of gas from the Appalachian Shale Region to growing markets in the Mid-Atlantic and southeastern United States. Application at 5. The Project is fully subscribed, with the terms set forth in Precedent Agreements between MVP and four shippers. The largest shipper, EQT Energy committed to 1,290,000 dt/day which accounts for 65 percent of the capacity, with the remainder split roughly amongst three other shippers. Roanoke Gas Company, a local gas company subsidiary of RGC (one of the MVP joint venturers) contracted for the final 10,000 dt/day of capacity, to be delivered via a new tap that preliminarily, would be located in Franklin County, Virginia at MP 262. DEIS 2-14.

The MVP Pipeline would cost approximately \$3.7 billion. See Exh. K to Application. In its application, MVP seeks a 14 percent return on equity (ROE) for its shareholders based on a 60 percent equity/40 percent debt capital structure. Application at 37. MVP inaccurately asserts that its exorbitant ROE -- which purportedly reflects "large capital investment risk undertaken by sponsoring owners," *id.* -- is consistent with Commission policy. See Discussion *infra* at Part III.C.¹³

MVP seeks both a certificate of public necessity and convenience under Section 7 of the Natural Gas Act, 15 U.S.C. §717f(e) to construct and operate the project as well as a blanket certificate under Part 157 of the Commission's regulations. The blanket certificate would give MVP the right for the duration of the certificate to further expand the project anywhere along the 301-mile portion with minimal notice and environmental review and use of eminent domain so long as the upgrade falls within applicable cost caps.¹⁴

C. Procedure Leading Up to and Following Issuance of DEIS

LA13-4

On November 5, 2015, the Commission publicly noticed MVP's application, and the County timely intervened on November 17, 2015. Between October 2015, when MVP filed its application and September 2016 when the Commission released the DEIS, MVP

¹² See DEIS at 1-2. Although the EEP is also the subject of the DEIS, the County's comments principally focus on the MVP Project which runs through the County.

¹³ Interestingly, MVP's proposed Financing Statement (Exh. L to application) proposes an ROE of 13 percent.

¹⁴ See 18 C.F.R. §157.208 and FERC Website at <http://www.ferc.gov/industries/gas/indus-act/blank-cert.asp> (explaining blanket certificate process); also FERC Project Cost Caps, online at <https://www.ferc.gov/industries/gas/indus-act/blank-cert/facilities/2015-cost-limits.pdf> (establishing \$32.4 million cost cap for blanket certificate activities for 2015).

LA13-4

While Mountain Valley made minor pipeline route modifications on October 14, 2016, in response to requests from landowners and recommendations in the draft EIS, the public had until December 22, 2016 to comment on those modifications, and newly affected landowners along the modifications had until February 21, 2017 to comment; see also response to comment LA3-1. The Commission did not hold hearings about the MVP. See response to LA1-11 about public sessions to take comments on the draft EIS. Alternative routes that would avoid or reduce impacts on the Slussers Chapel Conservation Site are analyzed in section 3 of the final EIS.

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submitted lengthy supplemental filings in response to 78 requests for additional information from staff. Because these constant, piecemeal supplements -- some several hundred pages in length -- made it difficult for many stakeholders to track changes to the application, several counties, including Montgomery County, asked the Commission to instruct MVP to organize its materials to facilitate meaningful public comment.¹⁵ In addition, the counties also asked the Commission to postpone release of the DEIS to allow stakeholders more time to review the 78 supplemental filings.

The Commission ignored the counties' requests - because it released the DEIS as originally intended on September 16, 2016 without requiring MVP to organize its filings to minimize confusion. The Commission also rejected the County's request for a public hearing on the scoping session at a location in Montgomery County. Instead, Roanoke, Rocky Mount and Chatham Virginia - which are outside of Montgomery County -- were selected by FERC for as public hearing sites. As a result, many County residents unable to travel to the other locations were deprived of an opportunity to express their concerns about the pipeline directly to Commission staff.

Meaningful participation in the DEIS process has been further compounded by the enormous information gaps that remain even after the DEIS was filed. Notwithstanding that a DEIS must be based on sufficient information to allow for meaningful public participation, as of the date of these comment, MVP made three supplemental, multi-part filings *after* the DEIS was released.¹⁶

One of the supplemental filings submitted in October 2016 updated the route studied in the DEIS by formally adopting the "Mount Tabor Route variation" in Montgomery County.¹⁷ Not only was it easy to miss this substantial modification to the route, but MVP failed to submit the feasibility studies in support of the Mount Tabor

¹⁵ See Montgomery County Letter to FERC (August 23, 2016), Accession No. 20160823-5022; also Giles County Letter, Accession No. 20160909-5383 (September 9, 2016), and Appalachian Mountain Advocates Letter (October 19 2016), Accession No. 20161019-5061 (providing comprehensive listing supplemental responses submitted and still outstanding).

¹⁶ See MVP Supplemental Information filings October 14, 20 and 27 (2016); *see also* Indian Creek Watershed Comments (December 16, 2016) (listing the numerous documents filed as part of the supplemental information).

¹⁷ Originally proposed in MVP's April 22, 2016 submission of "Second part of the data responses of Mountain Valley Pipeline LLC to the March 31, 2016 data requests under CP16-10" FERC Accession No. 20160422-5012.

LA13-4
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Route variation that the Commission required of MVP. (DEIS at 3-52).¹⁸ If the route is not feasible, the County is concerned that MVP will choose an even more damaging approach. Further, because MVP is not required to submit the feasibility study until the close of comments for the DEIS, the County and the public will be foreclosed from commenting on the study unless the Commission extends the deadline for comment.

In addition, the Mount Tabor Route variation route also changed the impacts to resources - in many instances, actually increasing the impacts.¹⁹ Yet the tables updating the DEIS resource impacts are difficult to find - and in any event, should the DEIS should be updated by Commission staff, not the applicant.

Finally, none of MVP's supplemental filings address the information gaps identified by other parties. For example, as relevant to Montgomery County, the DEIS asked the applicant to provide information on the feasibility of other route alternatives (in addition to the Mount Tabor variation), including the Virginia Department of Conservation's proposed Slussers Chapel Conservation Site Avoidance Concept Alternative Route.²⁰ Again, because the applicant is not required to provide this additional information on alternatives by the close of the comment period, the County and the public will be deprived of its opportunity to respond to the newly submitted information.

D. Concurrent Review by Forest Service and BLM

LA13-5

Meanwhile, as the Commission's review of MVP's application proceeded, several other agencies sharing jurisdiction over the MVP pipeline initiated concurrent review. Because the pipeline runs through a national forest, MVP must obtain two additional authorizations from the Forest Service, which must amend its Land Resource Management Plan (LMRP) for the Jefferson National Forest and from BLM, which must grant MVP a right-of-way to construct and operate the project on federally-owned forest lands.

¹⁸ Specifically, the Commission requested that "Mountain Valley should file with the Secretary the results of on-site surveys for the Mount Tabor Route Alternative to assess constructability and identify karst features that should be avoided if the alternative is adopted into the proposed pipeline route."

¹⁹ See MVP Supplemental Filing (October 20, 2016) (Accession # 20161020-5175 (updating Tables 4.8.1 to show increased acreage of tree removal); see also discussion *infra* at Part VI.

²⁰ See Virginia Department of Conservation filing, (September 2016) (proposing Slussers Chapel Conservation Site Avoidance Concept Alternative Route).

LA13-5

The statements are noted.

LA13-5
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Both the Forest Service's LMRP amendment and the BLM's lease grant are federal actions subject to NEPA, thus, the Forest Service and BLM opted to act as cooperating agencies in preparation of the DEIS. On October 14, 2016, the Forest Service and the BLM published a joint notice of availability of the DEIS. See 81 FR 71041. The Notice invited comments on the DEIS, the BLM's review of a right-of-way grant and the Forest Service's proposed amendments to the LMRP, and instructed parties to submit all comments to the Commission by December 22, 2016, the deadline for comment.

LA13-6

II. PROCEDURAL DEFICIENCIES IN THE COMMISSION'S IMPLEMENTATION OF NEPA REQUIREMENTS PREPARATION OF A SUPPLEMENTAL DEIS OR EXTENSION OF THE COMMENT PERIOD TO ENSURE MEANINGFUL PUBLIC PARTICIPATION

A. The DEIS Contains Substantial Information Gaps That Preclude Meaningful Public Participation in Violation of NEPA.

A DEIS must contain sufficient information to allow for meaningful participation and to inform the eventual decision-makers.²¹ "When relevant information is not available during the [EIS] process and is not available to the public for comment, the [EIS] process cannot serve its larger informational role, and the public is deprived of its opportunity to play a role in the decision-making process.²² Thus, when a draft statement is so inadequate as to preclude meaningful analysis, the CEQ regulations direct the agency to prepare and circulate a revised draft of the appropriate portion." 40 C.F.R §1502.9. The CEQ regulations further provide that "if the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement." 40 C.F.R. § 1502.22.

²¹ "Draft environmental impact statements ... must fulfill and satisfy to the fullest extent possible the requirements established for final statements" in 42 U.S.C. § 4332(2)(C). 40 C.F.R §1502.9(a). See *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 368–69 (D.C. Cir. 1981) ("The impact statement must be 'sufficient to enable those who did not have a part in its compilation to understand and consider meaningfully the factors involved.'") (quoting *Environmental Defense Fund, Inc. v. Corps of Engineers*, 492 F.2d 1123, 1136 (5th Cir. 1974)); *Nat'l Comm. for the New River v. F.E.R.C.*, 373 F.3d 1323, 1329 (D.C. Cir. 2004) "the purpose of a DEIS 'is to elicit suggestions for change.'" (quoting *City of Grapevine, Tex. v. Dep't of Transp.*, 17 F.3d 1502, 1507 (D.C.Cir.1994)).

²² *NC Wildlife Federation v. NC Dept. of Transportation*, 677 3d. 596, 605 (4th Cir. 2012).

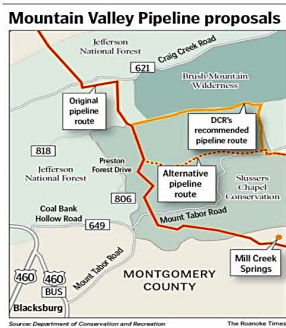
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The draft EIS contained sufficient information to allow the public to have a meaningful opportunity to comment on the projects potential impacts on a range of environmental resources. See the responses to comments FA11-2, LA5-1, and LA13-1 regarding the adequacy of the draft EIS. Alternative routes that would avoid or reduce impacts on the Slussers Chapel Conservation Site are analyzed in section 3 of the final EIS.

LA13-6
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The MVP DEIS presents a textbook example of a DEIS lacking in sufficient information to allow for meaningful public comment and review by decision-makers - which include not only the Commission but also the Forest Service and Bureau of Land Management which must also rely on the DEIS to inform their decisions. As relevant to Montgomery County, the DEIS lacks adequate information regarding both the feasibility of the Mount Tabor Route variation (which has now been adopted by the Applicant in its October 14, 2016 filing)²³ and the VA DCR Slussers Chapel Conservation Site Avoidance Concept Alternative route. See Discussion of Alternatives, *infra* at Part VI. And while Commission staff attempts to obtain this information by instructing MVP to “investigate route variations to avoid or reduce impacts on Craig’s Creek and the Mount Tabor Sinkhole Plain” (ES-4) and “file results of on-site surveys for the Mount Tabor Route Alternative to assess constructability and identify karst features along the route” (DEIS 5-20), the comments will be filed too late to allow for public comment. See Condition 35, DEIS 5-25 (requiring documentation of further consultation with VDCR regarding Slussers Chapel Alternative).

The DEIS provides even less information about an alternative proposed by the VDCR on September 9, 2016 to avoid damage to Slussers Chapel and other protected VDCR resources.²⁴ The VDCR route, shown below, is not even described in the DEIS, which only makes reference to the applicant’s continued coordination with the Nature Conservancy and VDCR “to assess alternative routes to allow the MVP to avoid important karst/sinkhole features of the Mill Creek Spring Natural Preserve.



LA13-7

In other instances -- such as with respect to groundwater -- the DEIS does not even bother to gather information regarding the number of wells in close proximity to the pipeline to assess the impacts, and instead directs MVP to collect the information *after* the certificate is issued and to provide mitigation, if necessary, to offset potential impacts to private wells after the certificate is issued. DEIS at 5-3. The lack of information regarding the number of wells makes assessment of the project’s impacts impossible.

LA13-7

See the response to comment IND401-5 regarding water wells.

²³ MVP Supplemental Filing dated October 13, 2016, FERC Accession No. 20161014-5022 (October 14, 2016).

²⁴ FERC Accession No. 20160909-5315.

LA13-8

The DEIS also buries reference to the 500-foot utility corridor (located at 4-261 and 4-275) that the Forest Service is considering if the pipeline is approved, instead of including it up front in the description of the project. As a result, the DEIS is deficient because it does not examine the potential environmental impacts associated with the future development that will be facilitated by the issuance of blanket certificate (*See infra* at Part IV.F) in a 500-foot corridor which is *ten* times the size of what is necessary for the MVP pipeline. It is impossible to envision how the Forest Service could rationally rely on the DEIS to amend the LMRP to allow for a utility corridor when the DEIS scarcely mentions or evaluates the mention the corridor at all!

The information gaps just described are but four examples of the inadequacy of the DEIS. The Allegheny Defense filing lists another two dozen examples of information that MVP has not yet provided, that is not required until the comment deadline closes or in some instances, even after the certificate is issued.²⁵ These post-comment disclosures “do not assuage the harm incurred during the NEPA process.”²⁶ Unless the Commission gathers all of the outstanding information not provided and either prepares a supplemental DEIS, or at least extends the comment deadline by at least 45 days from the date that all of the outstanding information requests are deemed complete, the DEIS will violate NEPA and the CEQ regulations and deprive the public of a meaningful opportunity to participate.

LA13-9

B. The DEIS Does Not Discuss Impacts That Arise Out of a Grant of a Blanket Certificate

The Applicants seek a “blanket certificate” for the project which pre-authorizes a pipeline to undertake, on a self-implementing basis, certain routine upgrades and repairs post-certificate without having to go through a lengthy approval process or extensive environmental review.²⁷ Today, the Commission’s blanket certificate program has been expanded beyond that narrow purpose, and has been used to authorize substantial expansion projects -- such as a 14,000 hp compressor station or a 16-mile lateral pipelines²⁸ -- as well as “repairs and upgrades” located a half-mile from the

²⁵ Allegheny Defense Project / Appalachian Mountain Advocates Letter to FERC, (October 19, 2016), Accession No. 20161019-5061

²⁶ *NC Wildlife Federation*, 677 F.3d at 605 (vacating DEIS where agency did not disclose information about the project until after the NEPA process had concluded).

²⁷ *See* Pipeline Certificates for Routine Transactions, 47 FR 24254 (1982); *also* 18 C.F.R. §157.

²⁸ *See Centerpoint Energy*, 121 F.E.R.C. P61,180 (2007)(authorizing 14,000 hp

LA13-8

See the response to comment FA8-1 regarding the 500-foot-wide utility corridor in the Jefferson National Forest. See the response to comment LA3-1 regarding extension of the comment period.

LA13-9

Environmental reviews of future Blanket Certificate actions are discussed in section 1.0 of the EIS.

LA13-9
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original mainline project with minimal prior notice and reduced environmental scrutiny.²⁹

Moreover, not only do blanket certificates allow a pipeline to expand its system with limited procedural safeguards, but they may also rely on the finding of public necessity and convenience underlying the grant of the initial certificate to invoke eminent domain for structures authorized under the blanket certificate – whether they serve a public need or not.³⁰ What this means is that any property-owners either currently subject to the pipeline easement or within the general vicinity now have a proverbial target on their back as potential sites for new infrastructure that are pre-authorized under the blanket certificate and allow for use of eminent domain to acquire property rights for construction.

Because a blanket certificate invites additional construction along the MVP system, the environmental impacts differ significantly from a traditional certificate that does not pre-authorize future upgrades or expansion. Yet, the DEIS does not consider these impacts at all, even though they are relevant to a cumulative impacts analysis under NEPA.³¹ In fact, the DEIS does not even describe what a blanket certificate is, or the types of activities that it may authorize, thus leaving the public with inadequate information to comment on the proposal. Accordingly, the Commission must address the impacts unique to a “blanket certificate” in the DEIS and provide substantial

compressor station under blanket certificate); *Enable Gas Transmission*, 153 FERC ¶61,055 (2015)(affirming use of blanket certificate for 16-mile lateral transmission pipeline across multiple private properties with limited notice and environmental review).

²⁹ *Columbia Gas Transmission v. 1.01 Acres, More or Less*, 768 F.3d 300 (3rd Cir. 2014)(affirming use of blanket certificate for repairs located one-half mile outside of easement and use of eminent domain).

³⁰ *Enable Gas, supra* (authorizing pipeline to construct 16-mile lateral line to new processing center under terms of a 30-year old blanket certificate, absent finding of need and with limited environmental review); *Columbia Gas, supra* (allowing pipeline to invoke eminent domain under blanket certificate for upgrade outside pipeline easement).

³¹ See *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 345 (D.C. Cir. 2002), *as amended* (Aug. 27, 2002) (“[A] meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.”)

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cont'd | mitigation for future impacts, or it must deny the request for a blanket certificate altogether.

C. The DEIS Does Not Address Expert Scientific Opinions Submitted by Intervenor.

LA13-10

Section 1502.24 of the CEQ regulations emphasizes that “agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in the environmental impact statements.” An agency must evaluate the scientific evidence presented, respond to opposing viewpoints and provide reasons for rejecting an expert’s analysis. See *Protect Our Communities v. Salazar*, Case No. 12-cv-2211 (S.D. Cal. 2013)(finding that agency’s consideration of expert opinions by petitioners along with agency experts satisfied NEPA). Failure to address expert opinions will result in invalidation of the agency’s EIS. See *Western Watersheds v. Kraayenbrink*, 632 F.3d 472, 492 (9th Cir. 2010)(remanding EIS where BLM failed to address concerns about project’s impacts raised by its own experts as well as other federal and state agency experts); *Lands Council v. McNair*, 537 F.3d 981, 1001 (9th Cir. Idaho 2008)(reaffirming that agency “must acknowledge and respond to comments by outside parties that raise significant scientific uncertainties” with reasonable support).

The DEIS did not evaluate or respond to an expert opinion by Dr. Ernst Kastning, a renowned expert on karst.³² The DEIS contains a single reference regarding water drainage in karst terrain (DEIS 4-72) to Kastning’s Report that was filed at the Commission on July 13, 2016 - two months before the DEIS issued,³³ and with enough time to allow ample consideration. Yet the DEIS does not take into account or even respond to Dr. Kastning’s report, including his ultimate conclusion that the MVP pipeline should not be constructed given the risks associated with construction through karst terrain. The DEIS’ failure to address a competing expert’s opinion about karst - which is dominant along the route in Montgomery County and elsewhere in the region and poses substantial threats to health and safety - detracts from the scientific integrity of the document in violation of NEPA.

³² In addition to such expert reports and opinions, the record also contains numerous and detailed comments submitted by County residents whose professions – such as engineers, environmental scientists, and real estate agents – would also qualify as experts and whose comments have been likewise ignored in the DEIS.

³³ See FERC Accession # 20160713-5029

LA13-10 See the response to comment IND62-1 regarding Dr. Kastning’s report.

LA13-11

III. THE DEIS FAILS TO CONSIDER THE LACK OF NEED FOR THE PROJECT OR ANALYZE THE COSTS AND BENEFITS

A. Sources of Authority for Evaluation of Need

Under both NEPA, the NGA and the Forest Service Manual, an Applicant must establish that there is both a public need for the project and that it is in the present and future public necessity and convenience. The Applicant bears the burden of proof in demonstrating that it satisfies the requirements of Section 7. See *Michigan Consolidated Gas Co. v. Federal Power Comm’n.*, 283 F.2d 204, 214 (D.C. Cir. 1960).

1. NEPA

With respect to NEPA, project purpose and need are relevant because the lack of need for a project would justify selection of a no-action or less harmful alternatives. *1000 Friends of Wisconsin v. U.S. Department of Transportation*, Case No. 11–0545, (ED Wis. May 22, 2015)(finding that because highway was not needed, agency should have considered more benign alternative). Further, defining project purpose and need enables an agency to exclude from consideration those alternatives that will not achieve the purpose of the project.³⁴

Because a project’s need and purpose define the range of viable alternatives to be considered, it is also important that an agency “not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality.” (emphasis added).³⁵

2. Natural Gas Act

Proof of need is equally significant under the NGA which authorizes the Commission to grant certificates only if projects are “required by the present and future public necessity and convenience.” 15 U.S.C. §717f(e). The Commission assigns the

³⁴ See e.g., *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 73 (D.C. Cir. 2011)(finding that BLM did not impermissibly narrow project goals to artificially limit consideration of alternatives); also *Fuel Safe v. FERC*, 389 F.3d 1313 (10th Cir. 2004)(accepting need for pipeline to provide electricity on Vancouver Island and finding purpose was not unduly narrow).

³⁵ *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir.1998)(quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C.Cir.1991), cert. denied, 502 U.S. 994, 112 S.Ct. 616, 116 L.Ed.2d 638 (1991)).

LA13-11

See the response to comment FA11-12 regarding need.

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applicant the burden of proof to establish that a certificate is in the public necessity and convenience under Section 7 of the Natural Gas Act. *See Sunray Mid-Continent Oil v. FPC*, 364 U.S. 137, 158 (1960)(finding that Commission was reasonable to require applicant to prove need for a limited certificate).

To assess whether a project meets the statutory “public necessity and convenience” standard, the Commission, pursuant to its *Certificate Policy Statement*,³⁶ balances a project’s benefits, such as need against burdens imposed on customers and property owners.³⁷ Finally, a showing of “public need” (as opposed to “private need”) is constitutionally imperative since the Section 7f(h) of the NGA empowers certificate holders to exercise the power of eminent domain. Absent public need, Section 7f(h) would violate the Fifth Amendment’s prohibition on takings of property for private gain.

Accurately assessing project need establishes a context for environmental review – a key factor in determining the significance of a project’s impacts.³⁸ When evaluating a project under the *Certificate Policy Statement*, the Commission balances public need for the project against harm to the environment³⁹, landowners and captive ratepayers. The Commission adopts a “sliding scale” assessment – meaning that it may tolerate more significant environmental and landowner impacts associated with a project that meets a crucial need, whereas, these same impacts might not be considered acceptable for a project of only marginal necessity.⁴⁰ In other words, the need for the project establishes

³⁶ Certification of New Interstate Natural Gas Pipelines, 88 FERC ¶61,227 (1999), clarified, 90 FERC ¶61,227 (1999), further clarified, 92 FERC 61,094 (2000) (Certificate Policy Statement).

³⁷ Certificate Policy Statement at 25 (“The amount of evidence necessary to establish the need for a proposed project will depend on the potential adverse effects of the proposed project on the relevant interests.”).

³⁸ See CEQ Regulations, 40 C.F.R. §1508.26 (defining significant impacts to be determined with respect to context and intensity; *see also infra* at Part IV (discussing intensity)).

³⁹ Unlike NEPA, which is primarily procedural in nature, this is a substantive requirement under the NGA and not simply a perfunctory, procedural requirement. This means the Commission has to go beyond taking a hard look at the environmental harms and substantively ensure there has been a balancing of public need and the harms. Considering there has been no demonstration of need, the Commission has not and cannot complete this balancing.

⁴⁰ *Turtle Bayou Gas Storage Co., LLC*, 135 FERC ¶ 61233, 62301, P.34 (June 16, 2011) (“The generalized showing made by Turtle Bayou does not outweigh the impact on

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the lens through which environmental impacts are evaluated; and absent an assessment of need in the DEIS, the context for measuring the significance of environmental impacts is lost.

3. Forest Service Manual

Project purpose and need are relevant to the findings that the US Forest Service must make under Section 2703.2 in determining whether to authorize use of national forest for the MVP Project. Section 2703.2 permits authorization only if the proposed use is consistent with the Forest Service mission to manage NFS lands and resources in a manner that will best meet the *present and future needs* of the American people. Thus, absent a public need for the project, the Forest Service must deny use of its lands.⁴¹

The Forest Service was aware of the lack of information regarding project need early in the process. In March 2016, the Forest Service submitted comments asking the Commission to expand the description of project purpose and need in MVP's Resource Reports to include a discussion of the necessity to cross federal lands.⁴² Because the description of project purpose and need in the DEIS is not more extensive than what was submitted in the Resource Reports, the Forest Service will be unable to make the findings required to authorize use of NFS lands for the pipeline.

4. BLM Project Review

Finally, the project purpose and need are relevant to BLM's grant of an ROW. If the purpose of the ROW is inconsistent with the purpose of the federal lands that will be crossed, BLM "shall not grant" the ROW. See 30 U.S.C §185(a). In addition, BLM must also define project purpose as part of its NEPA analysis of an ROW grant - and is not

the landowner ... needed to develop the proposed project... Therefore, we cannot find that Turtle Bayou's proposed project is required by the public convenience and necessity, and we deny its request for certificate authority to construct and operate its project."); *Pac. Connector Gas Pipeline, Lp Jordan Cove Energy Project, L.P.*, 139 FERC ¶ 61040, 61174 (Apr. 16, 2012) (vacating Certificate on the grounds that the need for the proposed facility no longer outweighed the impacts)

⁴¹ *National Parks v. Bureau of Land Management*, 606 F.3d 1058 (9th Cir. 2010) (vacating BLM DEIS which failed to consider all reasonable project alternatives due to BLM's narrowly drawn project objectives which required that private sponsor's needs be met).

⁴² Forest Service Comments on Final Resource Reports (dated March 9, 2016), Accession No. 20160311-5013.

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permitted to rely solely on the applicant’s private project goals to preclude consideration of alternatives that are more compatible with BLM’s statutory obligations.

B. There Is No Public Need for the Pipeline

Although the Commission is legally required under both NEPA and the Natural Gas Act to evaluate the need for the MVP, the DEIS does not.⁴³ Instead, the DEIS uncritically accepts the purpose of the MVP Project as stated in its application: to deliver 2 million dth/day of natural gas from the Appalachian Basin to markets in the Northeast, Mid-Atlantic and Southeastern states to five contracted shippers. DEIS 1-7.

That the MVP pipeline is fully subscribed does not end the inquiry of whether

Table 2. All of the shippers on the Mountain Valley Pipeline are affiliates of companies involved in developing the project.

Pipeline owner	Ownership Interest	Shipper	Capacity contracted (dth/cft/days)	Capacity contracted (%)
EGT Midstream Partners, LP	45.5%	EGT Energy, LLC	1,290,000	64.5%
Next Era Energy US Gas Assets, LLC	31%	USG Properties Marcellus Holdings, LLC	250,000	12.5%
Con Edison Gas Midstream, LLC	12.5%	Consolidated Edison Company of New York	250,000	12.5%
WGL Midstream, Inc.	7%	WGL Midstream, Inc.	200,000	10%
Vega Midstream MVP LLC	3%			
RGC Midstream LLC	1%	Roanoke Gas Company	10,000	0.5%

there is a need for the project. Here, there is a strong possibility that need for the project was manufactured by project investors given that every subscriber is an affiliate of an MVP joint venture, as shown on the table to the left.⁴⁴

The Commission itself acknowledges in its Certificate Policy Statement that affiliate contracts are less probative of public need than those negotiated at arm’s length.⁴⁵

⁴³ As discussed in Parts III.A.3 and 4, *supra*, both the Forest Service and BLM must also consider project need as part of the LMRP amendment and ROW grant processes. Comments on the Forest Service and BLM proceedings are discussed separately in Part IV, *infra*.

⁴⁴ See Institute for Energy Economics and Financial Analysis (IEEFA), *Risks Associated with Natural Gas Pipeline Expansion Across Appalachia* (April 27, 2016) (“IEEFA Report”) (concluding that the MVP and Atlantic Coast Pipeline, FERC Docket Nos. CP15-554 & CP15-555, are indicative of overbuilding by the natural gas industry). filed at FERC by C. Kunkel on September 12, 2016, Accession No. 20160912-0036. The report was cited and linked in the Virginia chapter of the Sierra Club’s May 12, 2016 filing (Accession No. 20160512-5183).

⁴⁵ *Certificate Policy Statement* at 88 FERC ¶ 61227, 61748 (discussing affiliate agreements).

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The DEIS also ignores credible and contrary evidence of potential for overbuild. A report released April 27, 2016, by the Institute for Energy Economics and Financial Analysis⁴⁶ demonstrates the recent pace of pipeline development, and documenting the potential risk of overbuild.

Even the gas industry has started to express concerns about overbuilt infrastructure. In June 2016, Rusty Braziel, president of RBN, an energy consulting firm expressed concerns at an energy conference about the “pipeline bubble:”

“Braziel drew parallels between the current state of shale hydrocarbon commodities markets and the housing market crash during the Great Recession.

‘What we’re really seeing is the tail end of a bubble, and what’s actually happened is that bubble attracted billions of dollars’ worth of infrastructure investment that now has to be worked off,’ he said. ‘It’s entirely possible that that could be the world that we’re into now, that it’s this world of infrastructure investment that we’re dealing with right now and that this has a lot to do with what we’re seeing happening up in the Northeast.’⁴⁷

The DEIS’ failure to consider the lack of need for the project skews its alternatives analysis. The DEIS ultimately rejected several system alternatives because it found them inadequate to transport 2 million dth/day,⁴⁸ and it never seriously considered the possibility of a smaller or shorter pipeline that would not have the same devastating impacts on the environmental and safety as a 42-inch line. But because the DEIS assumes not only that the project’s purpose is to transport gas but specifically to transport 2 million dth/day, it disregarded or never considered other feasible and less impactful alternatives - including the no-action alternative.

The lack of demonstrated public need in the DEIS also raises questions regarding the constitutionality of use of eminent domain to acquire private property along the MVP

⁴⁶ *IEEFA Report, supra note 44.*

⁴⁷ *Marcellus on Pace for Overbuild*, Natural Gas Daily (June 8, 2016), online at <http://www.naturalgasintel.com/articles/106695-marcellusutica-on-pace-for-pipeline-overbuild-says-braziel> (last visited October 10, 2016).

⁴⁸ See DEIS at 3-10 to 3-13 (rejecting numerous system alternatives, finding that they lack capacity to transport 2 million dth/day).

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route. The Commission recognizes that absent public need, a taking of property may violate the 5th Amendment's prohibition on taking of public land for private use.⁴⁹

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C. The DEIS Does Not Evaluate the Cost of Allowing a 14 Percent Return on Equity for the Pipeline.

Rule 1502.23 of the CEQ regulations allow an agency to conduct a cost benefit analysis of a project⁵⁰. Here, the MVP Project is a \$3.7 billion project -- which that will be in operation for just 20 years. Thus, it would be appropriate for the DEIS to compare the cost of the MVP, for the time that it will be in service, to alternative and less expensive resources.⁵¹

Moreover, the DEIS should at least mention that the 14 percent ROE is excessive, even under the Commission's standards. Recently, in *Florida Southeast Market*, the Commission rejected a request for a 14 percent ROE when the company -- as here -- had a capital structure of 60 percent equity/40 percent debt. The Commission explained:

For new pipelines, the Commission has approved equity returns of 14 percent, but only where the equity component of the capitalization is no more than 50 percent. In MarkWest Pioneer, LLC (MarkWest), the Commission approved a greenfield pipeline's proposed 14 percent return on equity but rejected its cost-based rates capital structure of 60 percent equity and 40 percent debt. *The Commission found that imputing a capitalization containing such a large equity ratio is more costly to ratepayers, because equity financing is typically more costly than debt financing and the interest incurred on debt is tax deductible.*⁵²

⁴⁹ See *Pac. Connector Gas Pipeline, Lp Jordan Cove Energy Project, L.P.*, 139 FERC ¶ 61040 (Apr. 16, 2012)

⁵⁰ *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1214 (9th Cir. 2004) ("A 'cost-benefit' analysis under the [CEQ] Guidelines consists of any analysis identifying and assessing the comparative benefits and/or costs of 'environmentally different alternatives.'") (quoting 40 C.F.R. § 1502.23).

⁵¹ See *Millennium Pipeline Company, L.L.C.*, FERC Docket No. CP11-515, 140 FERC ¶ 61,045 (July 17, 2012), Wellinghoff, Chairman, *dissenting* (comparing costs of benefits of alternative proposals).

⁵² *Florida Southeast Connection*, Docket CP14-554, 154 FERC ¶ 61,080 at P 117 (February 2, 2016) (footnotes and citations omitted).

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Markets, rates, and return on investments are not environmental issues that need to be discussed in the EIS. Non-environmental issues related to the MVP would be addressed in the Commission's Project Order.

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Because of MVP's capital structure, the return on equity of 14 percent is excessive and must be rejected.

Moreover, as described in the IEEFA Report, this high rate of return encourages often unnecessary infrastructure, burdening both ratepayers and landowners with the cost of higher rates and loss of property values.⁵³ The DEIS should have considered whether the high ROE created a bias in favor of a larger-than-necessary pipeline when a smaller pipeline, a system alternative or no pipeline at all would have sufficed. Given that project investors and shippers are interlinked as corporate entities, it is imperative that FERC should prioritize such considerations in its evaluation of MVP's application.

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IV. THE DEIS FINDINGS OF NO SIGNIFICANT IMPACT ARE ERRONEOUS AND UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

Not only is the DEIS both procedurally and legally deficient, the DEIS findings that the project will have no significant impacts, or some adverse impacts that may be reduced by mitigation are unsupported by substantial evidence and factually erroneous. Below, the County lists numerous instances where the DEIS either downplayed impacts or ignored them entirely, failed to consider feasible alternatives and provide adequate mitigation and repeatedly refused to incorporate protections for landowners that also make MVP accountable.

A. The MVP Project Will Have Significant Impacts on Forests Yet Neither Attempts to Avoid These Impacts or Provide Any Mitigation.

1. Description of Impacts to Forest

According to the DEIS, construction of the MVP pipeline will impact 4780 acres of forest during construction and 1689 acres during operation DEIS Table 4.8.1. The Applicant has since updated these tables in light of its recent route modifications, resulting in even larger impacts to forests - 4860 acres impacted during construction and 1702.2 acres impacted during operation⁵⁴.

Within Montgomery County, the pipeline will impact 501 acres of forested lands within recreational and special areas, including the Jefferson National Forest during construction and 189.37 acres during operation. DEIS Table 4.8.1-8. As updated by

⁵³ IEEFA Report, *supra* at notes 44 and 46 (and accompanying text).

⁵⁴ Table 4.8.1-1 as modified in MVP Supplemental Filing (October 20, 2016), Accession # 20161020-5175.

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See the response to comment IND155-2 regarding forest impacts. Based on our experience with restoration, we conclude that the replanting of trees in formerly disturbed areas would not significantly enhance or expedite the return of forest habitat. We disagree with the statements regarding the location of the Applicants plans. Table 2.4-2 in the EIS provides the accession number for each plan which can be found in the public record using the FERC's e-Library system.

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MVP's October 20, 2016 filings, the impacts to forested lands within recreational and special areas have been reduced to 197.3 acres during construction and 63.5 acres during operation. Yet these reductions -- though beneficial to resources within Montgomery County -- do not compensate for the overall increase in impacts to forest resulting from the the project. Moreover, even reduced, the project impacts to forests within Montgomery County are still substantial.

The DEIS repeatedly acknowledges that the impacts to forests are significant.⁵⁵ As the DEIS describes, more than half of the trees that will be removed are interior forest, which has a higher habitat value for some wildlife species and is considered rarer than forest edges with lower habitat value. DEIS 4-131. The pipeline will destroy thousands of acres of upland forest, 938 acres of which is classified as "High to Outstanding Quality" in Virginia. (ES-6, 4-145). The removal of forest would contribute to edge effects and habitat fragmentation within 856 acres of core forest tracts in West Virginia and 195 acres of core forest tracts in Virginia. Destruction of forest will in-turn have consequences for viewshed (see discussion *infra* at Part IV.B), and forest-dwelling species, including endangered species.

2. Given impacts to forest, the DEIS finding of no significant impact is unsupported by evidence.

Given that the MVP Project alone will raze 4909.1 acres of trees⁵⁶ -- an impact which the DEIS itself characterizes as significant -- the DEIS' conclusion that the project's impacts may be reduced to acceptable levels by mitigation is internally inconsistent and unsupported by the evidence. Although the DEIS attempts to downplay the extent of impacts to forests by noting that those trees in the temporary right-of-way "would be allowed to regenerate after pipeline installation and restoration" (DEIS 4-214), even the DEIS acknowledges that "larger trees likely would not grow to maturity for many decades, making [tree removal] a long-term impact." In turn, the lengthy regeneration period -of 30 years or longer will also have greater impacts on forest-dwelling wildlife species. DEIS 4-161.

⁵⁵ See, e.g., ES-5 (permanent conversion of forested wetland to scrub or emergent wetland); ES-6 ("Impacts on forest-dwelling species would be greater because forest would take a long time to regenerate in temporary workspaces and trees would be permanently removed from the operational pipeline easement."); ES-14 ("The construction and operation of the projects will result in limited adverse environmental impacts, with the exception of impacts on forests.").

⁵⁶ The EEP Project will remove an additional 74 forested acres. Updated MVP Table 4.8.1 (October 20, 2016). See FERC Accession No. 20161020-5175 at 107 – 108.

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3. The DEIS does not provide any mitigation for impacts to forests.

Even when as here, a project will have substantial adverse impacts, the DEIS may still rationally conclude that the impacts are not significant if adequate mitigation is provided. Yet the MVP DEIS does not include any details regarding mitigation or evaluate the adequacy of the proposed measures. This omission is particularly problematic, because the DEIS' finding of no significant impacts rests on an assumption that adverse effects will be reduced through mitigation.

Sec. 1502.14(f) of the CEQ regulations requires an EIS to "include appropriate mitigation measures not already included in the proposed action or alternatives" and to evaluate whether mitigation offers an effective means to remediate significant environmental impacts. *See* 40 C.F.R. §1508.25(3)(b). Section 1508.20 of the CEQ regulations define mitigation as: (a) avoiding the impact, (b) minimizing impacts by limiting the magnitude of the action, (c) rectifying the impact by repairing and rehabilitating the affected environment, (d) reducing or eliminating impacts over time by preservation and maintenance operations of (e) compensating for the impact by replacing or providing substitute resources. 40 C.F.R. §1508.2.

To satisfy the CEQ regulations, the DEIS must describe any proposed mitigation in sufficient detail to ensure that environmental consequences have been fairly evaluated." *Carmel-By-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir.1997). "A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." *Northwest Indian Cemetery Protective Ass'n. v. Peterson*, 795 F.2d 688, 697 (9th Cir.1986); *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998)(finding Forest Service's "perfunctory listing" of mitigation measures for the Redband trout improper under NEPA).

The discussion of mitigation measures in the DEIS falls far short of what is required under the CEQ and FERC regulations. First, the DEIS failed to fully consider avoidance of impacts, which is required before an Applicant may even begin to consider mitigation.⁵⁷ Although the DEIS considered - and rejected - collocation of a larger

⁵⁷ *See* 18 C.F.R. §380.15(a) ("The siting, construction and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic, historic, wildlife and recreational values."); *Webster v. U.S. Dep't of Agric.*, 685 F.3d 411, 431 (4th Cir. 2012) ("The statutory mandate that agencies detail 'any adverse environmental effects which cannot be avoided should the proposal be implemented,' 42 U.S.C. § 4332(C)(ii), implicitly assumes 'that the EIS will discuss the extent to which adverse effects can be avoided.'") (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989)); *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1084–85 (9th Cir. 2011) ("Mitigation measures may help alleviate impact *after* construction, but do not

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portion of the MVP and EEP projects,⁵⁸ collocation is not the only option for avoiding impacts. Most obviously, the Commission could have considered a 25-foot, or even 50-foot construction easement, rather than the 75-foot construction easement currently proposed.⁵⁹ A narrower easement would have avoided the amount of tree removal necessary by between 40 and 60 percent and is not necessary for topsoil storage in forested areas because MVP has not proposed to store topsoil in forested areas. In addition, narrowing the width of the easement is consistent with Section 380.15(e)(4) of the Commission's siting regulations implementing NEPA which provide that a project should keep "rights-of-way clearing to the minimum width necessary." 18 C.F.R. §380(e)(4).

Likewise, the DEIS must evaluate whether reducing the size of the 500-foot utility corridor that MVP seeks from the Forest Service would avoid or reduce impacts to forests. Although initially, MVP's grant will be limited to a 125-foot easement within the utility corridor with future projects subject to NEPA review,⁶⁰ establishment of a 500-foot utility corridor invites the prospect of additional infrastructure development which will lead to removal of even more trees.

Even if it is not possible for the project to partially or fully avoid impacts to forests, NEPA allows for mitigation in the form of replacement. 40 C.F.R. §1508.20(c). Yet, the DEIS does not consider the option of requiring MVP to fully replant trees in the construction easement. To ensure that replanting is successful, the DEIS should require Applicants should to retain and consult with local arborists and tree experts, and monitor the replanting efforts for the next decade.

help to evaluate and understand the impact before construction. In a way, reliance on mitigation measures presupposes approval. It assumes that—regardless of what effects construction may have on resources—there are mitigation measures that might counteract the effect without first understanding the extent of the problem." (emphasis in original).

⁵⁸ Currently, 29 percent of the MVP is collocated with existing easements and 20 percent of the EEP is likewise collocated.

⁵⁹ The combined construction and operation easement is 125 feet, with 50 feet of that to remain a permanent easement for pipeline operation.

⁶⁰ Forest Service FAQ Regarding FERC DEIS for Mountain Valley Pipeline (November 2, 2016), online at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd523416.pdf.

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Tree replanting is not without precedent.⁶¹ Moreover, it is illogical to excuse a multi-billion-dollar company like MVP from fully restoring plant communities in temporary workspaces to original condition prior to installation of the pipeline when even the tiniest, run-of-the-mill home-improvement contractor would be obligated to do the same if they damaged a property. In a case where it is undisputed that the project will have significant and lasting impacts on forests, mitigation in the form of replanting is appropriate and justified by the evidence. That the Applicant itself did not propose replanting trees as mitigation does not foreclose the Commission from considering this option⁶² - since ultimately, the Commission and not the applicant bears the burden of complying with NEPA.

Not only does the DEIS fail to consider obvious and effective forms of mitigation, it fails to provide any details regarding the scant mitigation measures that were actually considered.⁶³ The DEIS' sole reference to mitigation of tree removal comes at page 4-162, describing that MVP will restore the right of in using native seed mixes in accordance with its "Plans and Procedures" -- which are nowhere to be found in the

⁶¹ See, e.g., *Laguna Greenbelt, Inc. v. U.S. Dep't of Transp.*, 42 F.3d 517, 528 (9th Cir. 1994), *as amended on denial of reh'g* (Dec. 20, 1994) (EIS proposed re-planting coastal sage scrub); *Surfrider Found. v. Dalton*, 989 F. Supp. 1309, 1320 (S.D. Cal. 1998), *aff'd sub nom. San Diego Chapter of the Surfrider Found. v. Dalton*, 196 F.3d 1057 (9th Cir. 1999) (mitigation measures for U.S. Marine Corps officer housing units included a tree planting program); *Mt. Lookout-Mt. Nebo Prop. Prot. Ass'n v. F.E.R.C.*, 143 F.3d 165, 169-170 (4th Cir. 1998) (the Commission required applicant to plant trees as part of its mitigation of adverse visual impacts); *Nw. Bypass Grp. v. U.S. Army Corps of Engineers*, 552 F. Supp. 2d 97, 131 (D.N.H. 2008) (U.S. Army Corps of Engineers developed mitigation requiring "trees, other plantings, and fencing ... to mitigate adverse visual and audible impacts.")

⁶² *Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010) ("NEPA regulations... require an agency to discuss possible mitigation measures in the EIS and Record of Decision.") (citing 40 C.F.R. §§ 1508.25(b)(3), 1502.14(f), 1502.16(h), 1505.2(c)) (emphasis added).

⁶³ See *Northwest Indian Cemetery Protective Ass'n. v. Peterson*, 795 F.2d at 697, *supra*, and *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d at 1380, *supra* (finding Forest Service's "perfunctory listing" of mitigation measures for the Redband trout improper under NEPA); *Carmel-By-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir.1997) ("Mitigation must 'be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.'") (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989))

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DEIS.⁶⁴ The DEIS also states generally that MVP will minimize all project impacts (DEIS 2-33) by undertaking construction and restoration in accordance with the plans in Table 2.4-2. Those plans, although referenced by Table 2.4-2 and essential to the mitigation procedures proposed by the DEIS, are not included within the DEIS, and are not accessible easily to members of the public intending to comment on the DEIS.

The DEIS also accepts, without discussion, the mitigation measures prescribed in these manuals - even though they are completely irrelevant to tree restoration. One of the manuals listed - the *Upland Erosion Control, Revegetation and Maintenance Plan*⁶⁵ - prescribes general measures for restoration of a right-of-way - such as seeding, clean-up, rock removal, etc... none of these measures pertain to the replanting of trees. Merely referencing mitigation measures is insufficient under NEPA; the Commission must also evaluate whether the stated mitigation "offers an effective means to remediate significant environmental impacts." 40 C.F.R. § 1502.14(f). Revegetating or reseeded rights-of-way obviously do not.

The only "mitigation" for tree removal in the DEIS -- if it can be called that -- comes in the form of wishful thinking that the trees will be permitted to "naturally regenerate" in the temporary construction easement once the pipeline is complete.⁶⁶ Yet the DEIS does not evaluate whether natural tree regeneration serves as effective mitigation for tree removal in the construction right of way. For example, the DEIS does not describe whether the natural factors that can play major role tree regeneration - such as stand size, boundary pattern, species composition, density and age class distribution of remaining trees, or sunlight, nutrients, moisture, soil characteristics,

⁶⁴ *WildEarth Guardians v. Montana Snowmobile Ass'n*, 790 F.3d 920, 925 (9th Cir. 2015) ("To incorporate underlying data by reference, [an] agency must cite the source in the EIS and briefly describe the content. 40 C.F.R. § 1502.21. A source may be incorporated by reference only if 'it is reasonably available for inspection by potentially interested persons within the time allowed for comment.' *Id.*"); *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 100 n.12 (1983) ("incorporation by reference is permissible if it will not impede agency and public review of the action... NEPA requires an agency to do more than to scatter its evaluation of environmental damage among various public documents.") (internal citations and quotations omitted).

⁶⁵ The Upland Erosion Control, Revegetation and Maintenance Plan is online at <https://www.ferc.gov/industries/gas/enviro/plan.pdf>.

⁶⁶ See DEIS at 4-138, also 4-144 – 4-147 (describing forest fragmentation); 4-150 (recommending "that Mountain Valley develop a mitigation plan in coordination with federal and state agencies for both long-term and permanent upland forest impacts.").

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temperature and wind - are conducive to effective natural regeneration.⁶⁷ In fact, several commenters contend that given existing conditions, natural regeneration is unlikely to succeed.⁶⁸ As such, natural regeneration is ineffective as mitigation for impacts.

To sum, the DEIS cannot logically conclude that the project will not have significant impacts while at the same time, acknowledging that impacts to forests are significant and failing to provide any effective mitigation. Accordingly, the DEIS must be rescinded or revised in accordance with these comments.

LA13-14

B. The DEIS Does Not Adequately Assess Project Impacts to Visual and Aesthetic Resources.

Under NEPA, a DEIS must fully consider impacts to visual and aesthetic resources and if they are unavoidable, the agency must provide mitigation.⁶⁹ The DEIS must disclose the methodologies applied as part of its analysis. See 40 C.F.R. §1502.24⁷⁰

In addition, under the Commission's siting regulations implementing NEPA, a project must (a) avoid "long foreground views of cleared rights-of-way through wooded

⁶⁷ See Virginia Department of Forest Website, Natural Tree Regeneration, online at <http://www.dof.virginia.gov/manage/tree-regeneration.htm>.

⁶⁸ Comment by Carl E. Zipper regarding the Adverse Effects to Forest Resources are not Minimized under CP16-10 (November 20, 2016), Accession No. 20161121-5051, at 5-6; U.S. Forest Service Comments on the MVP June 2016 Draft Plan of Development (November 14, 2016), Accession No. 20161115-5013, at 23 ("The statement 'Restoration in these areas will be determined successful if the seeded areas have germinated and are demonstrating that they will, over time, achieve a distribution and diversity similar to adjacent undisturbed areas or to targeted conditions' is unrealistic and perhaps not achievable... it is highly unlikely that it will ever be restored.")

⁶⁹ *LaFlamme v. FERC*, 852 F.2d 389, 399-400 (9th Cir. 1988) (Commission's failure to evaluate visual and aesthetic impacts was arbitrary and capricious); *Young v. Gen. Servs. Admin.*, 99 F. Supp. 2d 59, 76 (D.D.C.), *aff'd*, 11 F. App'x 3 (D.C. Cir. 2000) (approving visual impact assessment which was based on "standard visual impact methodology;" methodology was detailed in EIS).

⁷⁰ *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 368 (D.C. Cir. 1981) ("[T]he administrative record must disclose the studies and data used in compiling environmental impact statements. Moreover, any methodologies relied upon should be carefully described.")

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Section 4.8 of the final EIS has been revised to include a leaf-off analysis as requested by our recommendation in the draft EIS. Section 4.8 has also been revised in the final EIS to discuss criteria for selecting the KOPs.

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areas that are visible from areas of public view;" (b) avoid, where practicable, rights-of-way crossing hills and other high points at their crests where the crossing is in a forested area and the resulting notch is clearly visible in the foreground from areas of public view and (c) employ screen plantings where rights-of-way enter forested areas from a clearing that is plainly visible in the foreground. *see* 18 C.F.R. §380.15(e)(8)-(10).

The DEIS concludes that "construction and operation of the MVP and the EEP would result in limited adverse environmental impacts, with the exception of impacts on forested land" (DEIS 5-1), but that with implementation of the Applicant's Plans, we conclude that overall impacts on ... visual resources would be adequately minimized." (DEIS 5-8). As shown, the DEIS lacks evidence to support this conclusion and fails to comply with NEPA nor evaluate projects consistently with the standards in Section 380.15.

First, as required by Section 1502.24 of the CEQ regulations, the DEIS does not describe the selection criteria by which MVP chose the 61 Key Observation Points (KOPs) listed in Table 4.8.1-10 And whatever selection criteria was applied was inadequate, because nothing was selected at Mt Tabor Road, Preston Forest or view points along I-81 where there is a greater potential of more people viewing where the sites where the right-of-way carves through the mountains.

Second, the DEIS also performed only a leaf-on analysis which minimizes the true extent of visual impacts. For this reason, the Forest Service requested a leaf-off analysis of the pipeline in March 2016,⁷¹ which MVP has not yet provided and which is necessary for full evaluation of the pipeline's impacts on forests.

Third, the DEIS visual simulations for highly sensitive KOPs reproduced in Appendix S are also inadequate. Again, there is no description of the tools used to develop the photos in Appendix S-1. Also, the visual "simulations" appear to be nothing more than photographs taken by the Applicant at a particular KOP and subsequently photoshopped to reflect the anticipated changes following the pipeline. This approach is far inferior to the visual impact assessment tools available today (such as GIS software) that can enable more comprehensive visibility evaluations⁷² and which in fact, are employed by other agencies to conduct visual assessments. At the very least, the DEIS should require the Applicant to perform a visual resource assessment using these more sophisticated tools, or Commission staff should have performed one itself.

⁷¹ *See* Forest Service Comments (March 2016).

⁷² *See Visual Impact Assessment: Where Have We Come and Where Are We Going?* (2016), online at http://file.scirp.org/pdf/JEP_2016092816171950.pdf (describing current visual evaluation tools employed by federal agencies such as BLM, Soil Conservation Service and Department of Transportation).

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Yet, even the Applicant's primitive approach to visual resource effects, applied during leaf-on season only, cannot conceal the enormous gashes across the viewshed resulting from the pipeline, which remain in plain site on many of the photos.⁷³ On other photos where impacts are better hidden, it is only because the "screening" (*e.g.*, on Brush Mountain, Appendix S-1-4) or remediation (*e.g.*, reseeded easements depicted in several photos) are depicted in the most optimistic light, with trees and grass lushly regenerated. At a minimum, the photos should also show how the landscape will look during the period that remediation is ongoing -- or if it is unsuccessful.

The Applicant's' photos also show that its siting of the project is incompatible with the Commission's siting regulations. Contrary to Section 380.15 (e)(8) and (9), the project does not avoid long foreground public views of cleared rights of way and crosses "hills and other high points at their crests where the crossing is in a forested area and the resulting notch is clearly visible." Although the DEIS attempts to minimize the project's visual impacts by claiming that assessment of visual resources is largely subjective (DEIS at 4-228), the Commission's regulations establish objective standards for determining whether visual impacts are acceptable. Here, they are not.

The mitigation for impacts to visual resources -- which involves construction of the project in accordance with the Applicant's' plans (DEIS at 4-256 – 4-259) is also vague⁷⁴ and non-responsive. The Applicant's' plans allow for regeneration of forest in the temporary rights-of-way, but absent specific measures to accelerate and ensure re-establishment of forest vegetation, this form of mitigation is inadequate to minimize visual effects. As described earlier, requiring the applicant to replant trees throughout the temporary easement and monitor growth for a decade (and to replant areas where planted trees do not survive or grow adequately, and to mitigate soil conditions where expert analysis indicates that such mitigation would enable planted trees' survival and/or accelerated growth) might offset some of the damage to viewshed, but the DEIS does not even discuss this obvious solution. Likewise, certain alternative routes - such as the Slussers Chapel alternative, described in Section VI below - offer the benefit of mitigating visual resources and if the pipeline is approved, this alternative should be adopted.

⁷³ See Appendix S-1-1 (showing right of way atop Peters Mountain even at great distance), S-1-6 (showing pipeline easement highly visible although Bradshaw Compressor Station is concealed), S-1-10 (large bare easement in plain view from Interstate 79), S-1-12 (bare easement in plain view from roadway).

⁷⁴ As with discussion of mitigation for impacts to forests (*supra* at Part IV.A, including caselaw), the description of mitigation for visual impacts is inadequate to allow decisionmakers to evaluate project impacts.

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C. The DEIS Erroneously Minimizes or Ignores All of the Impacts of Constructing a Pipeline Through Karst Terrain and Other Geological Hazards

1. Description of Karst Hazards

Between mileposts 190 and 237, the MVP pipeline route will cross treacherous and highly unstable karst terrain, nineteen miles of which is located along the pipeline's path through Montgomery County (between MP 217 and 236).⁷⁵ In particular, a high concentration of sinkholes and karst terrain -- known as the Mount Tabor Sinkhole Plain -- is located in Montgomery County between MP221.1 and 222.3 the original mileposts used in the DEIS prior to the October 2016 route revisions.⁷⁶ Given the hazards of constructing a 42-inch pipeline in these challenging conditions, numerous commenters - including the County, state agencies, non-profits⁷⁷ and experts and residents with engineering or geology credentials - have raised serious concerns about the pipeline's route. Potential impacts resulting from karst include groundwater contamination, collapse and formation of sinkholes and erosion.⁷⁸

⁷⁵ In addition, there may still be unknown karst features along the route that MVP has yet to identify. See DEIS 4-49 (requiring MVP to continue to investigate karst). Other commenters assert that MVP understates the extent of karst in the Mount Tabor area. See e.g., Dr. Robert Jones Comments (November 23, 2016) at 7, Accession No. 20161123-5080.

⁷⁶ DEIS at 3-52.

⁷⁷ -See, e.g., Indian Creek Watershed Association, "Karst-related Features on the Proposed MVP Corridor in Monroe County, WV Docket No. CP16-10," (November 13, 2015), Accession No. 20151113-5109; "Supplemental Information of Save Monroe, Inc under CP16-10" (November 25, 2015), Accession No. 20151125-5114; Report of The U.S. Fish and Wildlife Service-VAFO under CP16-10, (March 9, 2016), Accession no. 20160309-5173; "Hydrogeological Assessment of Watershed Impacts Caused by Constructing the Moain Valley Gas Pipeline Through Summers and Monroe Counties, West Virginia," (August 15, 2016), Accession No. 20160815-5135

⁷⁸ See Kastning Report at 24-32 (listing Karst impacts). For additional detail regarding hazards of karst, see U.S. Forest Service Staff, "Comments on Final Resource Reports for the Mountain Valley Pipeline Project," (Mar. 9, 2016), Accession no. 20160311-5013; Robert M. Jones, Ph.D., "Report on Why MVP Needs to Go Along the Ridge of Brush Mountain instead of in the Slussers Chapel Conservation Site," (November 23, 2016), Accession No. 20161123-5080.

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See the response to comment CO14-1 regarding blasting. See the response to comment IND62-1 regarding Dr. Kastning's report. Landslides and seismicity are addressed in section 4.1 of the EIS.

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Blasting -- which is necessary to construct the pipeline in shallow bedrock (see DEIS 4-51, 5-2) -- can compound many of the adverse impacts presented by karst - heightening the probability groundwater contamination and contributing to erosion and soil instability.⁷⁹ More than half of the pipeline section that crosses the County will run through shallow bedrock and therefore blasting would be required if the pipeline were to be approved by FERC. See DEIS Table 4.3.2-8 (listing waterbodies, including 12 in the County located in areas of shallow bedrock), Table 4.1.1-14 (listing Montgomery County as having 11 miles of shallow bedrock). Construction of the pipeline through blasting lead Dr. Kastning to conclude that major segments of the pipeline corridor in Monroe, Giles, Craig, and Montgomery Counties, and additional segments in Summers and Roanoke Counties, are proposed for construction through karst "making it unsafe and unsuitable **for the type of construction** proposed in the application." Kastning at 45. Hydrostatic testing in the karst region poses additional dangers which the DEIS does not adequately address.

Presumably in recognition of the dangers of karst - particularly through the Mount Tabor Sinkhole Plain as MVP originally proposed, the DEIS included a recommendation that MVP conduct on-site surveys of the Mount Tabor Route Variation to assess constructability and identify karst features prior to the end of the DEIS comment period. DEIS 4-49. On October 20, 2016, MVP adopted the Mount Tabor Route variation.

2. The DEIS does not adequately address the dangers of karst

As noted earlier, an agency must evaluate the scientific evidence presented, respond to opposing viewpoints and provide reasons for rejecting an expert's analysis. Notwithstanding the numerous expert reports submitted on karst, the DEIS does not address any of the contrary arguments, including Dr. Kastning's position that the Mt. Tabor region is a no-build zone for pipelines and that construction in karst threatens groundwater. Because the DEIS did not respond to opposing, credible and science-based opinions, the DEIS is deficient and should be supplemented or rejected.

Indeed, *had* the DEIS considered Dr. Kastning's report, it would have recognized that MVP's reports grossly underestimated karst features, by relying on aerial photography or topographic maps which may not capture the presence of small sinkholes which are also an indicator of karst.⁸⁰ According to Kastning, the true extent of karst may only be determined through high-resolution surveying and mapping,

⁷⁹ Kastning at 45.

⁸⁰ Kastning Report at 12-14, as modified in December 2016 Report at 4-5.

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detailed geotechnical methods such as dye-tracing and exploration and surveying of area caves.⁸¹

The mitigation proposed by the DEIS also falls short. For example, MVP claims that it mitigated potential harm with the Mount Tabor Route Variation, which it proposed as modification of the original DEIS route in October 2016 and which avoids a massive sinkhole. However, the Mount Tabor Route Variation lies within the Mount Tabor Karst Sinkhole Plain as defined by Dr. Ernst Kastning, and therefore does not abate any of the dangers.⁸²

MVP's other proposed mitigation in the Karst Mitigation Plan and the Karst-Specific Mitigation plan are too vague to allow for meaningful review. The plans provide for avoidance of karst if possible, stabilization of karst features and deployment of a karst specialist team "during land clearing and construction in karst terrain to directly assess karst hazards, inspect karst features encountered during construction and provide recommendations".⁸³ MVP's plans do not offer any further detail – such as the "karst expert" that may be selected, or the precise mitigation measures to be implemented.

Further, although the DEIS lists several mitigation measures, critically, the DEIS fails to evaluate the effectiveness of these measures. "A mitigation discussion without at least some evaluation of effectiveness is useless in making that determination."⁸⁴ In *South Fork Band Council*, the Ninth Circuit criticized a DEIS inadequate because it stated only that "feasibility and success of mitigation would depend on site-specific conditions." Here, the Commission's DEIS does not even go that far: it is void of any mention of the effectiveness or likelihood of success of the MVP's proposed mitigation measures. Moreover, Dr. Kastning has criticized MVP's proposed mitigation measures for karst features as "contrary to accepted best management practices." Kastning December 2016 Report at 10 (citing published works).

As discussed in more detail in Part VI, one option that would provide more effective mitigation for karst associated with karst risks is the Slussers Chapel Conservation Site Avoidance Alternative route proposed by the VDCR. If the Commission decides to approve the pipeline, despite the numerous problems documented here and elsewhere, the Slussers Chapel Conservation Site Avoidance Alternative Route must be

⁸¹ *Id.* at 7.

⁸² See Dr. Robert Jones Report (November 23, 2016) at 7.

⁸³ See MVP Supplemental Response (February 26, 2016) at 5 (summarizing features of karst mitigation).

⁸⁴ *South Fork Band Council v. US Dept. of Interior*, 588 F. 3d 718, 727 (9th Cir. 2009).

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adopted. However, the DEIS does not assess potential environmental impacts of that routing, or compare potential environmental impacts of that Alternative's routing to those of proposed routings.⁸⁵

3. Other geological hazards

The DEIS also fails to adequately assess the prospect of landslides and seismic risks. The pipeline is proposed through areas of high landslide potential⁸⁶ and areas of enhanced seismic risk.⁸⁷ The DEIS fails to assess the potential for co-occurrence of seismic and landslide risks; and how such co-occurrence might affect the proposed pipeline's integrity and, by extension, water resources in potentially affected areas – including areas of karst terrain, where groundwater resources are especially vulnerable to contamination that might occur at the land surface or in pipeline trenches. Enhanced seismic risks, steep slopes with unstable soils that are subject to risk of landslide, and karst terrain with groundwater resources that are both essential as water supplies to numerous residents (who do not have access to alternative water supplies) and are vulnerable to contamination co-occur within landscapes proposed for pipeline construction. Yet, the DEIS does not assess the enhanced risk of adverse environmental effects due to these geologic hazards' co-occurrence that would result if the pipeline were to be constructed as proposed. The potential for adverse effects is not speculative, as a severe earthquake occurred with an epicenter close to the proposed pipeline's route 119 years ago, in 1897,⁸⁸ and the current scientific documents describe that same route segment as

⁸⁵ "Proposed routings" is stated in the plural, since the routing proposed initially by the DEIS (as issued in September 2016) differs from that proposed in subsequent filings (e.g., submittal s20161014-5022, 20161020-5175, 20161027-5212 to Docket CP16-10, etc.).

⁸⁶ As stated by the DEIS: "About 151.7 miles (78 percent) of the MVP pipeline route in West Virginia is considered to have a high incidence of and high susceptibility to landslides. In Virginia, about 50.0 miles (47 percent) of the proposed alignment has a high incidence of and high susceptibility to landslides" (p. 4-29).

⁸⁷ The area of enhanced seismic risk is known as the Giles County Seismic Zone, as discussed by the Kastning Report, submittal 20160713-5029 to FERC Docket CP16-10, in that report, see "Slope Stability and Potential Seismicity" (pp. 30-32), "Giles County Seismic Zone" (pp. 45-47), Figure 4 (p. B-9), and Figures 6-A and 6-B (p. B-11 and B-12).

⁸⁸ GA Bollinger, MC Hopper. 1971. Virginia's two largest earthquakes Virginia's two largest earthquakes—December 22, 1875 and May 31, 1897. Bulletin of the Seismological Society of America 61: 1033-1039; GA Bollinger, RL Wheeler. 1983. The Giles County, Virginia, Seismic Zone. Science 219: 1063-1065; GA Bollinger, RL Wheeler. 1988. The Giles

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remaining seismically active.⁸⁹ As stated by the DEIS, “The Applicants stated that the expected useful lifespan of the projects would be about 50 years”,⁹⁰ yet the DEIS does not consider the potential for an earthquake of similar location and magnitude despite that planned 50-year duration. The DEIS must be corrected to address these issues as well.

D. The DEIS Fails to Evaluate Impacts to Water Wells

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As management consultant Peter Drucker has remarked, “If you can’t measure it, you can’t manage it.” Drucker’s observation applies aptly with respect to the DEIS’ evaluation of impacts to private water wells. Because the DEIS does not measure the number of wells impacted, it cannot rationally propose mitigation to manage those impacts.

Although the DEIS identifies the number of public wells within the vicinity of the pipeline, it does not do the same for private wells in Virginia and West Virginia. As the DEIS explains, this is because “information on private wells is unavailable [for those two states]” and the Applicant has been unable to obtain the information through field surveys because many landowners have denied access. DEIS 4-75. Thus, to address the potential - but unknown scope of impacts -- the DEIS recommends that the Applicants file the location of private wells and springs within 150 feet of construction workspaces and within 500 feet in karst terrain before construction begins. The Applicant would then be required will perform two pre-construction evaluations of water quality and gather post-construction water quality/yield samples *if* the well owner lodges a complaint. If suitable water quality were to be no longer viable subsequent to pipeline construction due to construction-related activities, MVP would provide adequate quantities of potable water or provide a temporary water source. DEIS at 4-81.

The DEIS’ approach to water wells is invalid under NEPA. Without information regarding the number of private wells near the project, it is impossible to determine from the record whether the project poses significant environmental harm as required by NEPA. A project located in close proximity to several dozen wells will logically have more significant adverse impacts on water supply and public health than a project near

County, Virginia, Seismic Zone – Seismological Results and Geological Interpretations. US Geological Survey Professional Paper 1355. <http://pubs.usgs.gov/pp/1355/report.pdf>

⁸⁹ Biryol, C.B.; Wagner, L.S.; Fischer, K.M.; and Hawman, R.B., 2016, Relationship between observed upper mantle structures and recent tectonic activity across the Southeastern United States: Journal of Geophysical Research: Solid Earth, v. 121, 21p. (DOI: 10.1002/2015JB012698).

⁹⁰ DEIS, p. 2-58.

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See the response to comment IND401-5 regarding water wells. A table in section 4.3 of the final EIS lists water wells and springs. Section 4.3 of the final EIS has been revised to indicate that the water quality testing would be conducted by an independent laboratory.

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one or two wells. Yet without data on the number of wells, decisionmakers cannot evaluate the overall impact of the project.

Meanwhile, the DEIS' excuse for the lack of data on private wells is laughable. Even if the Applicants could not perform field studies (which in reality, provide an excuse to harass landowners and pressure them into easement negotiations), surely they - or Commission staff could have contacted landowners and asked them to identify wells located on their property. Perhaps not all landowners would have responded, but at least a simple request would have generated additional information.

Furthermore, the locations of occupied households are available within public records, given that government authorities tax landowners based on criteria that include residential occupation, and locations within proximity of the proposed pipeline corridor are well-known to the applicant; the geographic reach of public water supplies is also a matter of public record; and the vast majority of homes, in both the project area and the nation, obtain water from either public supplies or wells; and household occupants require water for survival. Therefore, it would be possible to estimate numbers of households with wells within a fixed-distance proximity of the pipeline based on MVP's own and public records.

The Commission's proposed mitigation is also inadequate under NEPA - because without data on wells and the extent of the potential impacts, there is no way of knowing whether avoidance of impacts or remediation is appropriate mitigation. In addition, there is no guarantee that the remediation proposed will be effective in preserving water quality. For starters, the preconstruction well testing will be performed by the Applicant which has a conflict of interest rather than an independent third-party, so the baseline levels established may be skewed. Second, the Applicant is not required to test all wells after construction to evaluate whether water quality or yield has been degraded -- instead, the onus lies with the landowner to bring a complaint and request post-construction re-testing. The fact that a landowner chooses, for whatever reason, not to seek re-testing does not mean that the water supply wasn't damaged, it simply means that the damage will remain unknown. This solution is also incompatible with NEPA, which imposes the onus of monitoring compliance on the agency or the applicant, not impacted owners.⁹¹

Finally, even where an owner seeks re-testing, it will be performed by MVP which increases the chance of bias. A preferable alternative would be to require MVP to fund

⁹¹ See *CEQ Guidance on Use of Mitigation Monitoring (January 14, 2011)*, online at https://ceq.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf

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landowners so that they can seek an independent evaluation of water quality. Also, MVP can drag out disputes over complaints regarding water quality, which requires landowners to spend money to obtain relief for damage caused by MVP. At a minimum, the certificate (if issued by FERC despite the numerous problems documented here and elsewhere) should make clear that should MVP decline to address complaints regarding water quality, the landowner has the option of seeking relief through the Commission's dispute resolution office and MVP must comply with the dispute resolution process or face sanctions.⁹²

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E. Lack of Protection for Property Owners

Both NEPA and the Commission's Certificate Policy Statement require evaluation of a project's impact to landowners.⁹³ The DEIS evaluation of impacts to landowners is inadequate, and fails to adequately mitigate impacts by providing protection to property owners.

1. Property Devaluation

In addition to damage to wells, forest and visual resources (discussed elsewhere in these comments), the MVP's most significant impact to landowners comes in the form of property devaluation.

Recent court decisions -- that are not discussed in the DEIS at all -- have recognized, and awarded damages for reduction in property damages caused by pipelines. For example, in *Portland Natural Gas Transmission v. 19.2 Acres of Land*, 318 F.3d 279, 284 (1st Cir. 2003), upheld a district court's finding that property encumbered by a FERC pipeline easement was "diminished by 75 percent" based in part on the easement requirements, with reduction in value to the remainder (*i.e.*, the overall property) of ten percent. Courts also recognize stigma -- that proximity to a pipeline may have an adverse effect on how people view the value, and consider it a valid consideration in reviewing overall reduction in property values. Again, the DEIS does not acknowledge the potential for stigma.

Similarly, the Keylog Report submitted to the Commission in May 2016 estimated that the MVP would cause between \$42.2 million and \$53.3 million in diminished

⁹² Because the Commission's dispute resolution process is voluntary, many pipelines decline to participate, thus rendering the process useless from a landowner's perspective.

⁹³ 40 C.F.R. 1506.6(b)(3)(viii) (duty to involve owners and occupants of nearby or affected property); Certificate Policy Statement at 23-24 (explaining that impacts to landowners are one of three major impacts evaluated under Certificate Policy Statement separate from consideration of environmental impacts)

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Impacts on landowners, including property values, are discussed in section 4.9 of the EIS. See the response to comment IND137-1 regarding the KeyLog report. Potential abandonment of the proposed facilities is discussed in 2.7 of the EIS. Any abandonment, modification, or re-purposing of the proposed facilities would require an environmental review and authorization from the FERC. Environmental reviews of future Blanket Certificate actions are discussed in section 1.0 of the EIS. We disagree with the statements regarding insurance. The FERC staff conducted independent research on the matter of obtaining insurance for properties encumbered by a natural gas pipeline (FERC, 2014). The research involved calling a number of insurance agencies. The FERC asked whether the presence of a utility crossing would change the terms of an existing or new residential insurance policy, which types of utilities may cause a change, how a policy might change, and what factors would influence a change in the policy terms, including the potential for a policy to be dropped completely. Given that the project may not significantly affect property values, as supported by multiple research papers, we believe the mitigation measures outlined in section 4.9.2.6 of the draft EIS are adequate. We are not requiring Mountain Valley to insert language into their easement agreements. However, we do think those agreements would compensate landowners for damages.

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property values within eight counties impacted by the pipeline. See DEIS at 4-312. As support for this estimate, the KeyLog report cited Ohio and Wisconsin studies showing that a pipeline decreases property values on average of 12 to 15 percent. Also, other reports submitted to the FERC Docket by citizens have documented or alleged real estate loss of value due to pipeline proximity. Yet, the DEIS ignores this, instead referencing a “preponderance” of contrary evidence largely sponsored by the gas industry, or experts working for the gas industry.⁹⁴ Not surprisingly, these studies are skewed to downplay the impacts of pipelines.

Consider, for example, the most recent 2016 INGAA study conducted by Interga Realty Resources.⁹⁵ Even the INGAA report concluded that the average sale price of properties in a Virginia development located adjacent to pipelines was 1.4 percent lower than properties further away. But a cursory glance at the report would reveal several flaws that bias the results. First, since the pipelines had been constructed in the 1950s and 1960s, and the houses were constructed in 2000, it is very likely that buyers were unaware that the properties were encumbered because real estate developers are not required to disclose the presence of a pipeline.⁹⁶ Landowners impacted by the MVP will not have this option, however, because the pipeline easement is visible throughout the area.

Second, the INGAA study defined encumbered properties to include properties directly crossed by a pipeline, as well as properties adjacent to or abutting tracts that are crossed by a pipeline. Logically, homeowners on properties next to other properties that have pipelines will not face the same degree of devaluation as a property crossed by a pipeline because they are unaffected by the same restrictions (such as prohibition on building on the easement, need for permission to construct adjacent to the easement, etc...) on use as an encumbered property owner. By lumping directly impacted properties with adjacent and abutting properties, the INGAA report dilutes the overall devaluation percentages. And in fact, as mentioned earlier, even with these built-in flaws, the INGAA Report still found properties reduced in value by 1.4 percent; correcting for these flaws would substantially increase the diminution percentage.

Finally, the DEIS does not consider whether the property valuation studies cited involve traditional Section 7 certificates or blanket certificates which carry the very real potential for future expansion of the pipeline. At a minimum, the DEIS must acknowledge

⁹⁴ See Diskin, Fruits, etc.. cited at 4-312 (all connected to gas industry); also 4-286.

⁹⁵ Report online at <http://www.ingaa.org/PropertyValues.aspx>

⁹⁶ See Virginia Real Property Disclosure laws, Virginia Code § 55-518(A)(1) online at <http://law.lis.virginia.gov/vacode/55-518/>; see also <http://www.nolo.com/legal-encyclopedia/what-virginia-listing-agents-must-disclose-about-property.html>

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that a blanket certificate is a far greater encumbrance to a property than a traditional certificate, and therefore has the potential to reduce property values far more significantly.

2. Impacts resulting from abandonment

The DEIS neglects to address another potentially serious source of impacts: abandonment of the project.⁹⁷ Here, abandonment is a foreseeable impact that must be evaluated under NEPA (see CEQ regulation 40 C.F.R. § 1508.8(b) (requiring consideration of foreseeable impacts)) because the precedent agreements with the shippers for capacity on the pipeline only last for 20 years. The DEIS does not evaluate the impacts that could result from abandonment of the pipelines on their property, and potential for corrosion or contamination - which will be significant because once abandoned, the pipeline will no longer be maintained by MVP.

3. Impacts are exacerbated by grant of a blanket certificate

The DEIS also fails to examine the impact of granting a blanket certificate -- as the Applicant has requested -- on property values. Although a "blanket certificate" was originally intended to pre-authorize a pipeline to undertake, on a self-implementing basis,⁹⁸ certain routine upgrades and repairs post-certificate without having to go through a lengthy authorization process.

Today, however, the Commission's blanket certificate program has been expanded to authorize substantial expansion projects -- from 14,000 hp compressor stations⁹⁹ to 16-mile lateral pipelines¹⁰⁰ to "repairs and upgrades" located a half-mile from the original mainline project¹⁰¹ -- with minimal prior notice and reduced environmental scrutiny. Moreover, not only do blanket certificates allow a pipeline to

⁹⁷ See, e.g., Comments of Appalachian Mountain Advocates on behalf of C.E. Zipper, 12 May 2016, Accession No. 20160512-5183.

⁹⁸ *Interstate Pipeline Certificates for Routine Transactions*, 47 FR 24254 (1982); also 18 C.F.R. §157.

⁹⁹ *Centerpoint Energy*, 121 F.E.R.C. P61,180 (2007)(authorizing 14,000 hp compressor station under blanket certificate).

¹⁰⁰ *Enable Gas Transmission*, 153 FERC ¶61,055 (2015)(affirming use of blanket certificate for 16-mile lateral transmission pipeline across multiple private properties with limited notice and environmental review).

¹⁰¹ *Columbia Gas Transmission v. 1.01 Acres, More or Less*, 768 F.3d 300 (3rd Cir. 2014)(affirming use of blanket certificate for repairs located one-half mile outside of easement and use of eminent domain).

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expand its system with limited procedural safeguards, but they may also rely on the finding of public necessity and convenience underlying the grant of the initial certificate to invoke eminent domain for structures permitted under the blanket certificate – whether they serve a public need or not.¹⁰²

What this means is that any property-owners either currently subject to the pipeline easement or within the general vicinity now have a proverbial target on their back as potential sites for new infrastructure that are pre-authorized under the blanket certificate and allow for use of eminent domain to acquire property rights for construction. This in turn devalues their property even further. In spite of these potential impacts, the DEIS treats the Application for a blanket certificate the same as a more limited, traditional Section 7 certificate and does not explore the potential, devastating impacts that result from granting blanket certification along a 300-mile, largely greenfield pipeline. Nor does the DEIS disclose to the public what a “blanket certificate” is so that the public can fully comprehend the potential project’s impacts. The DEIS must address the impacts to property arising uniquely out of a “blanket certificate” to be considered adequate under NEPA.

4. Impacts on Property Insurance

The DEIS’ conclusion that the pipeline will not lead to increased property insurance is unsupported by evidence. First, the DEIS’ investigation of impacts resulting from the pipeline was inadequate. Instead of flatly inquiring of insurance companies whether a 42-inch natural gas pipeline constructed in karst-ridden terrain prone to geologic hazards and running in close proximity - in some instances, as close as 50 feet - to residences will impact property insurance, FERC staff merely asked “whether a utility crossing would change the terms of a residential insurance policy.” DEIS 4-288. Not surprisingly, all that staff learned was that insurance policies might be impacted depending upon the type of utility and the terms of the operator’s policy. Notwithstanding that information on the type of utility is *known* and not hypothetical for the MVP project, staff did not follow up to pursue a more definitive response.

The DEIS again turns to an industry-sponsored study by Interga Reality Resources (IRR) regarding potential increases in insurance rates which reported that three of the largest home insurers indicated that proximity to a pipeline was not taken into consideration when underwriting a homeowner’s policy, and premiums would not increase following pipeline installation. However, without detail on the methodology applied or questions presented to the insurers (for example, insurers may have believed that IRR was inquiring about gas distribution lines which of course have no

¹⁰² *Enable Gas, supra* (authorizing pipeline to construct 16-mile lateral line to new processing center under terms of a 30-year old blanket certificate, absent finding of need and with limited environmental review); *Columbia Gas, supra* (allowing pipeline to invoke eminent domain under blanket certificate for upgrade outside pipeline easement).

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impact, and not a 42-inch high pressure pipeline) or identification of the individuals consulted, the IRR study is of little value.

5. Mitigation

The mitigation for impacts to property values and property insurance is completely inadequate. For example, with respect to property insurance, the DEIS requires MVP to monitor and report to the Commission on complaints by landowners regarding increases or cancellation of property insurance for a period of two years following placement of the pipeline in service. DEIS 4-313. Although this proposal is a good start, the DEIS then goes on to state that MVP would “consider” mitigation on a case-by-case basis if policy increases or cancellations were reported. Allowing MVP discretion to determine whether to reimburse a landowner for increases completely guts the effectiveness of the mitigation - since MVP can simply deny landowners’ request for compensation. The proposed mitigation for property insurance increases would be far more effective if the DEIS simply mandated MVP to compensate impacted property owners, end of story. Also, the two-year timeframe proposed by Mountain Valley is inadequate because some property-insurance firms may not become aware of the pipeline unless the property experiences ownership change, and typical ownership terms for properties in the project area far exceeds two years.

As for mitigation resulting from devaluation of property, the DEIS assumes that property owners will be compensated as part of an easement agreement. As with much of the mitigation discussed in these comments, addressing compensation via an easement agreement is ineffective because it allows MVP *carte blanche* to establish the amount and terms of compensation with no accountability - since it can bring eminent domain proceedings against landowners who do not agree.¹⁰³ Although the DEIS cannot set the amount by which MVP must compensate landowners, it can and should recommend mandatory terms that MVP must include in its easement agreement so that landowners do not have to bargain away compensation to achieve equitable easement terms.

¹⁰³ In most instances, landowners do not refuse to accept an easement agreement because they want more money (as is generally assumed), but rather because they want the easement agreement to include protections such as a limited liability clause, or prohibition on installing a second pipeline in the easement which would not be authorized by the Commission certificate. *See, e.g., Tennessee Gas v. 104 Acres*, 749 F. Supp. 427, 431 (D. RI 1990)(finding easement agreement that provides for second pipeline and use of pipeline for substance other than gas invalid as beyond the scope of the FERC Certificate).

LA13-17
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Thus, to protect landowners from the pipeline's impacts, the DEIS should either make the following terms enforceable conditions of the certificate if the pipeline is erroneously approved.

- (1) MVP's easements must include a limitation of liability/hold harmless clause in its easement agreements to protect landowners from liability for damages caused by the pipeline;
- (2) MVP must post a bond as security to ensure full remediation of properties and resolution of claims by landowners for damages;
- (3) MVP must fund a decommissioning fund to pay for the cost of pipeline removal and restoration of the properties, and is required to remove the pipeline from a landowner's property if the project is abandoned, unless the landowner agrees to permit the pipeline to remain in place.
- (4) If attempting to purchase the rights to install more than one pipeline, or to transport liquid substances through the pipeline that would be installed; MVP must disclose to the property owner in writing that only one pipeline to transport natural gas only has been proposed to FERC; and that the eminent domain condemnations which occur in the absence of voluntary agreement would apply only to one pipeline to be installed for the purpose of transporting natural gas only.

These proposed terms will not fully mitigate the significant harm to landowners resulting from the pipeline (to recap, harm to landowners includes property devaluation, increased property insurance premiums and other environmental and safety harms discussed in these comments). Nevertheless, if the pipeline is improperly approved, inclusion of these terms would at least afford a small degree of added protection for landowners.

Finally, the Commission should prevent MVP from finalizing easement agreements with property owners prior to approval of the project.¹⁰⁴ Locking in easements early on forecloses consideration of alternatives - because MVP will argue that it already has acquired property rights to enable construction of its preferred route. MVP's acquisition of easements early on is tantamount to a "commitment of irretrievable resources," which NEPA prohibits until after a DEIS is prepared.¹⁰⁵

¹⁰⁴ As noted in Carl Zipper's submittals - 20150828-5050 to Docket PF15-3, and 20161121-5045 to Docket CP16-10 (footnotes 3 and 4 for documentation), MVP has already acquired easements for the project.

¹⁰⁵ 42 U.S.C. § 4332(2)(C)(v) (requiring impact statement prior to "any irreversible or irretrievable commitment of resources.")

LA13-18

6. The DEIS Does Not Address Climate Change Impacts as is Required by CEQ Guidance

On August 2, 2016, CEQ finalized its guidance on how federal agencies should take GHG emissions and climate change impacts into account when conducting their NEPA review.¹⁰⁶ Going forward, agencies must now quantify and analyze the direct and indirect climate change impacts from a given project using GHG emissions as a proxy for climate change impacts. The Guidance directs agencies to look at the life-cycle GHG emissions of a project, including upstream activities, like natural gas extraction and downstream activities such as the foreseeable results of the project such as burning gas after transport. Finally, the Guidance requires agencies to quantify GHG emissions unless they can demonstrate that no tools exist for doing so. The quantification requirement prevents agencies from casually dismissing climate change impacts as overly speculative.

F. Commission's treatment of climate change impacts

The DEIS ignores the CEQ Guidelines on climate change by failing to quantify project impacts on climate change. The DEIS states,¹⁰⁷ with no support, that:

The GHG emissions from the construction and operation of the MVP and the EEP would be negligible compared to the global GHG emission inventory. Additionally, burning natural gas emits less CO₂ compared to other fuel sources (e.g., fuel oil or coal).

The DEIS also fails to support or otherwise demonstrate (e.g., through reference to scientific reports) a rational connection between the facts and its

¹⁰⁶ See *supra* note 4; CEQ GHG Guidance online at https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf

¹⁰⁷ DEIS at 4-516. *But see* CEQ GHG Guidance at 11 (“[A] statement that emissions from a proposed Federal action represent only a small fraction of global emissions is essentially a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether or to what extent to consider climate change impacts under NEPA. Moreover, these comparisons are also not an appropriate method for characterizing the potential impacts associated with a proposed action and its alternatives and mitigations because this approach does not reveal anything beyond the nature of the climate change challenge itself.”)

LA13-18

Climate change and GHG are discussed in sections 4.11.1 and 4.13.2.7 of the draft EIS.

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statement that no standard methodology for quantifying climate change impacts exists.¹⁰⁸

Moreover, the DEIS finding defies common sense. The MVP project will add 171,600 horsepower of compression, which is bound to have more than a negligible impact on GHG emissions and climate change.

The DEIS also claimed that there is no methodology to quantify impacts on climate change. However, the project docket includes submissions from groups such as the Oil Change International that offer guidance on methodologies to determine the impact of pipelines on climate change. Thus, the DEIS' claim that no methodology exists to evaluate climate change impacts is not reasonable.

LA13-19

VI. IF THE PIPELINE IS TO BE APPROVED, THE DEIS SHOULD RECOMMEND THE SLUSSERS CHAPEL CONSERVATION SITE AVOIDANCE CONCEPT ALTERNATIVE

The County opposes the pipeline and believes that the Commission must deny the certificate and the Forest Service must deny the amendment to the Forest Management Plan. That said, in the event that the Commission decides to move forward with the pipeline, it must adopt the alternative route suggested by a Virginia Department of Conservation filing of 9 September 2016 to Docket CP16-10, the Slussers Chapel Conservation Site Avoidance Alternative. Unfortunately, the DEIS is deficient in this regard because it does not evaluate the Slussers Chapel Conservation Site Avoidance Alternative which was submitted before the DEIS issued. At a minimum, the DEIS will need to be supplemented to evaluate the Slussers Chapel Conservation Site Avoidance Alternative.

A. Description of the Slussers Chapel Conservation Site Avoidance Alternative

On September 9, 2016, the VDCR submitted an alternative route known as the Slussers Chapel Conservation Site Avoidance Alternative. The proposal is shown below, with the Slussers Chapel Conservation Site Avoidance Concept Alternative depicted in orange and the Mount Tabor Route (current proposed route) shown in dotted lines.

¹⁰⁸ DEIS at 4-516. *Cf.* U.S. EPA Final Rule for Carbon Pollution Emission Guidelines for Existing Stationary Sources Electric Utility Generating Units, 80 Fed. Reg. 64661, 64663, 64689 (Oct. 23, 2015) (regulation of GHG emissions from fossil fuel-fired electricity generating power plants); Oil and Natural Gas Sector Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 34824, 35830 (June 3, 2016) (regulation of GHG emissions from oil and gas sector).

LA13-19

Our analysis of the Slussers Chapel Conservation Site Avoidance Alternatives is discussed in section 3.5 of the final EIS. VADCR's letter was submitted on September 9, 2016, after the draft EIS went to the printer.

LA13-19
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The Slussers Chapel Conservation Site Avoidance Alternative completely bypasses the Mount Tabor Sinkhole Plain, and also reduces impacts to resources such as Slussers Chapel Conservation Area and the Mount Tabor aquifer, and avoiding impacts to the Mill Creek Springs Natural Area Preserve that would have occurred due to the September 2016 DEIS route; and avoiding an extensive area of sinkholes that is encountered by the October 2016 revised route through the Mount Tabor area¹⁰⁹, and therefore reducing overall impacts to karst.

B. Rationale for Adoption of the Slussers Chapel Conservation Site Avoidance Alternative

Alternatives are considered to be the heart of the DEIS and must be closely considered. Selection of alternatives is neither arbitrary nor subjective but instead are informed by the Commission's siting regulations and precedent. As relevant to evaluation of the Slussers Chapel Alternative, Section 380.15(e)(2) provides that "the project sponsor, to the extent practicable shall avoid places listed on, or eligible for listing on, the National Register of Historic Places; natural landmarks listed on the National Register of Natural Landmarks; officially designated parks; wetlands; and scenic, recreational, and wildlife lands." Further, Section 380.15(e)(5) requires selection of a method to clear rights-of-way that takes account of soil stability and protection of natural vegetation and adjacent resources.

The Commission must adopt an alternative when it is determined to be environmentally preferable to the default route. In the past, the Commission has deemed an alternative environmentally preferable when it reduced impacts on forested acres by 6.5 acres and on wetlands by 6.6 acres and resulted in collocation of 40 percent of the route.¹¹⁰ In another instance, the final EIS concluded that an alternative route was environmentally preferable to the proposed route because it would avoid a canal owned by a state water district.¹¹¹

Furthermore, the timing of DEIS activity indicates clearly that it could have been within the Commission's discretion to evaluate the Slussers Chapel Avoidance Alternative within the available timeframes. The DEIS, as originally posted to the FERC Docket on 16 September 2016, described a routing through the Mount Tabor area, but also advised the applicant to "investigate route variations to avoid or reduce impacts on Canoe Cave and the Mount Tabor Sinkhole Plain".¹¹² Approximately one month later, Mountain Valley

¹⁰⁹ See December 19, 2016 Submittal by M. Johnson, Accession No. 20161219-5056.

¹¹⁰ See *Gulf South Pipeline*, 155 FERC ¶61,287 (2016), P. 56.

¹¹¹ *Florida Gas Transmission*, 129 FERC ¶61,150 (2009) P. 81.

¹¹² Cited text is from page ES-3; and similar text occurs elsewhere in the DEIS.

LA13-19
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filed extensive documents to FERC Docket CP16-10 that included a revised routing through the Slussers Chapel / Mount Tabor area;¹¹³ and in the following weeks Mountain Valley filed additional documents to FERC Docket CP16-10¹¹⁴ containing materials that it designated as “Updated” DEIS tables, figures, and appendices despite these materials having been prepared by Mountain Valley Pipeline and not by FERC, and FERC issued to no additional public comments to suggest that such designations were inaccurate. In other words, it was clearly within the realm of DEIS process that Slussers Chapel Conservation Site Avoidance Alternative could have been considered and evaluated by the applicant and by FERC’s DEIS process; yet it was not. At a minimum, a supplemental DEIS will be required to gather comments on the Slussers Chapel Conservation Site Avoidance Alternative.

C. Applying NEPA and the Commission’s Siting Guidelines, The Slussers Chapel Conservation Site Avoidance Alternative Route Is The Only Acceptable Alternative To Avoid Impacts to Karst and Slussers Chapel.

Under both the Commission’s siting regulations and precedent, the Slusser’s Chapel Conservation Avoidance Alternative route is environmentally preferable alternative and should be adopted in the event that the pipeline goes forward. As compared to the Mount Tabor Route Variation, the Slussers Chapel Conservation Site Avoidance Alternative will minimize impacts to a conservation site (as required by 380.15(e)(2),¹¹⁵ avoids crossing a major stream twice as well as Mill Creek and its seven tributaries thus further lowering the danger of erosion and sedimentation of the underground aquifer with its effect on water supply and water quality. The Slussers Chapel Conservation Site Avoidance Alternative crosses fewer driveways and access roads, traverses less karst, impacts fewer parcels of land with occupied homes, and avoids a 1.5 mile long gouge on Brush Mountain, consistent with 380.15(e)(3)(requiring avoidance forested areas)¹¹⁶ In light of all of these advantages, the Commission has no choice but to adopt the Slussers Chapel Conservation Avoidance Site if it issues a certificate.

¹¹³ Submittal 20161014-5022 to FERC Docket CP16-10 by Mountain Valley Pipeline LLC.

¹¹⁴ Submittal 20161020-5175 to FERC Docket CP16-10 by Mountain Valley Pipeline LLC.

¹¹⁵ See also VADCR Comments (September 9, 2016) at 2 (discussing benefits of Slussers’ Conservation Avoidance Concept Alternative route).

¹¹⁶ Jones Comments (October 11, 2016).

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By failing to even evaluate the Slussers Chapel Conservation Site Avoidance Alternative, FERC has failed to execute its responsibility as a federal agency that is subject to the requirements of NEPA.

LA13-20

VI. THE DEIS LACKS SUFFICIENT INFORMATION TO SUPPORT EITHER THE LMRP AMENDMENTS OR A GRANT OF A BLM RIGHT-OF-WAY

The October 14, 2016 notice jointly by the Forest Service and BLM, cooperating agencies invited comments for submission to the Commission related to the Forest Service's consideration of the LMRP amendments or the BLM's consideration of a ROW grant. For economy's sake, the County incorporates comments on the Forest Service and BLM authorizations as part of its overall comments the Commission DEIS.

At the outset of this portion of the comments, the County asks the Forest Service and BLM to hold public hearings on the DEIS to allow for meaningful participation and comment by the public. The Commission's hearings on the DEIS used a "one on one format," where individuals are ushered into a room, one at a time, to present their comments privately to a Commission representative. This format deprived participants of a chance to listen to each other's comments and as such, is incompatible with the transparency and openness of agency decision-making intended NEPA; and, as such, were not "public." In addition, the Forest Service and BLM public hearings should take place in the County where the section of forest crossed by the pipeline is located.

Second, the County emphasizes that any alternative to the pipeline crossing through the Jefferson National Forest that may involve a reroute through other portions of Montgomery County is unacceptable. MVP has already considered and rejected other routes through the County that would have an even more extensive impact than the current route. The County's residents have already endured two years of the certificate process, which has consumed many residents' time and resources. Therefore, if MVP is unable to obtain all of the required authorizations for the current route, the Commission must not allow MVP yet another opportunity to identify yet another route through the County.

A. Insufficient evidence for Forest Service decisions

Because a pipeline is utterly incompatible with the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600-1687, in order for the pipeline to cross through the Jefferson National Forest, the Forest Service must amend DEIS to allow either the Forest Service or BLM to either conduct an adequate NEPA review or issue the requested authorizations. Here, the Forest Service must adopt four amendments in connection with the MVP: (1) a plan-level amendment to reallocate land to establish a 500-foot utility corridor for the pipeline, (2) a project specific amendment that would allow the pipeline to exceed certain protections for soils, (3) an amendment to allow removal of old growth

LA13-20

Since the draft EIS, Mountain Valley has provided additional inventories and analyses as requested by the FS to evaluate the effects of the project. The FS has worked extensively with Mountain Valley to develop project design features, mitigation measures and monitoring procedures to ensure that NFS resources are protected as much as possible in order to determine that the LRMP standards can be exempted or modified for the MVP. The determination that the EIS is sufficient to meet FS NEPA obligations will be made in the FS Record of Decision for the plan amendments decision.

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trees and (4) an amendment to allow the pipeline to cross the Appalachian National Trail (ANST) on Peters Mountain. See DEIS 4-263-4-264 (discussing amendments).

Notwithstanding that each of these four amendments would have permanent direct and cumulative impacts on the Jefferson National Forest, the nearly 800-page DEIS devotes approximately seven pages to describing the impacts associated with the respective amendment. For example, the DEIS notes that “the effect of designating a 500-foot wide utility corridor” would be the potential for future development such as linear utility lines or communications sites in the corridors as well as a change in the SIO (Scenic Integrity Objectives) for the area. Besides stating the obvious, the DEIS offers no further assessment of the likelihood that additional development may occur in the corridor, or discussion of the impacts of future development on the forest, soils and other areas within the corridor. Moreover, even the Forest Service itself cannot evaluate the impacts of this amendment because neither MVP nor the Commission performed a “leaf-off” analysis.¹¹⁷ Subsequent filings by concerned individuals have documented clearly that Mountain Valley Pipeline, if constructed through the Jefferson National Forest as proposed, would have extensive and adverse visual resource effects, both within and beyond the Jefferson National Forest, which are not discussed by and cannot be inferred from information with the DEIS.¹¹⁸

Nor does the Forest Service have sufficient information to analyze the amendment to existing soil requirements. In comments dated November 14, 2016,¹¹⁹ the Forest Service advised that MVP would be required to segregate topsoil along the entire portion of the pipeline on forest service lands, and that in order to do so, MVP would need to expand the currently proposed ROW by 10-feet. On December 16, 2016 - with less than a week until the deadline for comments, MVP submitted information on topsoil segregation and potential use of herbicides. The Forest Service, if not the Commission, must allow commenters additional time to respond to MVP’s plans - six days before a deadline for comment on a 780-page document (exclusive of appendices) is simply insufficient.

In its current form, the DEIS lacks sufficient information to allow the Forest Service to consider, or the public to comment meaningfully on the environmental impacts associated with the four proposed LMRP amendments and for that reason, they must be denied. If and when MVP supplies the additional information needed, the Forest Service

¹¹⁷ Forest Service Comments, Accession No. 20160311-5013, at 26, 29.

¹¹⁸ See comments by C.E. Zipper posted to FERC Docket CP16-10 on 21 November 2016 (submittal 20161121-5049) and especially on 13 December 2016 (submittal 20161213-5106).

¹¹⁹ FERC Accession No. 20161115-5013

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must prepare a supplemental DEIS to incorporate the new information and provide another opportunity for comment.

B. The DEIS lacks sufficient information for BLM to grant an ROW

Not only does MVP require approval from the Forest Service, but it must also obtain a ROW from BLM because it crosses Forest Service lands. BLM will grant an ROW if the project is not inconsistent with the purpose of the federal lands. *See* 30 U.S.C. §185. BLM may also include conditions in the ROW providing for operation and maintenance of the pipeline, erosion control, protection of individuals in the vicinity of the pipeline. In addition, under 30 U.S.C. §185(b)(1), ROW may grant a ROW in excess of 50-feet only if the Secretary of Interior or agency head finds that the wider ROW is necessary for operation and maintenance, or to protect the environment and safety.

Because of its extensive statutory obligations, on December 7, 2016, BLM filed an objection to the Commission's timetable of a June 8, 2017 final determination from BLM. First, BLM stated that many of the determinations that it must make are dependent upon actions by other cooperating agencies.¹²⁰ Second, BLM explained that "the applicant has not provided sufficient information regarding the proposed crossing of the ANST to enable BLM to evaluate avoidance, minimization and mitigation strategies. In addition, BLM also sought information on MVP's contingency plan for open-trench crossing of the ANST if conventional boring fails.

Under BLM's regulations, failure to comply with a BLM deficiency notice or request for additional information is grounds for denying an application. *See* BLM ROW Regulations, 43 C.F.R. §2884.23(a)(3), (5). Because MVP has not provided the information that BLM needs to conduct an adequate environmental review of the proposed project, BLM should deny MVP's ROW application at this time.

VII. CONCLUSION

LA13-21

The Commission must deny the certificate application for the MVP pipeline. The MVP Pipeline will cause irreparable environmental and economic harm to resources and landowners within Montgomery County as well as in the surrounding regions. The impacts of the MVP Pipeline are so significant, and the proposed remediation either

¹²⁰ Because the MVP pipeline is more than 24-inches in diameter, the Secretary of Interior or BLM must notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. No right-of-way for such a pipeline shall be granted until a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to the terms and conditions he proposes to impose, has been submitted to the committees. 30 U.S.C. §185(w). Although this provision is not directly relevant to the DEIS proceeding, it is another contingency that would prevent issuance of an ROW by the deadline set by the Commission.

LA13-21

We disagree. As supported by facts, the EIS indicated that, except for clearing of forest, the MVP would not cause significant irreparable environmental or economic harm to the citizens of Montgomery County. As pointed out in section 4.9, the project may have economic benefits to the county. The Commission would decide whether or not this project is needed in its Order.

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vague or non-existent that they preclude conclusion of no significant impact or a finding that the adverse impacts may be reduced through mitigation measures. Moreover, given the lack of need for the pipeline - at best, the record shows a manufactured need by private affiliates seeking to increase shareholder returns - these grievous impacts and extensive takings of private property are unconscionable and require denial of MVP's application under the Commission's Certificate Policy Statement.¹²¹ For these reasons, the Commission should deny a certificate for the project. However, if contrary to law and fact, the project is somehow approved, the DEIS must adopt the Slussers Chapel Conservation Site Avoidance Alternative and incorporate the mitigation measures described in these comments.

Even if the Commission does not reject the project outright, at a minimum, it must rescind the factually unsupported and legally deficient DEIS. Moreover, given the numerous information gaps in the DEIS that MVP is not required to address until the comment period closes, unless the Commission extends the deadline for comment or issues a supplemental DEIS, the public will be foreclosed from responding to MVP's late filings. Finally, the inadequate DEIS and outstanding information requests also preclude meaningful environmental review by both the Forest Service and BLM. Accordingly, the Forest Service must deny MVP's proposed LRMP amendments and BLM must deny MVP's ROW application.

¹²¹ See Certificate Policy Statement, at 25 ("The amount of evidence necessary to establish the need for a proposed project will depend on the potential adverse effects of the proposed project on the relevant interests."); *id.* at 27 (discussing sliding-scale approach to assessing degree of public benefit which must be shown prior to project approval).

LOCAL
LA14 – Giles County Board of Supervisors

**UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION**

_____)	
Mountain Valley Pipeline LLC,)	CP16-10-000
Mountain Valley Pipeline Project)	PF15-3-000
_____)	
Equitrans, LP)	CP16-13-000
Equitrans Expansion Project)	PF15-22-000
_____)	

**GILES COUNTY, VIRGINIA'S COMMENTS ON THE
 MOUNTAIN VALLEY PROJECT
 AND EQUITRANS EXPANSION PROJECT
 DRAFT ENVIRONMENTAL IMPACT STATEMENT**

LA14-1

Giles County, Virginia (County) hereby responds to the “Notice of Availability of the Draft Environmental Impact Statement for the Proposed Mountain Valley Project and Equitrans Expansion Project” (Notice) issued on September 16, 2016.¹

The County provides these comments in furtherance of its duty to “secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth.”² Its comments focus on Mountain Valley Pipeline (MVP) Project’s potential impacts that would have a significant effect on the health and quality of life of the County’s residents and visitors if not avoided or adequately mitigated. These include impacts on forested lands, waterways, floodplains, geological features, groundwater supply, and cultural resources.

Giles County has 92 square miles of the Jefferson National Forest, 52 miles of the acclaimed Appalachian Trail, 37 miles of the stunning New River, hundreds of miles of trails and country roads, and numerous historic landmarks. Preservation of these natural and cultural resources is critical to the local economy, which is dependent on recreational tourism. In addition to natural resources, Giles County is also concerned about potential impacts on infrastructure and public safety.

The County is an intervenor in this proceeding, having filed a timely, unopposed Motion to Intervene on November 23, 2015.³ It is also a Consulting Agency for purposes of the Federal

¹ eLibrary no. 20160916-3014.
² Virginia Code § 15.2-1200.
³ eLibrary no. 20151123-5257.

*Giles County, Virginia's Comments re DEIS
 Mountain Valley Pipeline, LLC, MVP Project (CP16-10-000)
 Equitrans, LP, Equitrans Expansion Project (CP16-13-000)*

LA14-1

See the response to comment FA11-2 and LA5-1 regarding the adequacy of the draft EIS. See the response to comment IND196-2 regarding “prior to construction” recommendations. See also the response to comment IND147-1 regarding recommendations. Updated information on water wells and springs was provided by Mountain Valley in a filing on February 17, 2017, and the final EIS was revised to include these data.

LA14-1
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Energy Regulatory Commission's (Commission) compliance with the National Historic Preservation Act (NHPA).⁴

These comments are organized as follows: Section I includes the County's comments on the general adequacy of the Draft Environmental Impact Statement (DEIS) under the National Environmental Policy Act (NEPA) and its implementing regulations, Section II includes comments on specific resources, and Section III states requests for further procedures and analyses.

I. GENERAL COMMENTS

A. **Environmental Consequences of the MVP Project Cannot Be Fully Evaluated Because the DEIS Does Not Provide Adequate Information or Reasoned Explanation.**

According to the DEIS, there is a significant amount of information relevant to the environmental analysis that was still pending at the time of publication, and is still pending three months later.⁵ In some instances, the Commission's Office of Energy (OEP) Staff has identified schedules for Mountain Valley to provide this information. In others, it is not clear that OEP Staff intends to obtain the missing information prior to preparation of the Final Environmental Impact Statement (FEIS). Even where schedules have been provided, it is not clear whether OEP Staff intends to provide an opportunity for public review and comment on the new information.

For example, the DEIS finds that the MVP Project will not have impacts on groundwater supplies. However, the DEIS acknowledges that Mountain Valley has not completed its survey of groundwater sources that may be impacted by the project. It *recommends* that Mountain Valley "**file with the Secretary the location of all water wells, springs, swallets, and other drinking water sources within 150 feet (500 feet in karst terrain) of the pipeline and aboveground facilities**" prior to construction.⁶ The DEIS does not provide a specific deadline for Mountain Valley to provide this information, and it appears that Mountain Valley may provide this information following the Commission's issuance of a certificate.

⁴ eLibrary no. 20160302-3008 (letter granting County consulting agency status).

⁵ The Indian Creek Watershed Association filed comments describing information that Mountain Valley has filed since the DEIS was issued, and information that is still pending. See letter from Judy Azulay et al. to Secretary Bose, eLibrary no. 20151215-5271 (Dec. 15, 2016). It described how a DEIS based on incomplete information coupled with ongoing filings of Mountain Valley has interfered with meaningful public review of the environmental consequences of the MVP Project. *Id.*

⁶ DEIS, p. 4-80 (bold in original).

LA14-1
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Under the Commission's regulations, the applicant is required to provide "any environmental information that the Commission may determine is necessary for compliance with these regulations, the regulations of the Council [of Environmental Quality], NEPA and other Federal laws . . ."⁷ OEP Staff has not explained why it has not required Mountain Valley to provide this information for public review before the Environmental Impact Statement (EIS) is finalized, or why information such as the number and location of all groundwater drinking sources is not needed to determine compliance with applicable laws.

Rather than defer necessary information gathering, the Council for Environmental Quality's (CEQ) regulations for implementing NEPA require that all required environmental analyses be conducted "at the earliest possible time."⁸ "NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done."⁹

Deliberately proceeding on an incomplete record does not comply with NEPA, which was intended to prevent uninformed action. NEPA mandates:

"a set of 'action-forcing' procedures that require that agencies take a 'hard look' at environmental consequences, . . . and that provide for broad dissemination of relevant environmental information." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989) (internal quotation marks and citation omitted). Because NEPA "does not mandate particular results, but simply prescribes the necessary process[.]" it "prohibits uninformed—rather than unwise—agency action." *Id.* at 350–51, 109 S.Ct. 1835. "[T]he broad dissemination of information mandated by NEPA permits the public and other government agencies to react to the effects of a proposed action at a meaningful time." *Marsh*, 490 U.S. at 371, 109 S.Ct. 1851.

Under NEPA, for every "major Federal action[] significantly affecting the quality of the human environment," the agency involved must prepare "a detailed statement" that discloses and evaluates, among other things, "the environmental impact of the proposed action," unavoidable adverse effects of the proposed action, and "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C). Every Environmental Impact Statement must "provide full and fair discussion of significant environmental impacts" arising from the reasonable alternatives. 40 C.F.R. § 1502.1.¹⁰

⁷ 18 C.F.R. § 380.3.

⁸ 40 C.F.R. § 1501.2; see also *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 707–08 (10th Cir. 2009).

⁹ *Kern v. BLM*, 284 F.3d 1062, 1072 (9th Cir. 2002).

¹⁰ *Depts. of Wildlife v. N. Carolina Dep't of Transp.*, 762 F.3d 374, 393–94 (4th Cir. 2014).

LA14-1
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As described in more detail below, the record lacks information needed to provide a full discussion of certain, potentially significant environmental impacts of the proposed actions and alternatives. In this circumstance, CEQ regulations require preparation of revisions to the DEIS: “[i]f a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.”¹¹

Beyond compliance with NEPA, it is not clear to the County how the Commission and Cooperating Agencies can comply with their substantive duties in issuing their respective final decisions in the absence of additional information and revised environmental analyses. The EIS will be a cornerstone of the agencies’ respective final decisions, and those decisions must be based on reasoned explanation and substantial evidence.

Under the Administrative Procedures Act (APA), an agency’s decision must show that the agency “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action.”¹² An agency’s decision will be held arbitrary and capricious if the agency:

relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.¹³

The APA further requires that an agency’s final decision state the “reasons or basis” for each of its findings and conclusions on all the material issues of fact, law, or discretion presented on the record.¹⁴

Under Natural Gas Act section 19(b),¹⁵ the Commission’s findings of fact will be upheld only if based on “substantial evidence.” Under this standard, substantial evidence is record

¹¹ 40 C.F.R. § 1502.9.

¹² *Defs. of Wildlife v. N. Carolina Dep’t of Transp.*, 762 F.3d 374, 396 (4th Cir. 2014) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009)). “The complete impact statement must contain more than a catalog of environmental facts, however. The agency must also ‘explicate fully its course of inquiry, its analysis and its reasoning.’” *Envt’l Defense Fund, Inc. v. Froehke*, 473 F.2d 346 (1972) (quoting *Ely v. Velde*, 451 F.2d 1130, 1139 (4th Cir. 1971)).

¹³ *Id.* (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (“*Motor Vehicle*”).

¹⁴ 5 U.S.C. § 557(c).

¹⁵ 15 U.S.C. § 717r(b).

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evidence which is expressly found to be: (A) reliable and probative for the purpose of supporting a finding and (B) superior to competing evidence with respect to a given finding.¹⁶

Giles County requests that OEP Staff and Cooperating Agencies complete the record of information needed for environmental analysis, and state a rational basis for their findings regarding the environmental consequences of the MVP Project, and any alternatives or measures that would avoid or mitigate those impacts.

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B. The DEIS Does Not Include a Detailed Discussion of Proposed or Alternative Mitigation Measures.

The DEIS concludes that:

construction and operation of the MVP and the EEP [Equitrans Expansion Project] would result in limited adverse impacts, with the exception of impacts on forested land.... As part of our review, we developed specific mitigation measures that we determined would appropriately and reasonably reduce the environmental impacts resulting from construction and operation of the projects.¹⁷

Under CEQ regulations, an EIS must include a discussion of “appropriate mitigation measures not already included in the proposed action or alternatives.”¹⁸

[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the “action-forcing” function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects. An adverse effect that can be fully remedied by, for example, an inconsequential public expenditure is certainly not as serious as a similar effect that can only be modestly ameliorated through the commitment of vast public and private

¹⁶ See Fed. Rules Evid. 702; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 590 (1993); *Motor Vehicle*, 463 U.S. at 43; *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962). See also *Butte County v. Hogen*, 613 F.3d 190,194 (D.C. Cir. 2010):

... an agency’s refusal to consider evidence bearing on the issue before it constitutes arbitrary agency action within the meaning of § 706. This proposition may be deduced from case law applying the substantial evidence test, under which an agency cannot ignore evidence contradicting its position. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. Although we are dealing with the question whether agency action is arbitrary or capricious, in their application to the requirement of factual support the substantial evidence test and the arbitrary or capricious test are one and the same.

Id. (internal citations and quotation marks omitted).

¹⁷ DEIS, p. 5-1.

¹⁸ 40 C.F.R. § 1502.14(f).

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See the response to comment LA13-13 regarding forested impacts.

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resources. Recognizing the importance of such a discussion in guaranteeing that the agency has taken a “hard look” at the environmental consequences of proposed federal action, CEQ regulations require that the agency discuss possible mitigation measures in defining the scope of the EIS, 40 CFR § 1508.25(b) (1987), in discussing alternatives to the proposed action, § 1502.14(f), and consequences of that action, § 1502.16(h), and in explaining its ultimate decision, § 1505.2(c).¹⁹

“An agency must discuss mitigation measures ‘in sufficient detail to ensure that environmental consequences have been fairly evaluated.... A mere listing ... is insufficient.’”²⁰

The DEIS lists mitigation measures, but does not adequately explain the basis for OEP Staff’s conclusion that those measures will effectively mitigate the MVP Project’s impacts to a level of insignificance, or at least to a reasonable level. For example, OEP Staff finds that reseeded deforested areas and implementation of the Commission’s Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures) will reduce impacts on forested lands. It makes this finding despite comments by the Forest Service that, “[t]he oak species, which dominate the impacted areas, do not readily regenerate from seed on disturbed sites.”²¹ The DEIS does not consider alternatives to proposed mitigation measures that might better mitigate or avoid project impacts.²²

The Forest Service made several requests for documentation that proposed mitigation measures were likely to be effective in its comments on the final resource reports, but Mountain Valley declined to provide such information.²³ Rather than remedy this deficiency, the DEIS

¹⁹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351–52 (1989).

²⁰ *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 872–73 (9th Cir. 2004) (citing *Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir.1998)). See also *Nat’l Audubon Society v. Dep’t of Navy*, 422 F.3d 174, 200 (4th Cir. 2005) (“The sufficiency of the mitigation measures proffered in the FEIS are necessarily dependent on an adequate assessment of environmental impact. For this reason, the FEIS also fails to sufficiently address mitigation.”).

²¹ See letter from Joby P. Timm to Secretary Bose, eLibrary no. 20160311-5013 (Mar. 9, 2016) (Forest Service Comments), Att. 1, p. 8.

²² 40 C.F.R. § 1502.14(f). There is evidence in the record that there are alternatives that would be more effective. See letter from Carl E. Zipper to Secretary Bose, eLibrary no. 20161121-5051 (Nov. 20, 2016) (“Zipper Forest Comments”), p. 8 (“FERC also fails to prescribe the practice that would be most effective if the goal is to accelerate forest regeneration: the re-planting of forest trees in association with management practices to encourage their survival and growth.”).

²³ See, e.g., Forest Service Comments, Att. 1, p. 5.

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appears to perpetuate it. Conclusory statements that impacts will be mitigated are an inadequate basis for any final decision by the Commission to issue Mountain Valley a certificate.²⁴

Giles requests that OEP Staff revise the DEIS to explain the specific basis for its findings that the proposed mitigation measures will mitigate, or significantly reduce, the environmental impacts of the MVP Project.

LA14-3

C. The DEIS Is Insufficient to Satisfy the Forest Service's Obligations under NEPA.

The DEIS describes several proposed amendments to the Land Resource and Management Plan (LRMP) for the Jefferson National Forest.²⁵ These include one plan-level amendment, and four project specific amendments. The plan-level amendment calls for converting 186 acres to a Rx 5C-Designated Utility Corridor.²⁶ According to the DEIS, "Rx 5C-Designated Utility Corridors contain special uses which serve a public benefit by providing a reliable supply of electricity, natural gas, or water essential to local, regional, and national economies."²⁷ The project specific amendments allow for exceedances of restrictions on soil conditions and riparian corridor conditions, removal of old growth trees, and crossings of the Appalachian National Scenic Trail (ANST) and Peters Mountain.²⁸

The DEIS does not state explicitly whether the Forest Service intends to prepare any additional or supplemental environmental documents for purposes of these amendments. The Forest Service's webpage for the MVP Project indicates that it intends to rely on the Commission's FEIS for the proposed amendments.²⁹ Based on its review of the DEIS, Giles County does not believe the Forest Service will be able to rely exclusively on the FEIS to satisfy its NEPA obligations unless there are significant revisions between draft and final. The DEIS's

²⁴ See 15 U.S.C. § 717r(b) (the Commission's findings of fact will be upheld if supported by substantial evidence); 5 U.S.C. § 706(2)(A) (court shall "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law").

²⁵ DEIS, pp. 4-259 – 4-264.

²⁶ *Id.* at 4-261 – 4-262. "The new Rx 5C land allocation would be 500 feet wide (250 feet wide on each side of the pipeline), with two exceptions: 1) the area where the pipeline crosses Rx 4A-Appalachian National Scenic Trail Corridor would remain in Rx4A; and 2) the new 5C area would not cross into Peters Mountain Wilderness so the Rx 5C area would be less than 500 feet wide along the boundary of the Wilderness." *Id.*

²⁷ *Id.* at 4-261.

²⁸ *Id.* at 4-263 – 4-264.

²⁹ See <http://www.fs.usda.gov/detail/gwi/landmanagement/projects/?cid=stelprd3827827> (describing the Forest Service's role under "Step 13" as reviewing the "Final EIS to ensure public and agencies [sic] concerns are addressed adequately for Forest Service to make a decision on amending the Forest Plan ... and issuing a special use permit to construct and operate a natural gas pipeline on National Forest System lands.") (last checked Dec. 22, 2016).

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Since the draft EIS, Mountain Valley has provided additional inventories and analyses as requested by the FS to evaluate the effects of the project. The FS has worked extensively with Mountain Valley to develop project design features, mitigation measures and monitoring procedures to ensure that NFS resources are protected as much as possible in order to determine that the LRMP standards can be exempted or modified for the MVP. The determination that the EIS is sufficient to meet FS NEPA obligations will be made in the FS Record of Decision for the plan amendments decision.

The effects to the resources the amendments are designed to protect are identified in the respective resource sections in section 4.0 that discuss the Jefferson National Forest. Section 4.8.2.6 describes the more critical mitigation measures to meet the intent of the amended standards. With the FS decision to not reallocate lands to the Rx5C-Designated Utility Corridors, all of the proposed amendments are project-specific to the MVP alone. There is no need to evaluate cumulative effects associated with the amendments.

The purpose and need for the pipeline is determined by FERC. The FS has the responsibility is to respond to an application for the project to utilize NFS lands, not to determine the purpose and need for the pipeline.

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consideration of the LRMP amendments is only incidental to the evaluation of the MVP Project, and does not demonstrate that the Forest Service has taken a hard look at the potential impacts of the proposed amendments.

The proposed amendments to the LRMP trigger NEPA's requirement for an EIS. The creation of a permanent 500-foot utility corridor through National Forest System land, which would accommodate the construction of the MVP Project and future pipelines or other linear utilities, constitutes a proposal for major federal action significantly affecting the quality of the human environment.³⁰ The Forest Service is responsible for the NEPA analysis of the LRMP amendments because it has exclusive control over the amendments.³¹

The proposed actions considered in the DEIS are the construction and operation of the MVP and EEP. The DEIS discusses the proposed amendments of the LRMP only in the context of its analysis of the MVP Project's impacts on land use on federal lands.³² It does not consider the need for the proposed amendments or alternatives to the proposed amendments, and provides only a cursory analysis of the impacts of the proposed amendments.

According to the DEIS, the purpose of the proposed amendments is to make the MVP Project conform to the LRMP. However, the DEIS does not include any analysis by the Forest Service of the need for the MVP Project. Such analysis was not provided by OEP Staff.³³ The failure to address project need is inconsistent with the Forest Service Handbook, which states that "the purpose of an action will be to respond to the stated need. [¶] It is critical that the responsible official and interdisciplinary team members all understand and agree on the need for action."³⁴

The DEIS does not consider alternatives to the proposed LRMP amendments. For example, it does not consider any corridors with varying sizes or locations. This does not comply with the Forest Service's regulations, which require that the Forest Service "document the examination of reasonable alternatives to the proposed action. An alternative should meet the purpose and need and address one or more significant issues related to the proposed

³⁰ 40 C.F.R. § 1502.3; *see also* 36 U.S.C. § 220.4. The proposed amendments fit the classes of action normally requiring an EIS which include "[p]roposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area." 36 C.F.R. § 220.5.

³¹ Forest Service Handbook (FSH) 1909.15 – National Environmental Policy Act Handbook Chapter – Zero Code, p. 4.

³² DEIS, p.4-259.

³³ "[T]his EIS ... does not address in detail the need or public benefits of either the MVP or the EEP." *Id.* at 1-9.

³⁴ *Id.*

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action.”³⁵ These regulations echo NEPA’s implementing regulations, which describe consideration of alternatives as the “heart” of the EIS.³⁶

The DEIS’s discussion of the environmental consequences on federal lands describes how the proposed plan amendment would affect the management of the 186 acres proposed to be converted to a utility corridor.³⁷ However, it does not actually evaluate the environmental consequences of these management changes on forest resources or the surrounding area.

With respect to the project specific amendments, the DEIS states that they “would not change future management direction or apply to any other projects or activities on the Jefferson National Forest.”³⁸ Giles County is concerned that this statement elides the potentially damaging precedent set by these project-specific amendments. If the Forest Service is willing to grant these exceptions to Mountain Valley, what would be its basis for denying similar requests by pipeline companies or other utilities for similar treatment?

The DEIS’s analysis of cumulative effects is limited to construction and operation of the MVP Project; it does not address the cumulative effects of the LRMP amendments. There is no discussion of how the proposed management changes would affect the character of these lands into the future as additional utility lines (including pipelines) are proposed for this corridor to comply with the amended LRMP. Giles County is concerned that the shift in land management from forested acreage that is adjacent to existing or potential wilderness to a utility corridor would have far-reaching impacts for natural resources within the County. The Forest Service is required to evaluate these impacts and alternatives that would avoid or mitigate those impacts prior to making a decision.

The County requests that the Forest Service prepare an additional or supplemental NEPA document that provides environmental analysis of the proposed LRMP amendments prior to making its decision because the DEIS is not adequate to satisfy the Forest Service’s NEPA obligations. We request that it immediately publish a proposal for how it intends to comply with NEPA given the project schedule proposed by OEP Staff, which shows publication of the FEIS on March 10, 2017 and the 90-day Federal Authorization Decision Deadline on certification decision on June 8, 2017.³⁹

³⁵ 36 C.F.R. § 220.5(e).

³⁶ 40 C.F.R. § 1502.14, 42 U.S.C. § 4332(2)(C). *See also* 42 U.S.C. §4332(2)(E) (requiring federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”).

³⁷ DEIS, p. 4-262.

³⁸ *Id.* at 4-264.

³⁹ FERC, “Notice of Schedule for Environmental Review of the Mountain Valley Pipeline Project and the Equitrans Expansion Project,” eLibrary no. 20160628-3050 (June 28, 2016), p. 1.

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D. The DEIS Does Not Provide an Adequate Basis for Verifying Compliance with Nationwide Permit 12 or the Clean Water Act section 404(b)(1) Guidelines.

The U.S. Army Corps of Engineers (Army Corps) is a Cooperating Agency for purposes of preparing the EIS. However, the DEIS does not appear to provide adequate basis for the Army Corps' permitting decision under Clean Water Act (CWA) section 404, 33 U.S.C. §1344.

The DEIS states that Mountain Valley's application for CWA section 404 permit is pending with the Army Corps. The DEIS states that the Army Corps will not consider the application complete until the Commission issues the FEIS.⁴⁰

Rather than apply for individual permits for waterbody and wetland crossings under Section 404, Mountain Valley has applied for coverage under Nationwide Permit 12 (NWP-12). A Nationwide Permit (NWP) is a general permit that is intended to streamline the permitting process for projects that will have "minimal adverse effects on the aquatic environment that would likely generate little, if any, public comment if they were evaluated through the standard permit process with a full public notice."⁴¹ The current NWP-12 expires on March 18, 2017; just one week after OEP Staff has said it will release the FEIS.⁴² The Army Corps has not explained the procedural or substantive implications of Mountain Valley's applying for coverage under a permit that will expire before the Army Corps considers the application.

In issuing the current NWP-12 in 2012, the Army Corps found that projects covered by the permit would comply with the CWA section 404(b)(1) Guidelines,⁴³ which provide that dredged or fill material should not be discharged if it will result in an unacceptable impact on the aquatic ecosystem:

Based on the information in this document, the Corps has determined that the discharges authorized by this NWP comply with the 404(b)(1) Guidelines, with the inclusion of

⁴⁰ DEIS, p. 4-129.

⁴¹ Army Corps, "Reissuance of Nationwide Permits," 77 Fed. Reg. 10184, 10185 (Feb. 21, 2012). *See also* Army Corps, "Decision Document Nationwide Permit 12, p. 3 ("NWPs are a type of general permit designed to authorize certain activities that have minimal individual and cumulative adverse effects on the aquatic environment and generally comply with the related laws cited in 33 CFR 320.3.").

⁴² Department of Defense, "Proposal to Reissue and Modify Nationwide Permits," 81 Fed. Reg. 35,186 (June 1, 2016).

⁴³ Under the guidelines, no discharge of dredged or fill material shall be permitted for a project if: (1) it causes or contributes to violations of applicable state water quality standards; (2) there are practicable alternatives (40 C.F.R. 230.10(a)) to the proposed discharge; (3) the discharge causes or contributes to significant degradation of the environment; and (4) all appropriate steps have been taken to minimize the potential adverse impacts. 40 C.F.R. § 230.10. The guidelines also require a cumulative impacts analysis (40 C.F.R. § 230.10(g)) and a determination of secondary effects on the aquatic ecosystem. 40 C.F.R. §§ 230.10(g)-(h). In addition, mitigation regulations require that actions be taken to minimize adverse impacts. 33 C.F.R. § 320.4(r); 40 C.F.R. §§ 230.70-230.77, 230.93.

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Section 1.3.2.2 of the EIS provides a discussion of the COE permitting process. As stated in this section, the COE cannot make a decision on a permit application until the requirements of NEPA are fulfilled. After the publication of an EIS, the COE permit decision can be issued as a ROD. In addition, in communications with FERC staff, representatives of the COE indicated that individual COE Districts would not finalize their permit processes for the MVP and EEP until after the FERC has documented completion of the NHPA Section 106 and ESA Section 7 consultations.

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appropriate and practicable conditions, including mitigation, necessary to minimize adverse effects⁴⁴ on affected aquatic ecosystems. The activities authorized by this NWP will result in minimal individual and cumulative adverse effects on the aquatic environment.⁴⁵

This finding was predictive in nature because at the time of issuance, the Army Corps was not considering any specific projects. The Army Corps is now required to verify that the impacts of the MVP Project would be minimal if it is considering authorizing the project under NWP-12.⁴⁶ The Army Corps' decision document for NWP-12 provides: "[e]ach separate and distant crossing should be evaluated to determine if it meets the terms and conditions of the NWP, and cumulative effects of the overall utility line should be evaluated to determine if the adverse cumulative effects on the aquatic environment are more than minimal and therefore do not qualify for NWP authorization."⁴⁷

If the District Engineer (DE) finds that the MVP Project would have more than "minimal" environmental effects, he must condition the NWP-12 authorization or issue an individual permit:

If the DE finds that the proposed activity would have more than minimal individual or cumulative net adverse effects on the environment or otherwise may be contrary to the

⁴⁴ Under the guidelines, effects contributing to significant degradation considered individually or collectively, include:

- (1) Significantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites;
- (2) Significantly adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical, and chemical processes;
- (3) Significantly adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or
- (4) Significantly adverse effects of discharge of pollutants on recreational, aesthetic, and economic values.

40 C.F.R. § 230.10(e).

⁴⁵ Army Corps, "Decision Document Nationwide Permit 12," p. 46.

⁴⁶ See *Maryland Native Plant Soc'y v. U.S. Army Corps of Engineers*, 332 F. Supp. 2d 845, 862 (2004) ("[t]he important inquiry insofar as a general permit is concerned is whether the environmental impact of the project which is verified is minimal.").

⁴⁷ Army Corps, "Decision Document Nationwide Permit 12," p. 7.

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public interest, he shall modify the NWP authorization to reduce or eliminate those adverse effects, or he shall instruct the prospective permittee to apply for a regional general permit or an individual permit.⁴⁸

Based on Giles County's review, the DEIS does not provide adequate information for the DE to verify that the multiple waterbody crossings proposed by the MVP Project will have only minimal impacts on the aquatic environment,⁴⁹ as required by the 404(b)(1) Guidelines. The DEIS refers to Mountain Valley's list of the proposed crossings, and generally concludes that compliance with the Commission's Wetland and Waterbody Construction and Mitigation Procedures (Procedures) and Mountain Valley's proposed mitigation measures will minimize the impacts of each crossing.⁵⁰ Contrary to the Forest Service's repeated requests for credible evidence to support statements regarding the effectiveness of the proposed mitigation, the DEIS does not cite to any evidence in support of this finding.

The County requests that the Army Corps provide its preliminary determination as to whether the MVP Project complies with the terms and conditions of NWP-12, thus providing the basis for public review in advance of the FEIS. If the Army Corps determines that the MVP Project in whole or in part does not comply with NWP-12, the County requests that the Army Corps direct Mountain Valley to apply for individual permits, or disclose the conditions the DE believes will bring the project into compliance with NWP-12. The verification is relevant to public review of the environmental consequences of constructing the project and should be disclosed before the EIS is finalized and the deadline for the Army Corps to issue a final permitting decision is triggered.

II. SPECIFIC COMMENTS

A. Forested Lands

The DEIS reports that the proposed route would cross 245.2 miles of forested land, and affect 3,720.0 acres during construction and 1,486.0⁵¹ acres during operation.⁵² "In Virginia, the MVP [Project] would impact about 938 acres of contiguous interior forest during construction

⁴⁸ 33 C.F.R. § 330.1(d).

⁴⁹ Mountain Valley has stated, "[p]otential cumulative impacts on aquatic resources could result from increased sedimentation and turbidity during waterbody crossings, loss of stream cover and habitat, introduction of water pollutants, and directly [sic] mortality from instream work and/or entrainment in water pumps during dry crossings." Mountain Valley Responses to Forest Service, p. 36, eLibrary no. 20160408-5318.

⁵⁰ DEIS, p. 5-4.

⁵¹ The DEIS alternatively reports this number as 1,489 acres on p. 4-141.

⁵² *Id.*, p. 3-24, Table 3.4.2-1, p. 4-141.

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The sentence "impacts on vegetation can be minimized by utilizing special construction techniques, proper restoration measures, and post-construction monitoring" was made at the beginning of draft EIS section 4.4.2.2. The remainder of section 4.4.2.2 provides a discussion of the special construction techniques, restoration measures, and post-construction monitoring that would be utilized. The statement regarding revegetation requiring more time than indicated in Resource Report 3 is noted. However, Resource Report 3 was prepared by Mountain Valley not the FERC. As stated in section 4.4 of the EIS, based on our review of the potential impacts on vegetation as described above, we find that the most adverse impacts from construction and operation would be on forested vegetation crossed by the MVP pipeline route. This conclusion is based on the acreage affected and the permanence of the impact. Section 4.4 of the final EIS has been revised to provide an updated discussion of forest impacts.

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classified as High to Outstanding quality.”⁵³ The DEIS finds that, “the most adverse impacts from construction and operation would be on forested vegetation crossed by the MVP [Project], and that this would be a significant impact. This conclusion is based on the acreage affected and the permanence of the impact.”⁵⁴

The DEIS generally finds that “impacts on vegetation can be minimized by utilizing special construction techniques, proper restoration measures, and post-construction monitoring.”⁵⁵ The DEIS does not describe the techniques, measures, or monitoring to which this statement refers. As a result, this statement is not reviewable.

The DEIS describes the impacts of removal of interior forest as follows:

removal of interior forest in order to create the necessary rights-of-way would result in the conversion of forest area to a different vegetation type. This would contribute to forest fragmentation and the creation of forest edges.... The creation of a new corridor and forest edges could impact micro-climate factors such as wind, humidity, and solar exposure which could lead to a change in species composition. Forest edges also play a role in ecosystem fluctuations, including the dispersal of plants and wildlife, the spreading of fire, movement of wildlife, and vegetation composition and structure. The new pipelines rights-of-way could also introduce non-native invasive species.⁵⁶

The DEIS finds these impacts would be reduced by replanting with native plant species, and “by implementing the measures contained in the FERC Plan, Mountain Valley’s project-specific *Erosion and Sediment Control Plan*, and revegetation of the right-of-way as directed by the Wildlife Habitat Council.”⁵⁷ It does not provide explanation or cite to any evidence that these measures would reduce the impacts at specific sites to the extent feasible.⁵⁸ There is evidence in the record that these measures would be *ineffective*.⁵⁹ Thus, there appears to be little

⁵³ *Id.* at ES-6. “Interior Forest is defined as forested areas greater than 300 feet from the influence of forest edges or open habitat... and it provides habitat for a variety of wildlife and plant species, including food resources, brooding habitat for wildlife, and protection from disturbance and predation. Interior forest has a higher habitat value for some wildlife species, and is generally considered rarer than forest edges which have lower habitat value for many species and can be created immediately with disturbance...” *Id.* at 4-131.

⁵⁴ *Id.* at 4-150, 5-1.

⁵⁵ *Id.* at 4-144.

⁵⁶ *Id.* at 4-145. *See also* Zipper Forest Comments.

⁵⁷ DEIS, p. 4-150.

⁵⁸ *See* Zipper Forest Comments, pp. 8-9.

⁵⁹ *Id.* at 24 (“the FERC Plan and Mountain Valley’s EISC Plans would not minimize ‘forest fragmentation and edge effects’ as proposed. The DEIS has been prepared with the expectation that ‘natural generation’ would occur in a manner that would eventually reduce forest fragmentation and edge effects, but proposes no actions to

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to no basis for OEP Staff's finding that reseeded formerly forested lands and other proposed measures would reduce changes in ecological function or species composition.

The Forest Service previously commented that revegetation of the disturbed lands will take much longer than indicated in Resource Report 3:

Given the age, size, and condition of many of the upland sites coupled with the level of disturbance expected, natural regeneration to current vegetation cover types, is unlikely in most situations. [¶] The oak species, which dominate the impacted areas, do not readily regenerate from seed on disturbed sites.... Given the level of disturbance in the temporary construction zones, it is highly unlikely that the Oak Forest Community Types would naturally regenerate to eventually achieve their "original condition and use or better."⁶⁰

The forested lands within Giles County that would be impacted by the MVP Project are characterized by steep slopes with shallow soil and rock. They are a significant natural asset to the County. Giles County is concerned that clearing a 125-foot right-of-way through these lands, which may not be revegetated for generations, if at all, would damage the beautiful viewshed for which the County is known. Giles County is also concerned about the impacts to wildlife, including long-term or permanent loss of habitat and migration corridors. These impacts would in turn affect the growing tourism industry that has become a large part of the County's economy. The quality and opportunities for outdoor recreation activities within Giles County – including hunting, birding, hiking, and photography – would be diminished by the MVP Project. Due to the absence of a reasonably complete discussion of mitigation measures that would address the loss of forested lands and related impacts, it is impossible for the County to determine the severity of these adverse effects.

Giles County requests that OEP Staff and the Cooperating Agencies explain the basis for the DEIS's findings that reseeded and compliance with the Commission's Plan and Procedures will reduce project impacts on forested lands, including effects related to the removal of interior forest. We request that they revise section 4.4 of the DEIS to include such explanation and evidence, and redistribute it for public review and comment.

ensure or accelerate such outcomes"), 27 ("in the absence of [an effective plan to control exotic invasive plants], exotic invasive plants are likely to become established in right-of-way and temporary workspace areas, impede effective regeneration of forest within temporary workspaces, and cause further adverse effects by invading and degrading forest resources adjacent to the corridor.").

⁶⁰ Forest Service Comments, Att.1, p. 8.

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B. Geological Resources

According to the DEIS, the MVP Project could encounter and/or contribute to a number of geologic hazards, including but not limited to: seismicity (e.g., earthquakes), surface faults, soil liquefaction, landslides, flash flooding, karst terrain, and subsidence.⁶¹

In its discussion of seismicity, the DEIS states that the “MVP pipeline would be in close proximity to the Giles County Seismic Zone (GCSZ), between MPs [mileposts] 165 to 230.... The GCSZ is considered seismically active”⁶² It states that, “[s]light damage is not typically experienced until MMI VI⁶³ and considerable damage not experience[d] until MMI IX⁶⁴ (USGS, 2013).” It continues, “D.G. Honegger Consulting determined that there is a less than 1 percent probability for the occurrence of an earthquake exceeding magnitude 6.0 and only a 4 percent probability of occurrence for an earthquake exceeding magnitude 5.0 within 50 kilometer[s] of the MVP within a 50-year period.”⁶⁵ The DEIS appears to dismiss concerns related to seismicity based on the low probability of an earthquake occurring strong enough to do damage to the pipeline.

The DEIS does not adequately address the evidence submitted by Dr. Kastning⁶⁶ that geologic hazards interact and so the threat of damage related to earthquakes is greater within the GCSZ:

Should a potential magnitude 4 to 6 earthquake occur once the pipeline is operational, there may well be a triggering of landslides on unstable or metastable slopes that could potentially disrupt the pipeline and cause significant collateral damage. Perhaps the pipeline itself may be directly broken by ground motion during an earthquake.

It is clear that steep mountain slopes in the area of Monroe, Giles, Montgomery, Craig, and Roanoke counties are subject to mass movement including large landslides. Seismicity and severe runoff from storms have triggered these events in the past and can easily do so in the future. Earthquakes do not necessarily have to be large to do damage

⁶¹ DEIS, p. 4-21.

⁶² *Id.*

⁶³ This translates roughly to Richter scale 5.0 to 6.0. *See* http://www.diffen.com/difference/Mercalli_Scale_vs_Richter_Scale (last checked Dec. 22, 2016).

⁶⁴ This translates roughly to Richter scale 7.0. *See id.*

⁶⁵ DEIS, p. 4-21.

⁶⁶ The DEIS includes one unrelated reference to Dr. Kastning’s report: “[w]ater originating in these upland areas drain toward lower-lying karst terrain (Kastning, 2016) and provide a spectrum of recharge from diffuse recharge through the soil overburden through discrete recharge directly into sinkholes and swallets.” *Id.* at 4-72.

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See the response to comment IND62-1 regarding Dr. Kastning’s report. Section 4.1 of the final EIS has been revised to address Mr. Rubin’s report.

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to the pipeline. Small events can easily trigger mass movement on metastable slopes. The Mountain Valley Pipeline would be most subject to these hazards in the many areas having steep slopes.⁶⁷

Dr. Kastning later states: “continuing seismic activity in the GCSZ (a high frequency of magnitude 2.5 or larger earthquakes), produces a major risk when compounded with the already co-existing problems of karst, slope, and soil hazards at sensitive locations along the proposed pipeline route. This poses severe engineering challenges in constructing the pipeline, and calls into question whether the pipeline should be built”⁶⁸

The DEIS describes the MVP Project’s path through steep topography:

The MVP pipeline would cross steep topography (32 percent greater than 15 percent grade) and karst terrain (17 percent of route). About 67 percent of the MVP pipeline would cross areas susceptible to landslides.... In Virginia, about 50.0 miles (47 percent of the proposed alignment has a high incidence of and high susceptibility to landslides.... Ground failure and slope movement are typically associated with steep slopes. The MVP would cross 18.5 miles of slopes ranging from 15 percent to 30 percent and 72.6 miles of slopes greater than 30 percent”⁶⁹

The DEIS finds that the “construction and operation of the MVP could result in unstable slopes including cut slope failures and fill slope failures....”⁷⁰ It could also “alter the surface and near-surface drainage along the pipeline trench, which could increase pre-existing landslide hazard potential on natural slopes.”⁷¹ Nonetheless, OEP Staff concludes that these potential impacts can be mitigated to less than significance: “Mountain Valley would use the procedures provided in its Landslide Mitigation Plan when constructing through landslide prone areas....”⁷² It does not provide full evaluations of how various measures would mitigate the increased risk of landslides and other impacts of this unprecedented construction project through karst terrain.

⁶⁷ See Dr. Ernst H. Kastning, “An Expert Report on Geologic Hazards in the Karst Regions of Virginia and West Virginia,” eLibrary no. 20160713-5029 (Kastning Report), p. 32.

⁶⁸ Kastning Report, p. 46.

⁶⁹ DEIS, p. 4-29.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 5-1.

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For example, the Landslide Mitigation Plan includes some site-specific recommendations for construction measures that would reduce the risk of landslides.⁷³ However, most of the recommendations for Giles County are not based on actual field surveys.⁷⁴ Further, the Landslide Mitigation Plan does not clearly address post-construction measures. It states that “maintenance and monitoring measures will be implemented ... in areas susceptible to landslides,”⁷⁵ but it appears that such measures will be conducted at the sole discretion of Mountain Valley.

The DEIS does not adequately consider Dr. Kastning’s findings that construction on steep slopes within karst terrain could have suffusion-related impacts. According to Dr. Kastning, “[c]ollapse of surficial material in karst is very common in areas of construction, especially where fill is used to level land.”⁷⁶ He notes examples of sinkholes developing in artificial fills,⁷⁷ and that artificial fill is more susceptible to percolation:

Intrinsic to construction of gas pipelines is the process of burying the pipes under fill material ... Despite the effort to compact the fill, the former trench will nonetheless become a zone of enhanced percolation and flow of groundwater. This can be envisioned as two concentric tubes. The central tube is the gas pipe that carries the product. The outer ‘tube’ is the surrounding fill. Its boundary would be the former walls and floor of the trench. **Therefore, the result would be an outer, annular, artificial pipe that carries groundwater parallel to the gas pipeline.**

As within any aquifer, discharge is proportional to the hydraulic gradient... The steeper the gradient, the more gravity-induced potential is applied to the flow system. It follows then that the infilled trench surrounding a pipe on steeper slopes will have a greater discharge than it would on gentler slopes. By design, the MVP pipeline would in many places be constructed directly up or down steep slopes of the mountains in the region. Therefore, in this case, groundwater flowing in the fill alongside the pipe would likely have a relatively high discharge and velocity of flow. By extension, suffusion and collapse in the fill could ensue, even though this process may take years and go undetected until the surface finally collapses into the growing cavity. **Sudden and**

⁷³ See “Landslide Mitigation Plan,” p. 11, *in* Attachment H: Supplemental Responses to Pre-DEIS Data Requests, eLibrary no 20161014-5022.

⁷⁴ *Id.* at 21-23.

⁷⁵ *Id.* at 10.

⁷⁶ Kastning Report, p. 28.

⁷⁷ *Id.*

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unexpected collapse of the material around the pipeline could have profound consequences such as breaks in the line⁷⁸

The County, in cooperation with Roanoke County, has obtained an expert report from Paul A. Rubin which further describes the potential adverse risks of constructing and operating the proposed pipeline through sensitive karst terrains characterized by numerous interconnected sinkholes, caves, and conduits.⁷⁹ According to Mr. Rubin, constructing in karst terrain, and specifically trenching in and around sinkholes, increases the potential of subsidence and pipeline rupture.⁸⁰ Active, shallow groundwater flow in this terrain can also accelerate pipeline corrosion, which can also lead to pipeline rupture.⁸¹

Gas leaks, sudden or gradual, as a result of pipeline failure can have grave consequences for human life, as well as sensitive cave fauna.⁸² It can also lead to groundwater contamination,⁸³ and changes to groundwater hydrology.⁸⁴

According to Mr. Rubin, studies needed to fully understand these impacts have not been conducted to date.⁸⁵ He also describes how Mountain Valley has given inadequate consideration even to those geologic hazards that it has identified in its selection of the proposed route.⁸⁶

⁷⁸ Kastning Report, p. 29 (bold in original). Dr. Kastning goes on to describe the increased risk of surficial collapse as a result of construction:

Although large scale collapse of surficial materials within the study area occurs rarely, the likelihood for karst collapse will increase within the pipeline corridor if the pipeline is constructed. Such increased risk of collapse will occur as a direct result of the construction process. Collapse is a characteristic phenomenon in karst regions where piping (suffusion) is induced by emplacement of artificial fills. Excavation of a trench for a pipeline and subsequent refilling would create subsurface zones with enhanced groundwater flows, with potential to increase rates of underground dissolution at subsurface locations receiving those flows. Underground rock dissolution caused by surface water infiltration is usually undetected until the final roof of an enlarging cavity falls in; such processes could easily and suddenly impact the integrity of the pipe.

Id. (italics in original).

⁷⁹ See Expert Report by Paul A. Rubin (Attachment 1). Mr. Rubin is a hydrologist, hydrogeologist, and cartographer with thirty-five years of experience. He is also a caver, and has explored a number of caves in Giles County. See *id.* at 2.

⁸⁰ See *id.* at 5-7.

⁸¹ See *id.* at 7-9.

⁸² See *id.* at 5-6, 8-9.

⁸³ See *id.* at 9.

⁸⁴ See *id.* at 10.

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Mr. Rubin further finds that Mountain Valley's Karst Mitigation Plan, issued after Dr. Kastning's report, is fatally flawed due to this lack of study.⁸⁷ He notes that "[m]itigation/stabilization plans that largely focus on individual karst features [as proposed by Mountain Valley] fail to factor in the broader karst settings present where sinkholes are only part of a well-interconnected cave and conduit network that often spans over many miles."⁸⁸ He recommends further analyses for fully assessing the potential impacts of construction in karstified terrain along the proposed route and effectiveness of any proposed mitigation measures.⁸⁹ In the absence of such study, he concludes that pipeline construction along the proposed route is not safe or environmentally sound.⁹⁰

Giles County requests that OEP Staff update section 4.1 of the DEIS to describe the potential impacts related to constructing in well-karstified terrain as described by Dr. Kastning, Mr. Rubin, and others, and provide substantial evidence in support of any findings that these impacts can be effectively avoided or mitigated. This should include consideration of the impacts of constructing, operating, and maintaining the MVP Project in the GCSZ given evidence that the presence of several geological hazards in this area may increase damage related to even minor earthquakes. It should also include conducting field surveys of landslide prone areas prior to making final findings regarding the project's impacts on geological resources and recommendations regarding landslide mitigation. The County also requests that OEP Staff direct Mountain Valley to undertake the further analyses identified in Mr. Rubin's report.

C. Surface Waters

The DEIS states that the MVP Project would cross 361 perennially flowing waterbodies,⁹¹ with multiple crossings located within Giles County.⁹² It generally describes the potential impacts of construction on surface waters:

⁸⁵ See, e.g., *id.* at 7 ("The few sinkholes depicted on Draper Aden Associates sheet 19 of 37 ... do not provide a true picture of the subsurface karst flow system present."), 8 ("Because MVP has yet to obtain geochemical and hydrogeologic data, FERC does not have the information needed to address potential means of assessing and potentially reducing the risk of external corrosion [to the pipeline]."), 11-12 (describing lack of detailed assessment of subsurface hydrogeology, groundwater flow paths, and karst stream discharge locations), 15 (recommendations for further analyses).

⁸⁶ See *id.* at 13-14.

⁸⁷ See *id.* at 15-16.

⁸⁸ *Id.* at 16.

⁸⁹ *Id.* at 15.

⁹⁰ *Id.* at 16.

⁹¹ DEIS, p. 4-501.

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Again, the commentor has selected one of the first sentences of an "Environmental Consequences" section to incorrectly claim that the draft EIS did not provide a detailed discussion of impacts and mitigation. Section 4.3.2.2 states that clearing and grading of stream banks, in-stream trenching, trench dewatering, and backfilling could each cause temporary, local modifications of aquatic habitat involving sedimentation, increased turbidity, and decreased dissolved oxygen concentrations; however, in almost all cases, these impacts would be limited to the period of instream construction. Section 4.3.2.2 includes text titled "project-specific impacts and mitigation."

The commentor incorrectly states that the draft EIS does not thoroughly evaluate the potential impacts to specific groundwater sources, and does not include a complete inventory of such sources. However, the draft EIS indicated that: "Appendix F provides a summary of waterbodies crossed by the MVP in karst areas, and table 4.3.2-8 provides waterbodies crossed in areas of shallow bedrock." In addition, section 4.3.2 of the EIS provides a discussion of mitigation measures for karst terrain.

See the response to comment IND70-1 regarding erosion.

Mountain Valley filed its Hydrological Analysis of Sedimentation on the Jefferson National Forest on March 3, 2017 (Attachment DR4-Water Resources 26), and these data were used in the final EIS.

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Clearing and grading of stream banks, in-stream trenching, trench dewatering, and backfilling could each cause temporary, local modifications of aquatic habitat involving sedimentation, increased turbidity, and decreased dissolved oxygen concentrations; however, in almost all cases, these impacts would be limited to the period of instream construction.⁹³

The DEIS does not cite to any evidence in support of its finding that impacts to surface waters would be localized, temporary, and otherwise insignificant.

The DEIS notes that some of these surface water crossings may impact groundwater: “[s]urface water resources overlying karst areas could act as a conduit into subsurface karst features; therefore, potentially affected surface waters may impact groundwater supplies in karst areas.”⁹⁴ However, as discussed below, the DEIS does not thoroughly evaluate the potential impacts to specific groundwater sources, and does not even include a complete inventory of such sources.

The DEIS generally finds that the potential impacts to surface waters can be mitigated by implementation of the Commission’s Plan and Procedures. However, it does not evaluate the potential impacts at individual crossings or explain how specific measures from the Plan or Procedures would mitigate those impacts. As stated by the Forest Service, unsupported statements that mitigation will be effective are not adequate.⁹⁵

The DEIS does not address the comments by the Forest Service that the hydrologic sedimentation analysis undertaken by Mountain Valley to date is inadequate to determine the project’s erosion and sedimentation impacts. Mountain Valley has not undertaken hydrologic

⁹² See, e.g., *id.* at 4-98, Table 4.3.2-8.

⁹³ *Id.* at 4-108.

⁹⁴ *Id.* at 4-95.

⁹⁵ Forest Service Comments, Att. 1, pp. 5-6. Other commenters have expressed concerns regarding sedimentation impacts in karst terrain that cannot be mitigated by ordinary Best Management Practices (BMPs):

As an erosion control specialist, there is [sic] no known devices that are specified, that meets the specifications for this type of construction in the steep terrain that the MVP would be built in. There are over twenty-two mountain ridges in West Virginia and Virginia. There's over eleven hundred stream crossings. We know that it will not be possible to prevent sediment from getting into the water supplies. And the karst terrain areas, the challenge is even more severe because of the unstable ground underneath the surface of the terrain in those areas. There are numerous caves and caverns in these karst terrain areas. Again, the construction of a pipeline creates a diversion dike underground which diverts water supplies away from springs and will also introduce sediment into the underground water flow systems.

Transcript, p. 9:2-24 (comments of Curt Bowers).

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cont'd analysis of sedimentation for the majority of the pipeline route, even though the Forest Service has stated such analysis is necessary to identify and evaluate the impact to waterbodies or aquatic biota.⁹⁶ The analysis it has undertaken for the Jefferson National Forest is not valid according to the Forest Service. The Virginia Department of Environmental Quality has similarly stated that Mountain Valley’s Erosion and Sediment Control Plan “absolutely lack[s] the specificity that DEQ is requiring for these plans.”⁹⁷

Giles County requests that OEP Staff and Cooperating Agencies require Mountain Valley to undertake the hydrologic sedimentation analysis that the Forest Service has stated is necessary to evaluate the MVP Project’s potential impacts on surface waters. We request that OEP Staff state the specific basis for findings that the proposed measures will mitigate impacts to surface waters to the point of insignificance. We request that OEP Staff revise Section 4.3 of the DEIS to include this information, and redistribute it for public review and comment.

D. Floodplains

LA14-8 Based on Giles County’s review, the DEIS lacks a thorough analysis of the MVP Project’s impacts on floodplain capacity or habitat. The DEIS’s limited analysis is in relation to other factors related to the project such as seismic activity and soil liquefaction. The most detailed information about affected floodplains is a chart⁹⁸ outlining flood zones and the class of pipe that would cross the specific waterbody in each county. However, there is no discussion of impacts on floodplain capacity or habitat. Instead, this chart discussed floodplains in relation to soil liquefaction.⁹⁹

The DEIS also mentions floodplains in relation to the Federal Emergency Management Agency’s Special Flood Hazard Areas. According to the DEIS, the hazard areas that would be affected by the MVP Project are located in West Virginia¹⁰⁰ and the “pipelines would displace an indiscernible quantity of flood storage capacity.”¹⁰¹ The DEIS does not appear to include further discussion of floodplain impacts.

⁹⁶ Forest Service Comments, Att. 1, p. 6.

⁹⁷ Casey Fabris, “Franklin County votes against Mountain Valley Pipeline easement,” THE ROANOKE TIMES (Oct. 18, 2016), available at http://www.roanoke.com/news/local/franklin_county/franklin-county-votes-against-mountain-valley-pipeline-easement/article_c728fd20-a955-507b-9850-d9663f51bddb.html (quoting James Golden, Director of Operations, Department of Environmental Quality (DEQ)) (last checked December 22, 2016).

⁹⁸ DEIS, pp. 4-26 – 4-28.

⁹⁹ *Id.* at 4-25.

¹⁰⁰ *Id.* at 4-100.

¹⁰¹ *Id.* The aboveground facilities would displace about one acre of storage capacity within the 100-year flood zone. *Id.* at 4-99 – 4-100.

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LA14-8 Table 4.3.2-7 of the EIS provides a list of 100-year floodplains that would be crossed by the MVP. See also table 4.1.1-9. The final EIS has been revised to further address impacts on floodplains, including flooding potential from large rainfall events.

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The Forest Service previously commented that Mountain Valley’s conclusion that it is not required to prepare a floodplain assessment is unsupported.¹⁰² It noted that Mountain Valley had not provided evidence that the project would comply with the relevant regulations regarding floodplain assessment and protection at 10 C.F.R. § 1022.1 *et seq.*¹⁰³ It further noted that exceptions to the floodplain assessment are limited, and include routine maintenance of existing structures, site characterization and environmental research and monitoring, and minor modifications to existing structures to improve safety or the environment.¹⁰⁴ The Forest Service requested that Mountain Valley demonstrate that it meets the exemptions or “submit the proposal to the appropriate regulating body for a ruling regarding the necessity of a floodplain assessment.”¹⁰⁵ Mountain Valley responded that because the pipeline would be buried in areas of floodplains and returned to pre-existing contours, the project would not cause displacement within the floodplain and is in compliance with 10 C.F.R. § 1022.¹⁰⁶

Giles County is concerned that Mountain Valley has not adequately responded to the Forest Service’s comments regarding project impacts to floodplains within the Jefferson National Forest. It is also concerned that project impacts to floodplain capacity and habitat located in Virginia do not appear to be discussed in the DEIS at all. Mountain Valley has proposed multiple crossings of the 100-year floodplain within Giles County:

Name of Stream	Milepost	Flood Zone	Width of Crossing
Big Stony Creek	199.4	AE	733’
Little Stony Creek	203.3-203.4	AE	321’
Sinking Creek	209.9	AE	150’
Greenbrier Branch	211.6-211.7	AE	93’ ¹⁰⁷

We understand that Mountain Valley may not be required to perform a floodplain assessment,¹⁰⁸ but that does not explain why the DEIS does not evaluate impacts to floodplain capacity or habitat within Virginia. That would seem to be inconsistent with the Department of Energy’s (DOE) general policy to carefully evaluate actions affecting wetlands and

¹⁰² Forest Service Comments, Att. 1, p. 5 (quoting Mountain Valley’s statement that, “[t]he Project will comply with 10 CFR 1022 with no significant loss of flood storage ... [and] therefore a floodplain assessment is not necessary.”).

¹⁰³ *Id.*

¹⁰⁴ Forest Service Comments, Att. 1, p. 5; *see also* 10 C.F.R. § 1022.5(d).

¹⁰⁵ Forest Service Comments, Att. 1, p. 5.

¹⁰⁶ Mountain Valley Response to Forest Service, eLibrary no. 20160408-5318, p. 45.

¹⁰⁷ This information was obtained by overlaying maps prepared by Mountain Valley onto Federal Emergency Management Agency flood insurance rate map for Giles County, Virginia (community number 510067).

¹⁰⁸ 10 C.F.R. § 1022.5.

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floodplains.¹⁰⁹ Due to the DEIS's extremely limited discussion of floodplains, mainly those in West Virginia, Giles County does not have information necessary to determine whether the project will comply with local regulations, which require a floodplain development permit with no rise certification, and may require a conditional use permit if there is to be greater than 5000 cubic yards of filling or excavation within the 100-year floodplain.¹¹⁰

The County requests that OEP Staff and Cooperating Agencies revise section 4.3 of the DEIS to include a discussion of project impacts to floodplain capacity and habitat within Virginia.

E. Groundwater Supply

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The DEIS states that construction of the MVP Project may impact groundwater supplies:

In areas of shallow groundwater, construction activities may temporarily affect near-surface aquifers. Grading and clearing, trenching and blasting, trench dewatering, and hydrostatic test discharge activities could temporarily alter overland water flows and groundwater recharge, or could result in minor fluctuations in groundwater levels. Overland construction could potentially increase turbidity through erosion and sedimentation.¹¹¹

However, it dismisses these impacts as "localized and temporary."¹¹² It offers no specific evidence to show that impacts would be so minor.¹¹³ Indeed, this finding appears unfounded and

¹⁰⁹ 10 C.F.R. §1022.3. DOE's general policy provides:

DOE shall exercise leadership and take action to:

- (a) Incorporate floodplain management goals and wetland protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable ...
- (b) Undertake a careful evaluation of the potential effects of any proposed floodplain or wetland action.
- (c) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.
- (d) Identify, evaluate, and as appropriate, implement alternative actions that may avoid or mitigate adverse floodplain or wetland impacts.
- (e) Provide opportunity for early public review of any plans or proposals for floodplain or wetland actions.

Id. While this is DOE's policy, we understand that the Commission is excepted from compliance with the regulations at 10 C.F.R. §1022.1 *et seq.* The Commission is the only organizational unit of DOE excepted. *See id.*

¹¹⁰ *See* Giles County Floodplain Zoning Ordinance, Art. IV, §§ 4.1, 4.5, 4.6.

¹¹¹ DEIS, p. 4-73.

¹¹² *Id.*

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See the response to comment LA13-16 regarding water wells and springs. Section 4.3 of the final EIS has been revised to include additional information regarding water quality testing. On February 17, 2017, Mountain Valley filed updated information about wells and springs. That data was incorporated into the final EIS.

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premature given that Mountain Valley has not even provided a complete map or inventory of groundwater sources within the construction area.¹¹⁴

The DEIS recommends that Mountain Valley “**file with the Secretary the location of all water wells, springs, swallets, and other drinking water sources within 150 feet (500 feet in karst terrain) of the pipeline and aboveground facilities.**”¹¹⁵ The DEIS does not explain why OEP Staff did not require this information, which is relevant to the analysis of project impacts on groundwater, before it published the DEIS. The Commission and Cooperating Agencies have not explained how they can evaluate the effectiveness of proposed construction and mitigation measures to address impacts to groundwater if they have not even identified or analyzed the specific wells and springs.

The Environmental Protection Agency (EPA) has stated that impacts to groundwater supplies in karst terrain can be significant, and for that reason construction in karst should be avoided: “[d]ue to its connection with surface water through sinkholes, caves and swallets, groundwater in karst geologic terrains is especially vulnerable to contamination. EPA recommends that to prevent impacts on public and private water supplies, the pipeline should avoid karst terrain, and consider route alternatives.”¹¹⁶ The DEIS does not meaningfully examine or address these potential impacts.

The DEIS describes Mountain Valley’s proposed measures for minimizing impacts to wells located within 150 feet of the MVP Project (500 feet in karst terrain), including two pre-construction water quality evaluations, and water yield testing during the second pre-construction evaluation.¹¹⁷ It also describes Mountain Valley’s proposal to conduct post-construction evaluations if a water supply owner lodges a complaint. “If this investigation confirms that pipeline construction was the source of impact, Mountain Valley would provide the owner with a temporary water supply until a permanent supply is developed.”¹¹⁸ The DEIS does not state whether the Commission would oversee investigations conducted by Mountain Valley in response to complaints.¹¹⁹ It simply states: “Mountain Valley would coordinate with the water supply owner to evaluate potential sources of impact.”¹²⁰

¹¹³ See *id.*

¹¹⁴ *Id.* at 4-80.

¹¹⁵ *Id.* (bold in original).

¹¹⁶ Letter from Jeffery D. Lapp (EPA) to Nathaniel J. Davis (FERC) re Atlantic Sunrise Project DEIS (CP15-138), eLibrary no. 20160706-0052 (June 27, 2016) (EPA Atlantic Sunrise Comments), Enclosure 2, p. 7.

¹¹⁷ DEIS, pp. 4-80 – 4-81.

¹¹⁸ *Id.* at 4-81.

¹¹⁹ *Id.*

¹²⁰ *Id.*

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These proposed measures are not adequate. The impacts analysis and administration of the complaint process should not be at the sole discretion of Mountain Valley, which plainly has an interest in finding that it did not cause any impact. Further, this analysis inappropriately diminishes the huge consequence of contaminating groundwater supplies. Many property-owners in Giles obtain their water from springs and wells, as their families have done for decades if not centuries.¹²¹ There is no comparable replacement for spring water.¹²²

OEP Staff should require Mountain Valley to complete mapping of existing wells and springs without further delay. Those evaluations should be provided to well owners for review and verification, and filed with the Commission. OEP Staff and the Cooperating Agencies should revise section 4.3 of the DEIS based on this information and redistribute it for public review and comment. OEP Staff should also investigate alternative mitigation measures, including but not limited to more robust and impartial procedures for resolving complaints pre- and post-construction. Post-construction complaint procedures are absolutely no substitute for the Commission's and Cooperating agencies full consideration of the MVP Project's potential hydrogeologic impacts and alternative mitigation measures prior to final decision.

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F. Cultural Resources

The DEIS summarizes the National Historic Preservation Act (NHPA) section 106 consultation process conducted by Mountain Valley to date, acknowledging that the process is not yet complete.¹²³ Giles County will continue to participate in this process as a Consulting Agency given that the proposed route for the MVP Project will impact several historic properties located within the County, including but not limited to, the Greater Newport Rural Historic District (GNRHID) and the Link and Clover Hollow covered bridges.

¹²¹ Transcript, p. 152 (comments of Teri Pettipiece: "I'm concerned about the pipeline being built at all, but mostly as it goes across some property that we own in Giles County. I think it's around Marker 215. This property's been in our family since the late 1700s and passed down. And the property that's adjoining mine -- there's a spring that is the only water source for several of the families that are neighboring around there. And there are sinkholes and caves around in that area. Lots of landmarks and structures were not included in the MVP DEIS").

¹²² *Id.*, pp. 133-134 (comments of Dawn Cisek: "I don't want them taking my property and affecting my way of life. That's my sense of place.... I have to have water. And when I asked about the water before, they told me they would bring it in in a stainless-steel tank. I have a spring that's been in my deed since 1880. And they're gonna replace it with a stainless-steel tank if my water goes away?").

¹²³ See DEIS, pp. 4-323 – 4-338, 4-384. "About 36 miles of pipeline route remains to be inventoried. In addition, 5 above ground facilities, 65 new or to-be-improved access roads, and 91 ATWS, staging areas, and yards still require survey. Also, testing or additional research must be conducted at 57 unevaluated sites in the direct APE to determine their NRHP eligibility." *Id.* at 4-384. All of this must occur before the Commission can complete its assessment of project effects on cultural resources, and specifically historic properties within the APE. See *id.*

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Section 4.10 of the final EIS has been revised as appropriate. We acknowledge that Giles County is a consulting party for compliance with Section 106 of the NHPA. We address the comments of the Greater Newport Rural Historic District Committee in section 4.10.2.1. Impacts on the Greater Newport Rural Historic District are discussed in section 4.10.7.1. Table 4.10.7-3 indicates that the MVP would have no effect on the Reynolds Farm Sinking Creek Covered Bridge and no adverse effects on the Link Farm Red Covered Bridge. As stated in section 4.10.6.2, the Virginia SHPO concurred with our definition of the APE. The FERC typically completes the Section 106 process after the issuance of a Certificate. The reasons for this are practical. First, if the Commission does not authorize the project, there would be no effects on historic properties. Second, in cases where surveys cannot be completed because landowners denied access, the company would need a Certificate to use eminent domain to gain access and complete the surveys.

LA14-10
cont'd

The DEIS states that OEP Staff cannot make its final determination of project effects on the GNRHD until it reviews the opinion of the Virginia Department of Historic Resources' (VDHR) opinion. However, it is OEP Staff's preliminary evaluation that:

that the MVP pipeline should not have long-term significant adverse effects on the district. All of the elements to the district within the [Area of Potential Effect (APE)] would be outside the construction right-of-way and would not be directly impacted. The pipeline route would mostly follow an existing powerline through the district; so the viewshed is not pristine and has already been compromised by utility infrastructure.... After installation, the original topographic contours would be restored, and the right-of-way would be reclaimed, revegetated (except no trees would be allowed in the 50-foot-wide permanent easement), and returned to its original condition and use; therefore, visual impacts would be minimized. Operation of the MVP pipeline should not have audible or visual impacts on contributing elements of the Greater Newport Rural Historic District that may affect or alter the character or setting of those resources.¹²⁴

The VDHR expressed concern regarding the Commission's proposal to issue a certificate prior to completion of the Section 106 process: "It is DHR's opinion that this [phased] approach limits FERC's ability to make an informed decision regarding potential effects to historic properties prior to authorization and limits the role of consulting parties in the resolution of any identified adverse effects."¹²⁵ Giles County shares this concern.

Giles County is further concerned that disputed issues regarding cultural resources located within the County are not adequately addressed in the DEIS. For example, concerns raised by the GNRHD Committee regarding the definition of the APE have not been resolved.¹²⁶ As reported by VDHR, Mountain Valley is "preparing a response to the most recent comments from the GNRHDC so that we may reach agreement on the specific contributing resources to the historic district that fall within the [APE] before we proceed to assess the potential effects of the project on those resources."¹²⁷ As indicated by VDHR, the definition of the APE is foundational

¹²⁴ DEIS, p. 4-348.

¹²⁵ See letter from Roger W. Kirchen to Kimberly D. Bose, eLibrary no. 20161221-5348 (Dec. 21, 2016) ("VDHR Comments"), p. 2.

¹²⁶ See Supplemental Information of GNRHD Committee under PF15-3, to suspend the NEPA pre-filing process per FERC rules, eLibrary no. 20141117-5027; Comment of GNRHD Committee under PF15-3, eLibrary no. 20150617-5078; Motion to Intervene and Protest of GNRHD under CP16-10, eLibrary no. 20151117-5094; Comment and Objection of GNRHD Committee to FERC Environmental Information Request 20151224-3000, and MVP responses 20160119-5076, 20160127-5356 under CP16-10, eLibrary no. 20160304-5077; Comment and Objection of GNRHD Committee by Matt Fellerhoff under CP16-10, eLibrary no. 20160516-5379; Submission of Expert Report filed by Matthew Fellerhoff under CP16-10, eLibrary no. 20160830-5133.

¹²⁷ VDHR Comments, p. 2.

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LA14-10
cont'd

to the assessment of project effects, and so it is unclear to us how OEP Staff could make even a preliminary determination regarding potential impacts to cultural resources in the DEIS.

Although Giles County does not take a position on the GNRHD Committee's recommendations regarding alternative routes, we request that OEP Staff revise Section 4.10 of the DEIS to address the issues raised by the Committee regarding the procedural deficiencies in the Section 106 process to date, and the factual inaccuracies regarding the location of certain resources in relation to the project area as the basis for revising and recirculating Section 4.10 of the DEIS.

G. Visual Resources

LA14-11

The DEIS summarizes Mountain Valley's visual resources analysis, including assessment of impacts at key observation points (KOPs).¹²⁸ The list of KOPs includes twelve locations in Giles County: Whitt Riverbend Park, Big Stony Creek Road, Little Stony Creek, Cascade Falls Trailhead, Cascade Falls, Mountain Lake Park and Resort, Pig Hole Cave, Smokehole Cave and GIL-VOF-2250 Open Space, Greater Newport Rural Historic District, Sinking Creek and Link Farm Covered Bridge, Newport Community Center and Recreation Center, and Blue Grass Trail.¹²⁹ It finds moderate¹³⁰ visual impacts at Big Stony Creek Road, Little Stony Creek, the Greater Newport Rural Historic District, Sinking Creek and Link Farm Covered Bridge, and Blue Grass Trail.¹³¹ It finds no to low impacts at the other KOPs.¹³²

The County is concerned that Mountain Valley's visual impacts analysis, including its list of KOPs, may not be complete, and may under-report the potential impacts.

The Forest Service has previously commented that Mountain Valley's visual impacts analysis, which is the basis for OEP Staff's analysis in the DEIS, does not adequately identify potential impacts. For example, it has challenged Mountain Valley's focus on proximate views:

The data displayed ... indicates that MVP analyzed only the "nearest" potential view between project components and the viewing platform.¹³³ The nearest location of a travelway or area may not be the part that would have the greatest impact on its scenery.

¹²⁸ *Id.* at 4-229.

¹²⁹ *Id.* at 4-231.

¹³⁰ "Low to medium impacts were found for KOPs where the pipeline right-of-way could not be seen by viewers, either because of distance or existing landscape or vegetation screening." *Id.* at 4-229.

¹³¹ *Id.*

¹³² *See id.*

¹³³ Forest Service Comments Att. 1, pp. 26-27.

LA14-11

Section 4.8 of the final EIS has been revised to provide an updated visual impacts analysis.

LA14-11
cont'd

Intervening geology or evergreen vegetation may block the view at the nearest location, but further out along that same travelway there could be a clear view to the project area. The table should be updated to include whether other portions of travelways listed, further from the proposed project area, may also have a view of the project area.¹³⁴

The Forest Service’s comments are directed to visual resources with the forest, but are relevant to other scenic areas within the region. Other commenters have challenged the evaluation of visual impacts as inadequate.¹³⁵ Problems include reliance on the use of photographs from key observation points, which are subject to bias and limited to a fixed perspective, and “failure to use landscape visualization tools that are widely available, and are more capable of representing visual impacts in complex landscapes than limited numbers of fixed point simulations.”¹³⁶

Given that OEP Staff and the Cooperating Agencies have not required the analyses necessary to evaluate the impacts, the County believes that the mitigation proposed in the DEIS is inadequate. The County requests that OEP Staff and the Cooperating Agencies revise Section 4.8 to undertake further evaluation of the MVP Project’s impacts and potential mitigation measures.

H. Socioeconomic Resources

LA14-12

The DEIS concludes that “neither the MVP nor the EEP would have significant adverse impacts on property values; nor affect the ability of landowners to obtain mortgages; and would not affect the ability of homeowners to obtain fair market base priced insurance.”¹³⁷

The DEIS’s analysis focuses on homes that will be encumbered by pipeline easements. The DEIS expects those homeowners will be able to negotiate fair compensation with Mountain Valley. However, the DEIS does not consider the potential loss in property values for homes outside of the right-of-way, but within the blast radius. There have been comments submitted into the record expressing concern regarding the potential impacts of pipeline failure.¹³⁸ Some

LA14-12

See the response to comment IND2-1 regarding safety. Section 4.9 of the final EIS has been revised to address comments about property values.

¹³⁴ *Id.* at 28.

¹³⁵ *See, e.g.*, letter from Carl E. Zipper to Secretary Bose, eLibrary no. 20161213-5106 (Dec. 13, 2016) (“Zipper Visual Comments”); *In the Matter of: Mountain Valley Pipeline LLC and Equitrans Expansion Project*, “Scoping Meeting Transcript,” eLibrary no. 20161103-4005 (Nov. 3, 2016) (“Scoping Meeting Transcript”), pp. 150-151 (comments of Laura Belleville (“Visual simulations are needed to sufficiently determine the impact to the AT scenic resources.”)).

¹³⁶ Zipper Visual Comments, p. 1.

¹³⁷ DEIS, p. 4-313.

¹³⁸ *See e.g.*, letter from Kevin Crispin to Kimberly D. Bose, eLibrary no. 20161208-0008 (Dec. 7, 2016); Scoping Meeting Transcript, eLibrary no. 20161103-4005 (Nov. 3, 2016), pp. 24 (comments of Glenn W. Loveless), 60 (comments of Sylvie Chandler), 89 (comments of Marilyn and Bobby Amerson), 136-139 (comments of Alden Dudley).

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LA14-12
cont'd

of these comments have cited the pipeline failure in a high consequence area in San Bruno, California, which destroyed 38 homes and damaged 70 and claimed the lives of 8 people.¹³⁹ Many property owners are plainly concerned about their safety in the event of a failure.¹⁴⁰ There may be decreased sales of properties within the blast radius as potential buyers weigh these concerns. The impacts may include not just sales at reduced values, but a decision by potential sellers to not sell based on reduction in the number or values of offers. To the County's knowledge, there has been no effort to study those impacts.

The County requests that OEP Staff consider the potential impacts of the pipeline on property sales outside of the right-of-way but within the blasting area in a revision to section 4.9 of the DEIS.

I. Roadways

LA14-13

According to the DEIS, the "Applicants would mostly use existing public and private roads to gain access to their respective rights-of-way. However, many existing roads are not suitable for construction traffic. Where necessary, the Applicants would improve existing roads, through widening and/or grading.... After pipeline installation, the Applicants would remove new temporary roads and restore the land to its pre-construction condition and use."¹⁴¹ The DEIS states that

[d]uring construction, Mountain Valley would inspect roads periodically and, if damages occur as a direct result of project-related activities, would repair them as appropriate and in accordance with the applicable permit.... Mountain Valley would use pre-construction video to document the condition of roadways prior to the project. Following construction, roads would be restored to their original conditions unless otherwise directed by the landowner, county, or state agency.¹⁴²

LA14-13

A specific plan for road repairs is not possible as it would be dependent on the location and extent of damage. Mountain Valley would make appropriate repairs to damaged roads; and we assume this work on public roads would be monitored by the counties, in accordance with the Traffic Plan. Mountain Valley filed revised Traffic and Management Plans on February 17, 2017 that incorporated comments from counties. These data are included in the final EIS. Landowners who believe Mountain Valley did not make proper repairs to private roads can contact the FERC helpline. Appendix E of the final EIS has been revised to provide updated information regarding roadway improvements.

¹³⁹ See Nat'l Transportation Safety Board, "Accident Report: Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire" (2011), available at <http://nhtsb.gov/investigations/AccidentReports/Pages/PAR1101.aspx> (last checked Dec. 22, 2016).

¹⁴⁰ The DEIS cites pipeline accident data relative to nationwide accidental deaths to show that "natural gas transmission pipelines continue to be a safe, reliable means of energy transportation." DEIS, p. 4-472. The County does not necessarily dispute that finding. Nonetheless, perceptions regarding the dangers pipelines pose to public safety do not necessarily align with that data, and may nonetheless negatively impact property values. See footnote 138, *supra*.

¹⁴¹ DEIS, p. 2-30.

¹⁴² *Id.* at 4-311.

LA14-13
cont'd

Based on Mountain Valley’s plans to restore roads to pre-construction condition, the DEIS finds that “construction activities would result in temporary to short-term impacts on transportation infrastructure.”¹⁴³

Giles County is concerned that Mountain Valley’s specific plans for improvements prior to pipeline construction and restoration post-construction have not been fully disclosed. For example, it is not clear how much notice local governments or private landowners will have prior to improvements or repairs, or the extent of their input to construction methods or schedule. The DEIS does not describe what “repair as appropriate” means, or who determines what is appropriate. This determination should not be at the sole discretion of Mountain Valley. Further, there does not appear to be any funding obligation related to the cost of roadway repairs. As a result, the County cannot determine whether Mountain Valley’s plans will adequately protect local infrastructure. This puts the Giles County Board of Supervisors in a very difficult position as it will likely bear the brunt of complaints related to impacts to roads, but the Board will be without authority or resources to address those complaints. This would place an undue burden on Giles County and other local governments.

The County requests that OEP Staff require Mountain Valley to disclose its specific plans for pre- and post-construction changes to any roadways it plans to use. The plans should include Mountain Valley’s estimate, verified by OEP Staff, for the cost of roadway improvements and repairs. Giles County further requests that the Commission require Mountain Valley to submit a performance bond before the start of construction to cover the estimated costs of repairing damage to roadways used for construction and operation of the MVP Project.

J. Reliability and Safety

LA14-14

The DEIS describes Department of Transportation Pipeline Safety Regulations which require pipeline operators to develop and implement an Integrity Management Program applicable to all High Consequence Areas (HCA) that complies with regulations at 49 C.F.R. § 192.911. It goes on to report that OEP Staff “received comments from county officials who were concerned about the construction and operational impacts, as well as pipeline rupture impacts on vulnerable populations such as children. Mountain Valley has routed the pipeline and is, along with the FERC staff, continuing to evaluate route modifications that would minimize risks to local residents and vulnerable locations.”¹⁴⁴

Giles County is concerned that it will not be able to review Mountain Valley’s Integrity Management Program with respect to HCAs within the County prior to OEP Staff making final findings and recommendations regarding public safety in the FEIS. We request that OEP Staff direct Mountain Valley to begin consulting with Giles County and other local governments regarding coordination of response to a natural gas pipeline emergency immediately. It is

¹⁴³ *Id.*

¹⁴⁴ DEIS, p. 4-462.

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LA14-14

As stated in section 4.12.1 of the EIS, the Applicants would actively participate in emergency response coordination with local fire personnel. The Applicants would coordinate with first responders regarding measures that should be taken if the pipeline were to be crossed by heavy machinery. The Applicants’ emergency response plans developed in coordination with local emergency response officials would ensure that the response to a pipeline emergency would be acceptable.

As stated in section 4.12.1 of the EIS, once a pipeline operator has determined the HCAs on its pipeline, it must apply the elements of its integrity management plan to those segments of the pipeline within the HCAs. The criteria used to designate HCAs are defined in section 4.12.1 of the EIS. The DOT regulations specify the requirements for the integrity management plan at 49 CFR Part 192.911. The pipeline integrity management rule for HCAs requires inspection of the pipeline every 7 years. The regulations do not require avoidance of an HCA. Table 4.12.1-3 in the final EIS has been revised.

LA14-14
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important for the County to understand what will be expected of its emergency services so it can begin to plan accordingly and provide information to its residents.

Giles County is also concerned that it has not yet received a response from OEP Staff to its requests for the Newport Recreation Center, Newport-Mount Olivet Methodist Church, and Doe Creek Farm to be considered Class 3 HCAs.¹⁴⁵ The DEIS does not discuss these requests, or otherwise identify these locations in the list of HCA locations for the MVP Project.¹⁴⁶ Whether these locations will be protected by Mountain Valley's Integrity Management Program is relevant to the County's and its residents' evaluation of the project's potential impacts to public safety.

III.

REQUESTS FOR FURTHER ANALYSIS AND PROCEDURES

A. OEP Staff and the Cooperating Agencies Should Prepare a Revised DEIS.

LA14-15

Pursuant to 40 C.F.R. § 1502.9(a), Giles County requests that the Commission issue a revised DEIS for the MVP Project. Since the DEIS was published in September 2016, OEP Staff and the Cooperating Agencies have received hundreds of comments, many of which go well beyond correction of incidental, factual inaccuracies, and instead challenge the bases for several of the DEIS's findings regarding the environmental consequences of the MVP Project. The County and others¹⁴⁷ have objected that by publishing the DEIS in advance of Mountain Valley's route changes and responses to environmental information requests, they have been denied a meaningful opportunity for review and comment on the environmental consequences of the MVP Project. "A public comment period is beneficial only to the extent the public has meaningful information on which to comment Informed public input can hardly be said to occur when major impacts of the adopted alternative were never disclosed."¹⁴⁸

We expect that OEP Staff and the Cooperating Agencies will need to make significant changes to the DEIS based on the comments they receive. In this circumstance, the County believes that preparation and circulation of a second DEIS is required to provide an opportunity for the public to comment on the information the agencies acquired during the comment period and their updated analyses based on that information.

¹⁴⁵ See letters from Chris P. McKlarney to Secretary Bose, eLibrary nos. 20160316-5049 (Newport Recreation Center), 20160406-5090 (Newport-Olivet Methodist Church), 20160817-5278 (Doe Creek Farm).

¹⁴⁶ DEIS, p. 4-464, Table 4.12.1-3.

¹⁴⁷ See, e.g., letter from Ryan Talbott *et al.* v. Kimberly D. Bose, eLibrary no. 20161019-5061 (Dec. 15, 2016); letter from Judy Azulay to Kimberly D. Bose, eLibrary no. 20161215-5271 (Dec. 15, 2016).

¹⁴⁸ *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 708 (10th Cir. 2009).

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LA14-15

There are no valid reasons why the FERC should issue a revised draft EIS. This final EIS addresses comments on the draft.

LA14-15
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In the alternative, the County requests that OEP Staff and the Cooperating Agencies issue a supplement to the DEIS pursuant to 40 C.F.R. § 1502.9(c), which addresses the new information that has been filed since the DEIS was published. “If there remains ‘major Federal actio[n]’ to occur, and if the new information is sufficient to show that the remaining action will ‘affect[t] the quality of the human environment’ in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.”¹⁴⁹ The County believes the new information presents a seriously different picture of the environmental impacts of the proposed MVP Project than that presented in the DEIS, necessitating preparation of a supplemental EIS, in the event OEP Staff and the Cooperating Agencies do not issue a revised DEIS.

B. OEP Staff and the Cooperating Agencies Should Undertake Further Analysis of Certain Impacts.

LA14-16

The County requests that OEP Staff and Cooperating Agencies provide additional information and undertake additional investigation and analysis in preparation of a revised DEIS, as discussed in Sections I and II, and summarized below.

- (1) Provide the specific basis for the assumptions in the DEIS.
- (2) Explain the specific basis for the DEIS’s findings that the proposed mitigation measures – e.g., reseeded, implementation of the Commission’s Plan and Procedures – will mitigate, or significantly reduce, the environmental impacts of the MVP Project.
- (3) Consider the impacts of constructing, operating, and maintaining the MVP Project in the GCSZ given evidence that the presence of several geological hazards in this area may increase damage related to even minor earthquakes.
- (4) Describe the potential impacts related to constructing on steep slopes, and whether and how these impacts can be effectively avoided or mitigated. Complete field surveys of landslide prone areas prior to making final findings regarding the project’s impacts on geological resources and recommendations regarding landslide mitigation. Revise the Landslide Mitigation Plan to include additional maintenance and monitoring measures that will be implemented post-construction with oversight by the Commission.
- (5) Undertake the further analyses recommended in Rubin’s expert report.
- (6) Undertake hydrologic sedimentation analysis that the Forest Service has stated is necessary to evaluate the MVP Project’s potential impacts on surface waters. Evaluate project impacts to floodplain capacity and habitat within Virginia.

¹⁴⁹ *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989).

LA14-16

See the response to comments LA14-2 through LA14-14 regarding these topics.

LA14-16
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- (7) Address issues raised regarding procedural deficiencies and factual inaccuracies regarding the APE and location of certain resources in Giles County.
- (8) Undertake additional visual impacts analyses.
- (9) Consider the potential impacts of the pipeline on property sales outside of the right-of-way but within the blasting area.
- (10) Direct Mountain Valley to disclose its specific plans for pre- and post-construction changes to any roadways it plans to use, including an estimate for the cost of roadway improvements and repairs.
- (11) Consider requiring Mountain Valley to submit a performance bond before the start of construction to cover the estimated costs of repairing damage to roadways used for construction and operation.
- (12) Direct Mountain Valley to consult regarding coordination of response to a natural gas pipeline emergency.
- (13) Respond to the County's previous requests regarding the Newport Recreation Center, Newport-Mount Olivet Methodist Church, and Doe Creek Farm to be considered Class 3 HCAs.

LA14-17

C. The Forest Service and Army Corps, as Cooperating Agencies, Should Comment on the Sufficiency of the DEIS as the Basis for Their Decisions.

As cooperating agencies with jurisdiction over the MVP Project, the Forest Service and the Army Corps must comment on the DEIS.¹⁵⁰ Further, their comments must address the sufficiency of the DEIS as the basis for their decisions whether to grant federal authorizations within their jurisdiction.

A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.¹⁵¹

We request that the Forest Service, in its comments, address the sufficiency of the DEIS as the basis for two necessary authorizations: amendment of LRMP for the Jefferson National

¹⁵⁰ 40 C.F.R. § 1503.2.

¹⁵¹ 40 C.F.R. § 1503.3(c).

LA14-17

The FS provided comments on the draft EIS on December 20, 2016 (FA16) and the COE provided comments on November 1, 2016 (FA5).

LA14-17
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Forest and a Special Use Permit. We request that the Forest Service specify the procedures and schedule for its hearing whether to grant these authorizations.

We request that the Army Corps, in its comments, address the sufficiency of the DEIS as the basis for permitting dredge-and-fill of jurisdictional waters under CWA section 404. We request further that the Army Corps make a preliminary determination as to whether the MVP Project complies with the terms and conditions of NWP-12, subject to public comment.¹⁵²

IV. CONCLUSION

Giles County thanks the Commission for this opportunity to provide comments. It requests that the Commission and Cooperating Agencies grant the requests for further analysis and procedures made herein.

Dated: December 22, 2016

Respectfully submitted,



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¹⁵² See, e.g., 33 C.F.R. § 330.6(a).

**UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION**

_____)	
Mountain Valley Pipeline LLC,)	CP16-10-000
Mountain Valley Pipeline Project)	PF15-3-000
_____)	
Equitrans, LP)	CP16-13-000
Equitrans Expansion Project)	PF15-22-000
_____)	

**ROANOKE COUNTY, VIRGINIA'S COMMENTS ON THE
 MOUNTAIN VALLEY PROJECT
 AND EQUITRANS EXPANSION PROJECT
 DRAFT ENVIRONMENTAL IMPACT STATEMENT**

LA15-1

Roanoke County, Virginia (County) provides these comments in response to the “Notice of Availability of the Draft Environmental Impact Statement for the Proposed Mountain Valley Project and Equitrans Expansion Project” (Notice) issued on September 16, 2016.¹ Roanoke is one of the counties that would be crossed by the Mountain Valley Pipeline (MVP) Project.²

The County is an intervenor in this proceeding, having filed a timely, unopposed Motion to Intervene on November 25, 2015.³ It is also a Consulting Agency for purposes of the Commission’s compliance with the National Historic Preservation Act (NHPA).⁴

As stated in our Motion to Intervene, Roanoke County has significant interests which will be affected by the outcome of this proceeding. These interests include protection of the County’s natural and cultural resources, as well as promotion of economic and community development within the County and broader region. The County also has an interest in how the MVP Project

¹ eLibrary no. 20160916-3014.

² Resource Report 1, p. 1-3 (“The line then heads south passing approximately one mile west of Spring Hollow Reservoir at approximate MP 234.5 and shifts to the south-southeast passing to the west of Bent Mountain, Roanoke County, Virginia at approximate MP 242.7. At MP 243.8, the pipeline heads east, crossing the Blue Ridge Parkway in an open field between MP 244.3 and 244.4,” before entering Franklin County.)

³ Roanoke County, “Motion to Intervene and Identification of Issues,” eLibrary no. 20151125-5074 (Nov. 25, 2015) (Motion to Intervene).

⁴ eLibrary no. 20160210-3028 (letter granting County status).

*Roanoke County's DEIS Comments
 Mountain Valley Pipeline Project (CP16-10-000)
 Equitrans Expansion Project (CP16-13-000)*

LA15-1

We acknowledge that Roanoke County is a consulting party for compliance with Section 106 of the NHPA.

The draft EIS contained a meaningful discussion of potential project-related impacts on geological resources (section 4.1), water resources (section 4.3), cultural resources (section 4.10), conserved lands (section 4.8), roadways (section 4.9), and public safety (section 4.12). See our responses to comments FA11-2 and LA5-1. There is no need or requirement for us to revise the draft EIS. Instead, this final EIS addresses comments on the draft.

Mountain Valley has complied with the FERC’s regulations regarding the environmental data attached to its application, as outlined in 18 CFR 380. See the response to comment IND152-1 regarding the FERC’s third-party compliance monitoring program. The FERC staff would conduct regular field inspections during construction to enforce any conditions imposed by the Commission’s Order.

LA15-1
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may affect its regulatory obligations, especially those related to erosion and sediment control and limitations on stormwater discharges.⁵

As described below, the Draft Environmental Impact Statement (DEIS) does not permit for meaningful analysis of the MVP Project's impacts on geologic resources, surface waters, groundwater, cultural resources, visual resources, conserved lands, roadways, and public safety. In many cases, this is due to incomplete information;⁶ there are a number of surveys and consultation processes that have yet to be completed and are relevant to the evaluation of the scope and magnitude of project impacts. The County requests that the Federal Energy Regulatory Commission (Commission) and Cooperating Agencies prepare a revised DEIS, or revisions to these sections of the DEIS, for public review and comment prior to preparing the Final Environmental Impact Statement (FEIS), as required by the Council for Environmental Quality's (CEQ) regulations for implementing the National Environmental Policy Act (NEPA).⁷

These comments are organized as follows: Section I states our General Comments; Section II states our Specific Comments on Resource Issues; and Section III states our Requests for Further Procedures and Analysis.

I. **GENERAL COMMENTS**

A. The DEIS's Findings and Conclusions Regarding Certain Impacts of the Proposed Project Are Not Based on Substantial Evidence in the Record.

In the DEIS, Office of Energy Project (OEP) Staff conclude that "construction and operation of the MVP and the EEP would result in limited adverse environmental impacts, with the exception of impacts on forested land."⁸ This and other "conclusions in the EIS are based on [Staff's] analysis of the environmental impact[s] and the following assumptions:

- the Applicants would comply with all applicable laws and regulations;
- the proposed facilities would be constructed and operated as described in section 2.0 of the EIS;
- the Applicants would implement the mitigation measures included in their applications and supplemental submittals to the FERC;

⁵ See Motion to Intervene, p. 2.

⁶ See *In the Matter of: Mountain Valley Pipeline LLC*, Scoping Meeting Transcript, eLibrary no. 2016-4005 (Nov. 3, 2016) ("Scoping Meeting Transcript"), pp. 118-119 ("Since one of the main components of the supplemental materials was the actual proposed pipeline alignment, it seems very hard to believe that the DEIS would've been published in advance of that information.")

⁷ See 40 C.F.R. § 1502.9(a).

⁸ DEIS, p. 5-1.

LOCAL
LA15 – Roanoke County

LA15-1
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- the Applicants would follow the mitigation measures included in other agencies' permits and approvals; and
- the Applicants would comply with [Staff's] recommended mitigation measures, listed in section 5.2.⁹

These are major assumptions for which Staff provide little basis in supported evidence. For example, there is no discussion of the applicants' compliance history. With respect to the MVP Project, many have alleged that Mountain Valley has not complied with regulations governing the application process, giving rise to concern that it is unlikely to comply with the regulations and certificate conditions governing construction, operation, and maintenance.

LA15-2

With regard to mitigation, while various measures are listed, Staff does not provide the specific basis for its assumption that those measures will be effective in mitigating the impacts of these projects on specific resources along the proposed routes. For example, expert evidence has been submitted regarding the unique characteristics of karst in this region.¹⁰ The DEIS does not address this evidence specifically, or otherwise explain why construction and mitigation practices used elsewhere, like the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland Waterbody and Construction and Mitigation Procedures (Procedures), will be successful in this unique and challenging terrain. In its comments on the final resource reports, the Forest Service repeatedly requested that Mountain Valley provide documentation for its conclusions that mitigation measures would be effective.¹¹ Rather than comply with the Forest Service's request, Mountain Valley tried to shift the burden to the Forest Service to show why the proposed mitigation measures were not adequate.¹²

LA15-3

Under the Administrative Procedures Act (APA), an agency's decision must show that the agency "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action."¹³ An agency's decision will be held arbitrary and capricious if the agency:

⁹ *Id.* at pp. 4-1 – 4-2.

¹⁰ See Dr. Ernst H. Kastning, "An Expert Report on Geologic Hazards in the Karst Regions of Virginia and West Virginia," eLibrary no. 20160713-5029 (Kastning Report).

¹¹ See, e.g., letter from Joby P. Timm to Secretary Bose, eLibrary no. 20160311-5013 (Mar. 9, 2016) (Forest Service Comments), Att. 1, p. 5.

¹² Letter from Matthew Eggerding to Joby P. Timm, eLibrary no. 20160408-5318 (April 8, 2016) (MVP Response to Forest Service), p. 41.

¹³ *Defs. of Wildlife v. N. Carolina Dep't of Transp.*, 762 F.3d 374, 396 (4th Cir. 2014) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009)). "The complete impact statement must contain more than a catalog of environmental facts, however. The agency must also 'explicate fully its course of inquiry, its analysis and its reasoning.'" *Env't Defense Fund, Inc. v. Froehke*, 473 F.2d 346 (1972) (quoting *Ely v. Velde*, 451 F.2d 1130, 1139 (4th Cir. 1971)).

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See the response to comment LA1-4 regarding existing 42-inch-diameter natural gas pipelines in karst terrain.. See the response to comment IND62-1 regarding Dr. Kastning's report. We have decades of extensive experience observing and assessing rights-of-way construction and restoration using the mitigation measures outlined in our Plan and Procedures

LA15-3

Adequate explanations were provided for staff's conclusions in the EIS.

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relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.¹⁴

The APA further requires that an agency's final decision state the "reasons or basis" for each of its findings and conclusions on all the material issues of fact, law, or discretion presented on the record.¹⁵

Under Natural Gas Act section 19(b),¹⁶ the Commission's findings of fact will be upheld only if based on "substantial evidence." Under this standard, substantial evidence is record evidence which is expressly found to be: (A) reliable and probative for the purpose of supporting a finding and (B) superior to competing evidence with respect to a given finding.¹⁷ Staff's assumptions do not meet this standard.

The County requests that OEP Staff and Cooperating Agencies state the specific basis for their findings, rather than stating assumptions, including the findings that the proposed mitigation measures, if implemented, would effectively mitigate or avoid the environmental impacts of the construction, operation, and maintenance of the MVP Project. We identify certain findings which we do not believe are supported by adequate explanation and evidence in Section II, below. Local governments and the public should have an opportunity to review the actual basis for OEP Staff's findings and any assumptions before the EIS is finalized.

¹⁴ *Id.* (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("*Motor Vehicle*").

¹⁵ 5 U.S.C. § 557(c).

¹⁶ 15 U.S.C. § 717r(b).

¹⁷ *See* Fed. Rules Evid. 702; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 590 (1993); *Motor Vehicle*, 463 U.S. at 43; *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962). *See also* *Butte County v. Hogen*, 613 F.3d 190,194 (D.C. Cir. 2010):

... an agency's refusal to consider evidence bearing on the issue before it constitutes arbitrary agency action within the meaning of § 706 [of the Administrative Procedures Act]. This proposition may be deduced from case law applying the substantial evidence test, under which an agency cannot ignore evidence contradicting its position. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. Although we are dealing with the question whether agency action is arbitrary or capricious, in their application to the requirement of factual support the substantial evidence test and the arbitrary or capricious test are one and the same.

Id. (internal citations and quotation marks omitted).

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B. The DEIS Does Not Adequately Consider Alternative Mitigation Measures that Would Better Mitigate or Avoid the Environmental Impacts of the MVP Project.

The DEIS finds that the applicants' proposed mitigation measures, along with some additional measures recommended by the Cooperating Agencies and OEP Staff, will mitigate the MVP Project's adverse impacts. As stated above, the information provided in the DEIS does not provide an adequate basis for several of Staff's findings that proposed mitigation will effectively mitigate the impacts on specific resources. Further, the DEIS does not show Staff's consideration of alternative mitigation measures that would better mitigate or entirely avoid the potential impacts. This is inconsistent with NEPA and implementing regulations, which provide:

When an agency prepares an EIS, it must include mitigation measures (not already included in the proposed action or alternatives) among the alternatives compared in the EIS.¹⁸ Each EIS must contain a section analyzing the environmental consequences of the proposed action and its alternatives, including "[m]eans to mitigate adverse environmental impacts."¹⁹

An EIS must include "a detailed discussion of possible mitigation measures" to show that the agency carefully considered the significant environmental impacts of the project and to inform the public regarding those impacts.²⁰ "An agency must discuss mitigation measures "in sufficient detail to ensure that environmental consequences have been fairly evaluated.... A mere listing ... is insufficient."²¹

The DEIS lists mitigation measures but does not provide adequate explanation for why OEP Staff believes those measures would effectively mitigate project impacts. As stated above, the Forest Service made several requests for documentation that proposed mitigation measures were likely to be effective in its comments on the final resource reports, but Mountain Valley declined to provide such information.²²

¹⁸ 42 U.S.C. § 4332(2)(C) (mandating that agencies' detailed statements must include alternatives to the proposed action); *id.* § 4332(E) (requiring agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources).

¹⁹ 40 C.F.R. § 1502.14(f) (listing mitigation measures as one of the required components of the alternatives included in an EIS); *id.* § 1508.25(b)(3) (defining the "scope" of an EIS to include mitigation measures).

²⁰ *Westlands Water Dist. v. U.S. Dep't of Interior*, 376 F.3d 853, 872–73 (9th Cir. 2004) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); 40 C.F.R. §§ 1502.14(f), 1502.16(h)).

²¹ *Id.* (quoting *Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir.1998)). See also *Nat'l Audubon Society v. Dep't of Navy*, 422 F.3d 174, 200 (4th Cir. 2005) ("The sufficiency of the mitigation measures proffered in the FEIS are necessarily dependent on an adequate assessment of environmental impact. For this reason, the FEIS also fails to sufficiently address mitigation.").

²² See, e.g., Forest Service Comments, Att. 1, pp. 5, 7.

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Alternatives are discussed in section 3 of the EIS. We do not have to include mitigation measures for alternatives that were not selected. The mitigation plans for the MVP are summarized in section 2 of the EIS. In section 4 of the EIS, we explain why we think each mitigation plan would be effective, under our analysis of specific environmental resources. The final EIS includes our evaluation of Mountain Valley's Blasting Plan in sections 4.1.2.5 and 4.1.2.7 of the EIS.

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For example, in Resource Report 2, Mountain Valley stated, “[u]se of controlled blasting techniques should avoid the impacts of blasting and limit rock fracture to the immediate vicinity of detonation along the trench line, and contain impact to within the construction right of way.”²³ The Forest Service responded by directing Mountain Valley to “[p]rovide credible citation of this limited area of effect from controlled blasting. A statement like this, which can be interpreted as a mitigation of the project’s effects, must be supported by credible evidence.”²⁴ Rather than provide evidence, Mountain Valley replied with a link to a 16-second YouTube video of “[t]ypical blasting techniques used for pipeline construction.”²⁵ The DEIS states that blasting could impact groundwater quality and quantity, but that Mountain Valley “would minimize or avoid impacts on groundwater during blasting by implementing the construction practices outlined in its *Blasting Plan*.”²⁶ The DEIS does not explain why Staff believes the *Blasting Plan* to be adequate to mitigate effects, or cite to any specific evidence to support that finding. Since the DEIS does not specifically evaluate the *Blasting Plan*, it has no basis for developing or considering alternative measures to mitigate impacts from blasting. This does not comply with the Commission’s obligations under NEPA to provide detailed discussion of proposed and alternative mitigation measures.

LA15-5

C. The DEIS Does Not Address All Reasonably Foreseeable Facilities Needed for the Projects.

As the County stated in its Motion to Intervene, the County is concerned that Mountain Valley has deferred its proposal to construct a fourth compressor station along the proposed route at approximately MP 220.51.²⁷ A fourth compressor station, the Swann Station, was included in Mountain Valley’s initial proposals, but omitted from its final application.²⁸ By removing a fourth compressor station from its proposal, Mountain Valley is limiting its ability to use the pipeline’s potential capacity.²⁹

LA15-5

Mountain Valley has not proposed a compressor station in Virginia.

²³ Resource Report 2, p. 2-26.

²⁴ Forest Service Comments, Att. 1, p. 5.

²⁵ MVP Response to Forest Service, p. 44.

²⁶ DEIS, p. 4-84.

²⁷ See Draft Resource Report 1, pp. 1-8 – 1-9. Now that the Swann Compressor Station has been removed from the project description, the pipeline will travel approximately 150 miles before it reaches the Transco Interconnect. See *id.* at 1-4.

²⁸ See *id.*

²⁹ According to Draft Resource Report 1, “[t]he capacity of the MVP system is limited by the design capacity of the compressor stations.” *Id.*

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Mountain Valley has stated that it will include additional interconnects if there is sufficient market demand. It has not explained how it can accommodate these additional interconnects without a fourth compressor station. The DEIS does not analyze the potential impacts of a fourth compressor station despite Mountain Valley's statements that it is still considering such a facility to accommodate demand.

The DEIS's omission of any analysis of the impacts of a fourth compressor station is inconsistent with the Commission's obligation to analyze the cumulative impacts of the MVP Project.³⁰ "Cumulative impact" is defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency... undertakes such other actions."³¹

A "likely" or "reasonably foreseeable" effect is interpreted to mean "that the impact is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision...."³² The duty to analyze cumulative impacts is not limited to actual proposals,³³ or anticipated actions with defined timetables for implementation.³⁴ Instead, the cumulative impacts of a proposal must be analyzed even if certain details of the proposal are unknown.³⁵ The U.S. Court of Appeals for the D.C. Circuit has explained:

In preparing an EA or EIS, an "agency need not foresee the unforeseeable, but ... [r]easonable forecasting and speculation is ... implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.'" ... While the statute does not demand forecasting that is 'not meaningfully possible,' an agency must fulfill its duties to "the fullest extent possible."³⁶

³⁰ 40 C.F.R. § 1508.25(c).

³¹ *Id.* § 1508.7; *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

³² *Id.*

³³ See *Texas Committee on Natural Resources v. Van Winkle*, 197 F. Supp.2d 586, 617 (2002) (citing *Oregon Natural Res. Council v. Marsh*, 832 F.2d 1498 (9th Cir. 1987), rev'd on other grounds, 490 U.S. 360 (1989)).

³⁴ *Sierra Club v. U.S. Dept. of Energy*, 255 F.Supp.2d 1177 (2002). The court considered whether a mine should have been analyzed as a cumulative impact of an easement grant because it was a "reasonably foreseeable future action." In its analysis the court stated that it was not pertinent when the mining company will begin operations, as long as action is "still reasonably foreseeable."

³⁵ *Texas Committee on Natural Resources v. Van Winkle*, 197 F. Supp.2d at 620 ("Even if the exact future of these other projects is uncertain, uncertainty alone does not excuse the [Corps of Engineers] failure to address the cumulative impacts of these projects ..."); *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C.Cir.1973); See also *Natural Res. Defense Council, Inc. v. Callaway*, 524 F.2d 79, 87-90 (1975).

³⁶ *Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304, 1310 (D.C. Cir. 2014) (quoting *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)).

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As stated above, it is reasonably foreseeable that Mountain Valley will add a compressor station at approximately MP 220.51 to allow the MVP Project to operate at capacity. Mountain Valley has indicated it will add interconnects to meet project demand and operate the project at capacity. The impact of the fourth compressor station along this section of the route should be evaluated in the context of the overall project by the Commission now so the public can consider that impact prior to any decision to construct the pipeline.

LA15-6

D. The DEIS Does Not Adequately Address the Cumulative Impacts of the Projects and Other Reasonably Foreseeable Projects.

The County previously requested that the Commission and Cooperating Agencies prepare a programmatic environmental impact statement as the basis for its decision on the MVP and EEP Projects. In support of this request, it noted that there were several pipeline projects pending or planned for the region, including the Atlantic Coast Pipeline and the Appalachian Connector Project.³⁷ It cited the CEQ guidance recommending programmatic environmental review to provide for more efficient and comprehensive analysis of the cumulative impacts of ongoing, proposed or reasonably foreseeable actions that share a common geography or timing.³⁸

The Commission did not specifically respond to the County's request. However, in correspondence with congressional representatives, the Commission Chair stated that the project-specific documents prepared by OEP Staff "will analyze both the impacts of the respective projects and the cumulative impacts of other actions affecting the environment in the region."³⁹

Contrary to the previous assurances, the DEIS does not adequately analyze the cumulative impacts of the projects and other proposed or reasonably foreseeable natural gas pipeline or other projects within the region. This does not comply with NEPA section 102(2)(C),⁴⁰ which requires that an EIS analyze the "environmental impact of the proposed action." Such impact includes direct, indirect, and cumulative effects of the proposed action.⁴¹

The DEIS broadly describes non-jurisdictional oil and gas facilities that are proposed, under construction, or recently constructed in the vicinity of the proposed projects.⁴² The DEIS states that specific information about these projects is unknown:

³⁷ See Motion to Intervene, pp. 6-7.

³⁸ *Id.* at 6.

³⁹ See, e.g., letter from Chair Norman C. Bay to Hon. Bob Goodlatte, eLibrary no. 20160121-0011 (Jan. 20, 2016).

⁴⁰ 42 U.S.C. § 4332(2)(C).

⁴¹ 40 C.F.R. §§ 1508.7, 1508.8.

⁴² DEIS, p. 4-493 – 4-494.

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See the response to comment FA11-3 regarding a programmatic EIS. The ACP Project was evaluated as a possible alternative to the MVP in section 3.3.2 of the EIS. The ACP Project was also evaluated in the cumulative impacts section of the EIS (4.13). Section 3.3.2 of the EIS clearly states that the Appalachian Connector pipeline is not a real project, and under NEPA only foreseeable projects need to be addressed. Section 4.13 of the final EIS has been revised to discuss sources of information about reasonably foreseeable projects.

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Non-jurisdictional gathering systems including pipelines and compressor stations account for an estimated 3,328.9 acres of impacts within the affected watersheds. We were able to estimate the amount of land that would be disturbed, but we do not know how many acres of that land are forest, wetland, or pasture. Similarly, data for resources affected by the existing wells are also unknown. As a result, it is only possible to speak in general terms about the cumulative effects on specific resources.⁴³

For example, the cumulative impacts analysis for wetlands states, “we were unable to find quantitative data for the extent of impacts to wetlands from non-FERC regulated projects, but we assume that some level of impacts would occur.”⁴⁴ Contrary to NEPA regulations, the DEIS does not describe Staff’s efforts to obtain this information, or provide any basis for why it cannot be obtained.⁴⁵ Such regulations require that, even if an agency has incomplete or unavailable information, the agency is required to reveal the facts and explain why such information is incomplete or unavailable.⁴⁶ The analysis of jurisdictional facilities is similarly

⁴³ *Id.* at 4-494.

⁴⁴ *See, e.g.*, DEIS, pp. 4-503 – 4-504 (“We were unable to find quantitative data for the extent of impacts to wetlands from non-FERC regulated projects, but we assume that some level of impacts would occur.”).

⁴⁵ 40 C.F.R. § 1502.22(a) – (b).

⁴⁶ *See* 40 C.F.R. § 1502.22. CEQ’s regulations specifically require:

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, “reasonably foreseeable” includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

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characterized by limited data, expectations (as opposed to specific findings), and unsubstantiated conclusions.

For example, with regard to groundwater, the DEIS states, “it is apparent that the MVP and EEP route would cross near numerous wells, springs, and swallets, some of which would be located within 0.1 mile of the projects.”⁴⁷ However, Staff does not have information for other projects: “[w]e were unable to quantitatively determine the number of these features on a HUC10 watershed basis.”⁴⁸ It does not state whether this information is unknowable or only unknown to Staff. It generalizes about the potential impacts:

Given the relatively shallow ... nature of the pipeline trenching and the often deep depths at which water wells are drilled to reach aquifers, in general it is unlikely that pipeline activities would negatively affect groundwater supplies from wells, although springs may be more subject to disruption. Potential impacts on groundwater in karst areas may be more likely given the extensive interaction between surface and near surface flow and deeper aquifers.

It does not explain what it means by “disruption” to springs, or what the potential impacts on groundwater in karst areas would be. There is no clear description of the cause-and-effect relationship between the proposed projects and impacts on groundwater, or description of the intensity⁴⁹ of the potential impacts.

The DEIS states, “[i]n consideration of available information for the projects, and the protective measures proposed by MVP, we have not identified any cumulative impacts on karst terrain that would result from construction and operation of the projects.” However, the previous statement that, “[w]e do not have data about impacts on karst features and related groundwater resources for all of the other projects” renders this statement meaningless.⁵⁰

⁴⁷ DEIS, p. 4-500.

⁴⁸ *Id.* at 4-500. It elaborates:

We do not have data about impacts on karst features and related groundwater resources for all of the other projects within the HUC10 watersheds crossed by the MVP and the EEP. However, a review of information available regarding karst features crossed by other FERC-jurisdictional projects shows whether or not there are karst impacts associated with any of those other projects.... [W]hile the ACP Project and Supply Header do cross karst terrain, it is unclear whether any of it occurs within the HUC10 watersheds shared by the MVP or the EEP.... Other projects that may also cross karst terrain include transportation or other energy projects.

Id. at 4-501.

⁴⁹ “Factors that have been used to define the intensity of effects include magnitude, geographic extent, duration, and frequency of the effects.” CEQ, “Considering Cumulative Effects Under the National Environmental Policy Act” (Jan. 1997), p. 44.

⁵⁰ DEIS, pp. 4-500 – 4-501.

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Based on this cursory analysis of incomplete data, the DEIS concludes “[g]iven the nature of shallow pipeline trenching relative to deeper aquifers, Mountain Valley’s Karst Mitigation Plan, as well as the protective permitting requirements of other agencies for other projects such as oil and gas well development, we conclude that the combined cumulative effects upon groundwater would be less than significant.”⁵¹ As stated above, it provides no specific basis for its implicit assumption that the proposed mitigation measures, specifically the Karst Mitigation Plan, will render potential impacts insignificant.

The analysis of cumulative impacts to surface waters is similarly deficient. That analysis is premised on the assumption that “the MVP and the EEP would contribute little to the long-term cumulative impacts on waterbodies because the majority of the potential impacts are temporary and short-term.”⁵² It surmises that it is “likely” that other projects would be required to install and comply with best management practices (BMPs) similar to those proposed by FERC, so the “cumulative effect on the surface waterbody resources would be temporary and minor.”⁵³

The DEIS only lists the number of waterbodies that jurisdictional projects would cross. It does not describe the baseline condition of specific waters that may be cumulatively affected.⁵⁴ The DEIS does not describe how conditions on any of the 361 perennially flowing water bodies that would be crossed by the MVP Project have changed over time and how they are likely to change in the future without the proposed actions. In other words, there is no trend analysis.⁵⁵ The DEIS does not identify any thresholds beyond which change in these surface waters would be detrimental.

The DEIS only considers the cumulative impacts of the proposed projects; it does not provide analysis of the cumulative impacts of alternatives. As a result, decision makers and the public have no basis for comparing the cumulative impacts of the proposed and alternative actions.

⁵¹ *Id.* at 4-501.

⁵² *Id.* at 4-502.

⁵³ *Id.*

⁵⁴ *See* “Considering Cumulative Effects under NEPA,” p. 41. “The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.... The analyst must determine the realistic potential for the resource to sustain itself in the future and whether the proposed action will affect this potential; therefore, the baseline conditions of the resource of concern should include a description of how conditions have changed over time and how they are likely to change in the future without the proposed action.” *Id.*

⁵⁵ “Considering Cumulative Effects under NEPA,” App. A, pp. A-24 – A-27. “Trends analysis *provides the historical context that is critical to assessing the cumulative effects of proposed actions.*” *Id.* at A-24.

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cont'd In sum, the DEIS does not show that the Commission or the Cooperating Agencies took a hard look at the cumulative impacts of the MVP Project or alternatives.

LA15-7 E. **The DEIS Does Not Provide an Adequate Basis for Verifying Compliance with Nationwide Permit-12 or the Clean Water Act section 404(b)(1) Guidelines.**

The Army Corps is a Cooperating Agency for purposes of preparing the EIS.

According to the DEIS, “[t]he COE is still reviewing Mountain Valley’s plan and will continue to work with Mountain Valley to determine the appropriate type and amount of mitigation needed for the MVP’s wetland impacts in West Virginia and Virginia.”⁵⁶ It states that the Army Corps will not consider Mountain Valley’s application for permit under Clean Water Act (CWA) section 404 complete until FERC issues the Final EIS.⁵⁷ This sequence undermines the public’s opportunity for public review of the proposed action. As described below, how the Corps will permit the project, whether it uses individual permits or Nationwide Permit (NWP)-12 and its proposed conditions for any permit, is relevant to the potential environmental impacts of the proposed project and consideration of alternatives.

The Army Corps has not disclosed whether it intends to issue individual permits for specific waterbody and wetland crossings, authorize the MVP Project under NWP-12, or ensure compliance with CWA section 404 using a combination of individual and general permits. As a result, it is not clear whether the Army Corps has satisfied NEPA requirements for purposes of its decision under Section 404.

As described in Section II, the County is concerned that at least two of the proposed wetland crossings at location 37.128527, -80.132335 and 37.128486, -80.130777 are not eligible for coverage under NWP-12 because they are less than 500 feet apart and collectively would exceed the ½-acre threshold.⁵⁸ That circumstance should trigger the need for Mountain Valley to apply for an individual permit. Neither the Army Corps nor the Commission have responded to this concern, despite the County raising it over eight months ago.

The Army Corps’ decision to authorize the project using NWP-12 rather than individual permits may have significant environmental consequences.⁵⁹ Projects that are covered by a

⁵⁶ DEIS, p. 4-129.

⁵⁷ *Id.*

⁵⁸ See Roanoke County, “Comment and Objection,” eLibrary no. 20160411-5323 (April 11, 2016), p. 1.

⁵⁹ Individual Permits are subject to greater scrutiny by the Army Corps. The Army Corps will grant an individual permit only if the proposal is found to be in the public interest and to comply with the CWA section 404(b)(1) guidelines. Under those guidelines, the Army Corps is required to permit the least environmentally damaging practicable alternative. 40 C.F.R. §230.10(a).

LA15-7 See the response to comment LA14-4.

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NWP are not necessarily required to undergo the more comprehensive, site-specific environmental and public interest reviews that are required for individual permits.⁶⁰ The County remains concerned that authorizing the MVP Project under NWP-12 will result in inadequate consideration of the direct impacts of each waterbody and wetland crossing, and of the cumulative impacts of scores of crossings within the region.⁶¹

An NWP is a general permit designed to cover a class of projects that are expected to have “minimal adverse effects on the aquatic environment that would likely generate little, if any, public comment if they were evaluated through the standard permit process with a full public notice.”⁶² The Army Corps’ environmental analysis of the potential impacts of any NWP is predictive in nature because at the time the NWP issues, the Army Corps does not know or consider individual projects that may be authorized under the permit.

When it issued NWP-12 in 2012, the Army Corps affirmed that the permit would comply with the CWA section 404(b)(1) Guidelines,⁶³ which provide that dredged or fill material should not be discharged if it will result in an unacceptable impact on the aquatic ecosystem:

Based on the information in this document, the Corps has determined that the discharges authorized by this NWP comply with the 404(b)(1) Guidelines, with the inclusion of appropriate and practicable conditions, including mitigation, necessary to minimize adverse effects⁶⁴ on affected aquatic ecosystems. The activities authorized by this NWP

⁶⁰ 33 C.F.R. §§320.1(c), 320.4.

⁶¹ See Motion to Intervene, pp. 10-11.

⁶² Army Corps, “Reissuance of Nationwide Permits,” 77 Fed. Reg. 10184, 10185 (Feb. 21, 2012). See also Army Corps, “Decision Document Nationwide Permit 12,” p. 3 (“NWPs are a type of general permit designed to authorize certain activities that have minimal individual and cumulative adverse effects on the aquatic environment and generally comply with the related laws cited in 33 CFR 320.3.”)

⁶³ Under the guidelines, no discharge of dredged or fill material shall be permitted for a project if: (1) it causes or contributes to violations of applicable state water quality standards; (2) there are practicable alternatives (40 C.F.R. 230.10(a)) to the proposed discharge; (3) the discharge causes or contributes to significant degradation of the environment; and (4) all appropriate steps have been taken to minimize the potential adverse impacts. 40 C.F.R. § 230.10. The guidelines also require a cumulative impacts analysis (40 C.F.R. § 230.10(g)) and a determination of secondary effects on the aquatic ecosystem. 40 C.F.R. §§ 230.10(g)-(h). In addition, mitigation regulations require that actions be taken to minimize adverse impacts. 33 C.F.R. § 320.4(r); 40 C.F.R. §§ 230.70-230.77, 230.93.

⁶⁴ Under the guidelines, effects contributing to significant degradation considered individually or collectively, include:

- (1) Significantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites;
- (2) Significantly adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical, and chemical processes;

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will result in minimal individual and cumulative adverse effects on the aquatic environment.⁶⁵

Again, that finding was predictive in nature. The Army Corps is now required to verify that the impacts of the MVP Project would be minimal prior to authorizing it under NWP-12.⁶⁶ The Army Corps' decision document for NWP-12 provides: "[e]ach separate and distant crossing should be evaluated to determine if it meets the terms and conditions of the NWP, and cumulative effects of the overall utility line should be evaluated to determine if the adverse cumulative effects on the aquatic environment are more than minimal and therefore do not qualify for NWP authorization."⁶⁷

The Army Corps must condition the NWP-12 authorization or issue an individual permit if the District Engineer (DE) finds that the proposed project would have more than "minimal" environmental effects:

If the DE finds that the proposed activity would have more than minimal individual or cumulative net adverse effects on the environment or otherwise may be contrary to the public interest, he shall modify the NWP authorization to reduce or eliminate those adverse effects, or he shall instruct the prospective permittee to apply for a regional general permit or an individual permit.⁶⁸

Based on the County's review, the DEIS does not provide adequate information for the Army Corps to verify that the multiple waterbody crossings proposed by the MVP Project will have only minimal impacts on the aquatic environment, as required by the 404(b)(1) Guidelines. The DEIS refers to Mountain Valley's list of the proposed crossings, and generally concludes that compliance with FERC's Wetland and Waterbody Construction and Mitigation Procedures (Procedures) and Mountain Valley's proposed mitigation measures will minimize the impacts of

(3) Significantly adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

(4) Significantly adverse effects of discharge of pollutants on recreational, aesthetic, and economic values.

40 C.F.R. § 230.10(c).

⁶⁵ Army Corps, "Decision Document Nationwide Permit 12," p. 46.

⁶⁶ See *Maryland Native Plant Soc'y v. U.S. Army Corps of Engineers*, 332 F. Supp. 2d 845, 862 (2004) ("[t]he important inquiry insofar as a general permit is concerned is whether the environmental impact of the project which is verified is minimal.").

⁶⁷ Army Corps, "Decision Document Nationwide Permit 12," p. 7.

⁶⁸ 33 C.F.R. § 330.1(d).

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each crossing.⁶⁹ Contrary to the Forest Service’s repeated requests for credible evidence to support statements regarding the effectiveness of proposed mitigation, the DEIS does not cite to any evidence in support of this finding.

In its comments on Mountain Valley’s final resource reports, the Forest Service stated that the potential impacts to the aquatic environment could not be determined based on information in Resource Report 2:

There is a general discussion on Impacts to Waterbodies from Crossings and Mitigation Measures in this section; however there has been no site specific analysis of potential impacts to waterbodies or aquatic biota. There has not been a sediment analysis done on the pipeline, access roads, or staging areas, therefore there is not quantitative data with which to do an effects analysis or alternative comparison. A sediment analysis should be completed to determine the potential amount of sediment delivered to the stream systems and subsequent effect on fisheries, and downstream mussels.⁷⁰

Mountain Valley subsequently provided *Hydrologic Analysis of Sedimentation*.⁷¹ However, the geographic scope of that analysis was limited to the Jefferson National Forest and contained “multiple fundamental problems” as identified by the Forest Service.⁷² The Forest Service found that Mountain Valley’s effects analysis was not scientifically valid because it was based on the incorrect premise that the actions proposed would only “temporarily” increase sediment yields.⁷³ The Forest Service also challenged the geographic scope of the analysis as too limited, as well as the modeling methods used by Mountain Valley.⁷⁴ The Army Corps has not explained how it proposes to verify the MVP Project’s compliance with NWP-12 and the 404(b)(1) guidelines without scientifically valid hydrologic analysis of sedimentation analysis.

The County requests that the Army Corps provide its preliminary determination as to whether the MVP Project complies with the terms and conditions of NWP-12, and basis therefor, for public review in advance of the FEIS. If the Army Corps determines that the MVP Project in

⁶⁹ DEIS, p. 5-4.

⁷⁰ Forest Service Comments, Att.1, p. 6.

⁷¹ eLibrary no. 20160725-5227 (July 25, 2016).

⁷² Forest Service, “Comments on the Hydrologic Analysis of Sedimentation,” eLibrary no. 20160816-5247 (Aug. 16, 2016) (Forest Service Comments re Sedimentation), Att. 1, p. 1.

⁷³ *Id.* at Att. 1, p. 2. In its comments on Resource Report 3, the Forest Service stated: “[t]he statement that “Sediment-related impacts are generally temporary, lasting only during the period of active-in-stream construction” does not take into account potential sediment impacts from upslope grubbing, trenching, grading during construction of pipeline corridor and access roads. Impacts from these activities need to be quantitatively evaluated via sediment analysis and effects on water bodies and aquatic biota disclosed.” Forest Service Comments, Att. 1, p. 9.

⁷⁴ Forest Service Comments re Sedimentation, Att.1, pp. 2-3, Att.2.

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cont'd whole or part does not comply with NWP-12, the County requests that the Army Corps direct Mountain Valley to apply for individual permits, or disclose the conditions the DE believes will bring the project into compliance with NWP-12. The verification is relevant to the public's and decisionmakers' evaluation of the environmental consequences of constructing the project and should be disclosed before the EIS is finalized and the deadline for the Army Corps to issue a final permitting decision is triggered.

LA15-8 **F. The DEIS Does Not Satisfy the Forest Service's Obligation to Comply with NEPA Prior to Amending the Land Resource and Management Plan.**

The DEIS describes several proposed amendments to the Land Resource and Management Plan (LRMP) for the Jefferson National Forest.⁷⁵ These include one plan-level amendment, and four project specific amendments. The plan-level amendment calls for converting 186 acres to Rx 5C-Designated Utility Corridor.⁷⁶ According to the DEIS, "Rx 5C-Designated Utility Corridors contain special uses which serve a public benefit by providing a reliable supply of electricity, natural gas, or water essential to local, regional, and national economies."⁷⁷ The project specific amendments allow for exceedances of restrictions on soil conditions and riparian corridor conditions, removal of old growth trees, and crossings of the Appalachian National Scenic Trail (ANST) and Peters Mountain.⁷⁸

The DEIS does not state explicitly whether the Forest Service intends to prepare any additional or supplemental environmental documents for purposes of these amendments. The Forest Service's webpage for the MVP Project indicates that it intends to rely on FERC's FEIS for the proposed amendments.⁷⁹ The County does not believe the Forest Service can rely exclusively on the DEIS to satisfy its NEPA obligations because the DEIS does not demonstrate that the Forest Service has taken a hard look at the potential impacts of the proposed amendments. More specifically, the DEIS does not (1) address the need for the proposed amendment, other than to say that the MVP Project will not comply with the LRMP,⁸⁰ (2)

⁷⁵ DEIS, pp. 4-259 – 4-264.

⁷⁶ *Id.* at 4-261 – 4-262. "The new Rx 5C land allocation would be 500 feet wide (250 feet wide on each side of the pipeline), with two exceptions: 1) the area where the pipeline crosses Rx 4A-Appalachian National scenic Trail Corridor would remain in Rx4A; and 2) the new 5C area would not cross into Peters Mountain Wilderness so the Rx 5C area would be less than 500 feet wide along the boundary of the Wilderness." *Id.*

⁷⁷ *Id.* at 4-261.

⁷⁸ DEIS, pp. 4-263 – 4-264.

⁷⁹ See <http://www.fs.usda.gov/detail/gw/landmanagement/projects/?cid=stelprd3827827> (describing the Forest Service's role under "Step 13" as reviewing the "Final EIS to ensure public and agencies [sic] concerns are addressed adequately for Forest Service to make a decision on amending the Forest Plan ... and issuing a special use permit to construct and operate a natural gas pipeline on National Forest System lands.") (last checked Dec. 22, 2016).

⁸⁰ *Id.*

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The final EIS has been revised. See Section 4.8.2.6 for further discussion.

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identify or evaluate *any* alternatives to the proposed plan or project-specific amendments,⁸¹ or (3) evaluate the effects of establishing a utility corridor through the Jefferson National Forest. This does not comply with the Forest Service's independent obligation to comply with NEPA prior to amending the LRMP.⁸²

Further, the DEIS does not address the deficiencies in the factual record identified by the Forest Service in its several comment letters.⁸³ The Forest Service has stated that additional information "is necessary for adequate review and decision."⁸⁴ The Forest Service has an independent obligation to assure the record is complete for purposes of its NEPA review and ultimate permitting decisions.

The County requests that the Forest Service establish procedures for satisfying its independent obligations under NEPA. Those procedures should include a schedule that describes how the Forest Service will comply with NEPA before the Commission finalizes the FEIS and the Forest Service is expected to issue its final permitting decisions within 90 days.⁸⁵

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G. The Public Comment Sessions Did Not Promote Public Involvement in the NEPA Process.

In the DEIS, OEP Staff stated that "public comment sessions" would be held at certain locations along the route.⁸⁶ The Notice of Availability of the DEIS, provided further detail about the process OEP Staff proposed for receiving public comments: individuals who wished to make a public statement would be given a number by an OEP Staffer and, in the order of the numbers, would be called back to provide their comments "on a one-on-one basis with a stenographer (with FERC staff or representative present)."⁸⁷

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See the response to comment LA2-1 regarding the draft EIS comment sessions.

⁸¹ 36 C.F.R. § 220.5(e).

⁸² 40 C.F.R. § 1502.3; *see also* 36 U.S.C. § 220.4. The proposed amendments fit the classes of action normally requiring an EIS including "[p]roposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area." 36 C.F.R. § 220.5. The Forest Service is responsible for the NEPA analysis for the LRMP amendments because the amendments are controlled by the Forest Service. Forest Service Handbook (FSH) 1909.15 – National Environmental Policy Act Handbook Chapter – Zero Code, p. 4.

⁸³ *See, e.g.*, Forest Service Comments, Forest Service Sedimentation Comments; letter from Joby P. Timm to Secretary Bose, eLibrary no. 20161025-5044 (Oct. 24, 2016).

⁸⁴ Forest Service Comments, p. 9.

⁸⁵ 18 C.F.R. § 157.22.

⁸⁶ DEIS, p. 1-23.

⁸⁷ FERC, "Notice of Availability of DEIS," eLibrary no. 20160916-3014 (Sept. 16, 2016).

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Under CEQ regulations, the Commission is required to “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.”⁸⁸ It is also required to “[h]old or sponsor public hearings or public meetings whenever appropriate,” including when there is “[s]ubstantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.”⁸⁹ Such procedures are intended to inform the public and obtain their input on the proposed action to permit informed decisionmaking.

There is a certain expectation among citizens that public comment sessions or public hearings with a local or governmental authority will be held in a public venue to promote discourse and provide an opportunity for feedback.⁹⁰ However, the isolated nature of the public comment sessions organized by OEP Staff discouraged public dialogue and limited understanding of the MVP Project as a whole. These sessions, with only one representative from OEP Staff present, appeared designed to limit public engagement and involvement, and discourage true and open discussion, which is inconsistent with the intent of the CEQ regulation for public involvement.

II.

SPECIFIC RESOURCE COMMENTS

A. Geologic Resources

LA15-10

The DEIS states that the MVP Project could encounter and/or contribute to a number of geologic hazards, including but not limited to: seismicity (e.g., earthquakes), surface faults, soil liquefaction, landslides, flash flooding, karst terrain, and subsidence.⁹¹

The DEIS also states that “construction and operation of the MVP could result in unstable slopes including cut slope failures and fill slope failures.”⁹² It adds, “[c]onstruction of the MVP could alter the surface and near surface drainage along the pipeline trench, which could increase pre-existing landslide hazard potential on natural slopes.”⁹³ It acknowledges that, “[s]everal steep slopes along Mountain Valley’s proposed pipeline route have experienced landslide

⁸⁸ 40 C.F.R. § 1506.6(a).

⁸⁹ 40 C.F.R. § 1506.6(c).

⁹⁰ See Scoping Meeting Transcript, pp. 117-118 (“While FERC has utilized the term public input sessions, the process being utilized is, by its very nature, not public, is [sic] we are sitting in a room with three people and closed doors. Public involvement on projects governed by the NEPA process and the FERC approval process should be just that – public.”).

⁹¹ DEIS, p. 4-21.

⁹² *Id.*, p. 4-29.

⁹³ *Id.*

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Steep slopes and landslides are discussed in section 4.1 of the EIS. Soils are discussed in section 4.2. See the response to comment CO49-63 regarding the Spring Hollow Reservoir. See section 4.3.1 of the EIS for a discussion of pre and post-construction testing of drinking water supplies. See the response to comment IND62-1 regarding Dr. Kastning’s report. See the response to comment LA14-6 regarding the Rubin report.

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activity in the past.”⁹⁴ It nevertheless suggests that landslides and other impacts related to construction in karst can be effectively mitigated through Mountain Valley’s implementation of a revised Landslide Mitigation Plan and other measures.⁹⁵

Although not directly cited, the discussion in the DEIS appears based on the information Mountain Valley provided in Resource Report 6. According to Resource Report 6, the terrain along the MVP route is marked by long, steep slopes, strong erosion due to multiple stream dissections, potentials for landslides, and, specifically in the Valley, Ridge, and Blue Ridge provinces where the County is located, areas of karst terrain.⁹⁶ The report states that 49% of the project area in the County is at moderate susceptibility for landslides while 51% has a history of high landslide incidence caused primarily by a combination of steep slopes and highly erodible soils.⁹⁷

The County entered data from the U.S. Department of Agriculture’s Soil Survey Geographic database into the County’s geographic information system to determine the percent rise and soil erosion hazard of the slopes proposed to be crossed. Of the approximate eight-mile length of the pipeline proposed in the County, 21% of the project area is along slopes with rises between 26% and 40%, and 25% of the project area is along slopes with rises over 40%. The GIS also calculated that 93% of the proposed project area is at a Moderate to Severe risk for soil erosion. Indeed, 84% of the project area has been categorized by the U.S. Department of Agriculture as being at Severe risk for soil erosion.⁹⁸ The DEIS does not specifically address this information.

The County highlighted the potential impacts to Poor Mountain, located between MP 236 and 238, which has some of the most severe slopes in the County. The County also expressed concern regarding the potential need for blasting along these slopes, where bedrock is located within the proposed pipeline trench depth from MP 236.2 to 237, and MP 238.4 to 239. “Using controlled explosives to clear the bedrock has the potential to increase the susceptibility for landslides, specifically between mileposts 236 and 238 where the mountain slopes have a greater than 40% rise and the land is at Severe risk for soil erosion.”⁹⁹ Blasting in this area could contribute to erosion and sedimentation problems at Spring Hollow Reservoir, one of the

⁹⁴ *Id.* at 4-46.

⁹⁵ *Id.* at 4-47.

⁹⁶ Resource Report 6, p. 6-2.

⁹⁷ *Id.*

⁹⁸ *See* Comment and Objection, Att. 3-4.

⁹⁹ *Id.*, p. 4.

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County's primary water supply sources.¹⁰⁰ Also discussed below are the potential impacts to springs and private wells. The DEIS does not specifically explain how Mountain Valley's proposed mitigation measures would address these concerns.

The Forest Service expressed similar concerns regarding the impacts of blasting along steep slopes on aquatic resources: "[b]lasting could affect stream hydrology permanently by fracturing aquifers or damaging perched water tables. It could also directly and indirectly affect fish and macroinvertebrates. Please provide a full discussion of blasting effects supported by independent scientific research."¹⁰¹ It made repeated requests for an engineering geologic assessment of slope modifications.¹⁰² The DEIS does not include this information.

The Forest Service expressed similar concerns subsequent to the publication of the DEIS, requesting that Mountain Valley prepare site-specific design of stabilization measures in selected high-hazard portions of the route within the Jefferson National Forest.¹⁰³ According to the Forest Service:

The route for the [MVP Project] ... would cross some very challenging terrain in the central Appalachians. Potentially difficult situations include steep slopes, presence of headwater streams, geologic formations with high slippage potential, highly erodible soils, and the presence of high-value natural resources downslope of high hazard areas. These hazards are exacerbated by high annual rates of precipitation and the potential for extreme precipitation events.

Similar hazards on other smaller pipeline projects in the central Appalachians have led to slope failures, erosion and sedimentation incidents, and damage to aquatic resources. Therefore, the Forest Service (FS) is concerned that crossing such challenging terrain with a much larger pipeline could present a high risk of failures that lead to resource damage. ... [¶] [T]he FS has identified the need for more detailed information to

¹⁰⁰ We note that in its comments on the Atlantic Sunrise DEIS, the Environmental Protection Agency (EPA) recommended avoidance of blasting near bedrock wells and in karst terrain:

It is noted that blasting along the proposed route may potentially impact yields and/or increase turbidity. Groundwater flow impacts should also be considered. EPA recommends that alternatives to blasting be fully explored. We also recommend that blasting within close proximity to bedrock wells and in karst terrain be avoided and/or should not be conducted.

Letter from Jeffery D. Lapp (EPA) to Nathaniel J. Davis (FERC) re Atlantic Sunrise Project DEIS (CP15-138), eLibrary no. 20160706-0052 (June 27, 2016) (EPA Atlantic Sunrise Comments), Enclosure 2, p. 7.

¹⁰¹ Forest Service Comments, Att. 1, p. 6.

¹⁰² *Id.*, Att. 1, p. 20.

¹⁰³ Letter from Joby P. Timm to Secretary Bose, eLibrary no. 20161025-5044 (Oct. 24, 2016).

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document the effectiveness of [Mountain Valley's] proposed techniques and measures [for slope stabilization and erosion/sedimentation control].¹⁰⁴

The DEIS does not adequately respond to the expert report submitted by Dr. Kastning, which characterized the numerous geologic hazards along the proposed route.¹⁰⁵ He found that Mountain Valley had erred by only considering these hazards individually. For example, he stated, "continuing seismic activity in the [Giles County Seismic Zone] (a high frequency of magnitude 2.5 or larger earthquakes), produces a major risk when compounded with the already co-existing problems of karst, slope, and soil hazards at sensitive locations along the proposed pipeline route. This poses severe engineering challenges in constructing the pipeline, and calls into question whether the pipeline should be built"¹⁰⁶

The County, in cooperation with Giles County, has obtained an expert report from Paul A. Rubin which further describes the potential adverse risks of constructing and operating the proposed pipeline through sensitive karst terrains characterized by numerous inter-connected sinkholes, caves, and conduits.¹⁰⁷ According to Mr. Rubin, constructing in karst terrain, and specifically trenching in and around sinkholes, increases the potential of subsidence and pipeline rupture.¹⁰⁸ Active, shallow groundwater flow in this terrain can also accelerate pipeline corrosion, which can also lead to pipeline rupture.¹⁰⁹

Gas leaks, sudden or gradual, as a result of pipeline failure can have grave consequences for human life, as well as sensitive cave fauna.¹¹⁰ It can also lead to groundwater contamination,¹¹¹ and changes to groundwater hydrology.¹¹²

According to Mr. Rubin, studies needed to fully understand these impacts have not been conducted to date.¹¹³ He also describes how Mountain Valley has given inadequate

¹⁰⁴ *Id.* at Att. 1, p. 1.

¹⁰⁵ *See* Dr. Ernst H. Kastning, "An Expert Report on Geologic Hazards in the Karst Regions of Virginia and West Virginia," eLibrary no. 20160713-5029 ("Kastning Report").

¹⁰⁶ Kastning Report, p. 46.

¹⁰⁷ *See* Expert Report by Paul A. Rubin (Attachment 1). Mr. Rubin is a hydrologist, hydrogeologist, and cartographer with thirty-five years of experience. He is also a caver, and has explored a number of caves in Giles County. *See id.* at 2.

¹⁰⁸ *See id.* at 5-7.

¹⁰⁹ *See id.* at 7-9.

¹¹⁰ *See id.* at 5-6, 8-9.

¹¹¹ *See id.* at 9.

¹¹² *See id.* at 10.

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consideration even to those geologic hazards that it has identified in its selection of the proposed route.¹¹⁴

Mr. Rubin further finds that Mountain Valley’s Karst Mitigation Plan, issued after Dr. Kastning’s report, is fatally flawed due to this lack of study.¹¹⁵ He notes that “[m]itigation/stabilization plans that largely focus on individual karst features [as proposed by Mountain Valley] fail to factor in the broader karst settings present where sinkholes are only part of a well-interconnected cave and conduit network that often spans over many miles.”¹¹⁶ He recommends further analyses for fully assessing the potential impacts of construction in karstified terrain along the proposed route and effectiveness of any proposed mitigation measures.¹¹⁷ In the absence of such study, he concludes that pipeline construction along the proposed route is not safe or environmentally sound.¹¹⁸

Roanoke County requests that OEP Staff update section 4.1 of the DEIS to describe the potential impacts related to constructing in well-karstified terrain as described by Dr. Kastning, the Forest Service, Mr. Rubin, and others, and provide substantial evidence in support of any findings that these impacts can be effectively avoided or mitigated. This should include the analyses recommended by Forest Service for karst terrain along the entire pipeline route, as well as the further analyses identified in Mr. Rubin’s report.

B. Waterbody and Wetlands Crossings

LA15-11

1. Erosion and Sedimentation

The DEIS states that erosion and sedimentation are among the impacts that could result from construction activities in stream channels and on adjacent banks: “[c]learing and grading of stream banks, in-stream trenching, trench dewatering, and backfilling could each cause temporary, local modifications of aquatic habitat involving sedimentation, increased turbidity, and decreased dissolved oxygen concentrations....”¹¹⁹

¹¹³ See e.g., *id.* at 7 (“The few sinkholes depicted on Draper Aden Associates sheet 19 of 37 ... do not provide a true picture of the subsurface karst flow system present”), 7 (“Because MVP has yet to obtain geochemical and hydrogeologic data, FERC does not have the information needed to address potential means of assessing and potentially reducing the risk of external corrosion [to the pipeline].”), 11-15.

¹¹⁴ See *id.* at 13-14.

¹¹⁵ See *id.* at 15-16.

¹¹⁶ *Id.* at 16.

¹¹⁷ *Id.* at 15.

¹¹⁸ *Id.* at 16.

¹¹⁹ DEIS, p. 4-108.

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See the response to comment IND70-1 regarding erosion. Section 4.3 of the final EIS has been revised to address Roanoke County’s Hydrogeological Assessment. In accordance with the FERC Plan, as discussed in section 4.2 of the EIS, Mountain Valley would conduct topsoil and subsoil compaction tests in agricultural and residential areas using a penetrometer or other appropriate device at regular intervals. The results of the compaction tests would be compared and matched to undisturbed soil under similar moisture conditions to ensure any affected soils are properly decompacted. If compaction is found to have occurred, the area would be tilled and retested. Section 4.3 has been revised to address deforestation and water quality.

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The DEIS continues:

The clearing and grading of stream banks could expose soil to erosional forces and would reduce riparian vegetation along the cleared section of the waterbody. The use of heavy equipment for construction could cause compaction of near-surface soils, an effect that could result in increased runoff into surface waters in the immediate vicinity of the proposed construction right-of-way. Increased surface runoff could transport sediment into surface waters, resulting in increased turbidity levels and increased sedimentation rates in the receiving waterbody. Disturbances to stream channels and stream banks could also increase the likelihood of scour after construction.¹²⁰

Nonetheless, the DEIS does not anticipate any “long-term or significant impacts on surface waters” as a result of construction or maintenance of the MVP Project. This expectation is based largely on Mountain Valley’s adherence to implementation of its proposed erosion and sedimentation controls, adherence to proposed crossing guidelines, and plans “to restore the streambanks and streambed contours as practical to pre-construction conditions.”¹²¹

In its motion to intervene, the County stated its concern regarding Mountain Valley’s vagueness as to how it would prevent erosion and sedimentation on waterways and wetlands the pipeline would cross. The County stated that it is required to prevent unauthorized stormwater discharges under its MS4 Permit, and does not want Mountain Valley’s activities to cause non-attainment of standards established under that permit, or to cause the County’s burden in achieving those standards to be increased.

The County continues to be concerned that Mountain Valley’s proposed erosion and sedimentation control measures are not adequate to minimize or avoid the potential impacts to surface waters. As stated by the Forest Service, broad assertions that impacts will be minimized or avoided by implementation of the construction practices outlined in the FERC Plan and Procedures are inadequate. Those statements “[n]eed supporting independent research citation ... Simply stating that mitigations are effective is not sufficient.”¹²² As described above, Mountain Valley has not undertaken hydrologic analysis of sedimentation for the majority of the pipeline route, even though the Forest Service has stated such analysis is necessary to identify and evaluate the impact to waterbodies or aquatic biota.¹²³ The analysis it has undertaken for the Jefferson National Forest is not valid according to the Forest Service. The Virginia Department of Environmental Quality (DEQ) has similarly stated that Mountain Valley’s Erosion and

¹²⁰ *Id.*

¹²¹ *Id.* at 4-116.

¹²² Forest Service Comments, Att. 1, p. 5; *see also id.* at 6.

¹²³ *Id.*, Att. 1, p. 6.

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Sediment Control Plan “absolutely lack[s] the specificity that DEQ is requiring for these plans.”¹²⁴

To our knowledge, Mountain Valley has not conducted a calculation of the potential impact of construction on both the North and South Forks of the Roanoke River upstream of the intake for Spring Hollow Reservoir that considers: (1) total acreage, (2) acreage for various ground covers (forested pasture, transmission right-of-way (ROW), roads, buildings) in order to properly weight the calculations for stormwater discharge, and (3) application of stormwater discharge from all the subwatersheds to scour calculations and stream bank erosion calculations. The County believes that such a calculation, or comparable analysis, is needed for an accurate assessment of impact and development of appropriate mitigation measures.

Roanoke County is submitting an expert report entitled, “Hydrogeological Assessment of Watershed Impacts Caused by Constructing the Mountain Valley Gas Pipeline Through Roanoke County, Virginia” (Hydrogeological Assessment), as evidence of the impacts that the MVP Project potentially will have on the County’s water resources, soils, and groundwater.¹²⁵ According to the Hydrogeological Assessment, construction of the MVP Project will likely

- (1) adversely impact headwater aquatic habitats which serve as the base of the food chain for the entire river continuum ecosystem;
- (2) adversely impact springs and wetlands by soil removal;
- (3) require deforestation and blasting, both of which will reduce groundwater recharge and cause significant changes to the amount of groundwater available as a drinking water source, as well as to groundwater flow routes;
- (4) degrade karst environments;
- (5) cause increased stormwater discharge and also degrade stream functions at the numerous locations where stream crossings are proposed;
- (6) create the potential for landslides;
- (7) create the potential for pipeline collapse in areas known to have experienced earthquakes; and
- (8) result in cumulative damage.¹²⁶

Based on Roanoke County’s review, the DEIS does not thoroughly evaluate these impacts or identify measures that would mitigate them. For example, the report describes the

¹²⁴ Casey Fabris, “Franklin County votes against Mountain Valley Pipeline easement,” THE ROANOKE TIMES (Oct. 18, 2016), available at http://www.roanoke.com/news/local/franklin_county/franklin-county-votes-against-mountain-valley-pipeline-easement/article_c728fd20-a955-507b-9850-d9663f51bddb.html (quoting James Golden, Director of Operations, DEQ) (last checked Dec. 22, 2016).

¹²⁵ See Hydrogeological Assessment of Watershed Impacts Caused by Constructing the Mountain Valley Gas Pipeline through Roanoke County, Virginia (Attachment 2) prepared by Pamela C. Dodds, Ph.D., Licensed Professional Geologist.

¹²⁶ *Id.* at 3-5.

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potential impacts of deforestation and soil compaction as a result of pipeline construction on water quantity:

Forested ridges intercept rainfall so that it gently penetrates the ground as groundwater rather than flowing overland as runoff. This means that 1) the rain will gently fall to the ground and recharge groundwater and 2) the surface flow of rainwater on the ground will be slower than in cleared areas, thereby reducing the velocity and quantity of stormwater drainage. Conversely, deforestation removes the protective tree canopy, causing increased stormwater discharge and decreased groundwater recharge. The proposed MVP gas pipeline construction would result in deforestation and soil compaction, causing increased stormwater discharge and decreased groundwater recharge. Leveling of the work corridor and access roads, along with trenching for pipe installation, will intercept groundwater, thereby reducing or eliminating the flow of water to rock fractures which serve as a conduit to provide water to seeps, springs, and wetlands, as well as to streams during times of drought.¹²⁷

While the DEIS briefly discusses temporary impacts to recharge functions during construction,¹²⁸ it does not address long-term impacts of deforestation and soil compaction resulting from construction, operation, and maintenance of the pipeline.

The County requests that OEP Staff and Cooperating Agencies require Mountain Valley to undertake the studies necessary to evaluate the potential impacts discussed in the Hydrogeological Assessment, and to determine whether there are any measures that would mitigate those impacts. This information is necessary for the Commission and Cooperating Agencies to complete their review of the proposed project, and should be provided in a revised DEIS for public review and comment. More specifically, Roanoke County requests that Sections 4.1 (Geology), 4.3 (Water Resources), 4.8 (Land Use...and Visual Resources), and 4.10 (Cultural Resources) of the DEIS be revised to address these possible consequences.

¹²⁷ *Id.* at 18.

¹²⁸ DEIS, p. 4-78.

2. Dry Open Cut of Roanoke River

LA15-12

MVP proposes to cross the Roanoke River using the “dry open-cut construction method.” According to the DEIS, “open-cut crossing of major waterbodies may impact larger populations of aquatic species, as well as interrupt potential recreational or boating activities”¹²⁹ It continues, “trenchless crossing methods, such as HDD crossings, are often used to minimize these impacts,” but “Mountain Valley has not proposed any HDD crossings”¹³⁰

The DEIS does not address the close proximity of the proposed crossing of the Roanoke River to Spring Hollow Reservoir’s water intake pump station (1.57 river miles).¹³¹ It also does not address the fact that this proposed crossing is located within a floodplain with increased concern of soil liquefaction and lateral spreading with softer sediments and a high groundwater table. The reservoir provides critical water supply and recreational uses for the County.¹³²

Roanoke County previously requested that OEP Staff reconsider the categorization of the Roanoke River crossing due to these factors.¹³³ It also requested a more detailed and comprehensive crossing plan.¹³⁴ The DEIS does not respond to either request: the categorization of the Roanoke River remains the same and no alternate crossing methods have been considered. Roanoke County once again urges OEP Staff to consider changing the categorization of this crossing from “Intermediate” to “Major,” and direct Mountain Valley to consider alternative crossing methods.

3. Wetland Crossings at 37.128527, -80.132335 and 37.128486, -80.130777

LA15-13

In comments filed on April 11, 2016, Roanoke County raised concerns regarding the MVP’s potential impacts to wetlands within the County. It has not received a response to those concerns to date from either OEP Staff or the Army Corps.

The County specifically objected to Mountain Valley’s claim that the proposed wetland crossings at 37.128527, -80.132335 and 37.128486, -80.130777 complied with the terms of NWP-12:

¹²⁹ *Id.* at 4-87.

¹³⁰ *Id.*

¹³¹ *See* Roanoke County’s Comment and Objection, p. 2.

¹³² *See id.* at pp. 2-3.

¹³³ *See id.*

¹³⁴ *Id.*

*Roanoke County’s DEIS Comments
Mountain Valley Pipeline Project (CP16-10-000)
Equitrans Expansion Project (CP16-13-000)*

LA15-12

The Spring Hollow Reservoir would be about 1.6 river miles upstream of the intake. As stated in section 4.6.2 of the EIS, based on a literature assessment of magnitude and timing of suspended sediment produced from open-cut dry crossing methods (Reid et. al., 2004), the duration of increased sedimentation would be mostly short-term (i.e., less than 1-4 days) and remain near the crossing location (i.e., an approximate downstream distance of a few hundred feet). As stated in section 2.4 of the EIS, in accordance with our Procedures, intermediate crossings are defined as waterbody crossings between 10 and 100 feet wide.

LA15-13

See the response to comment LA14-4 regarding the COE permitting process.

LA15-13
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[Mountain Valley] states that they will be in compliance with [NWP-12] issued by the [Army Corps] by limiting impacts of wetland crossings to “under 0.5 acres of cumulative impacts per single and complete project.” However, the 0.5 acre maximum cited in NWP-12 applies to crossings that can be considered separate because “they are sited at distant locations from other crossings.” The two impact points listed by [Mountain Valley] in its February 26, 2016 filing, which total over the 0.5 acre maximum, cannot be considered separate crossings with respect to the requirements of the NWP-12 due to the fact that they are less than 500 feet apart.¹³⁵

These wetlands are important to the County, and the DEIS does not describe how their value can be replaced by offsite mitigation.

As stated above, Roanoke County requests that the Army Corps provide its verification as to whether these and other water body and wetland crossings along the proposed MVP Project route comply with NWP-12 and 404(b)(1) Guidelines as soon as possible. The Army Corps’ current proposal to defer this disclosure until after publication of the FEIS will preclude meaningful opportunity for public review of the potential impacts to aquatic resources.

C. Groundwater

LA15-14

The DEIS finds that construction of the MVP Project may impact groundwater supplies:

In areas of shallow groundwater, construction activities may temporarily affect near-surface aquifers. Grading and clearing, trenching and blasting, trench dewatering, and hydrostatic test discharge activities could temporarily alter overland water flows and groundwater recharge, or could result in minor fluctuations in groundwater levels. Overland construction could potentially increase turbidity through erosion and sedimentation.¹³⁶

However, it finds that any disturbances to wells in near-surface aquifers “would typically quickly re-establish equilibrium, and turbidity levels would rapidly subside, such that impacts would be localized and temporary.”¹³⁷ It does not cite to any specific evidence to support this finding.¹³⁸

The DEIS acknowledges that MVP has not identified all private domestic water supply wells within 150 feet of the construction work areas.¹³⁹ To remedy this deficiency, the DEIS

¹³⁵ *Id.* at 1.

¹³⁶ DEIS, p. 4-73.

¹³⁷ *Id.*

¹³⁸ *See id.*

¹³⁹ *Id.* at 4-80.

LA15-14

See the response to comment IND401-5 regarding pending drinking water sources. See the response to comment LA14-9 regarding our dispute resolution hotline. See the response to comment CO14-1 regarding blasting.

LA15-14
cont'd

recommends that Mountain Valley “**file with the Secretary the location of all water wells, springs, swallets, and other drinking water sources within 150 feet (500 feet in karst terrain) of the pipeline and aboveground facilities.**”¹⁴⁰ OEP Staff does not explain why it did not require Mountain Valley to complete this task prior to publishing the DEIS. Such passivity does not comply with CEQ regulations, which require that environmental analyses be conducted “at the earliest possible time.”¹⁴¹ “NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.”¹⁴²

The DEIS describes Mountain Valley’s proposed measures for minimizing impacts to wells located within 150 feet of the MVP Project (500 feet in karst terrain), including two pre-construction water quality evaluations, and water yield testing during the second pre-construction evaluation.¹⁴³ It also describes Mountain Valley’s proposal to conduct post-construction evaluations if a water supply owner lodges a complaint. “If this investigation confirms that pipeline construction was the source of impact, Mountain Valley would provide the owner with a temporary water supply until a permanent supply is developed.”¹⁴⁴ The DEIS does not state whether the Commission would oversee investigations conducted by Mountain Valley in response to complaints. It simply states: “Mountain Valley would coordinate with the water supply owner to evaluate potential sources of impact.”¹⁴⁵

The County previously objected to the impacts of blasting along mountainous terrain to springs and private wells. These groundwater sources serve as the primary drinking water sources for many County residents, especially those who live in and around Poor Mountain and Bent Mountain.¹⁴⁶ It highlighted two primary risks associated with blasting bedrock in close

¹⁴⁰ *Id.* (bold in original).

¹⁴¹ 40 C.F.R. § 1501.2; *see also New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 707–08 (10th Cir. 2009).

¹⁴² *Kern v. BLM*, 284 F.3d 1062, 1072 (9th Cir.2002).

¹⁴³ DEIS, pp. 4-80 – 4-81.

¹⁴⁴ *Id.* at 4-81.

¹⁴⁵ *Id.*

¹⁴⁶ The MVP Project’s impacts to groundwater supplies is a major concern for Roanoke County residents. *See, e.g.*, Scoping Meeting Transcript, p. 59 (comments of Silvie Chandler (“The water will be contaminated if this pipeline leaks, and it will not only go into my water, it will contaminate half of Roanoke County.”)); p. 66 (comments of Cletus Bohon (“I don’t know how you can guarantee not to mess up my water supply ... How will you fix it? The pipeline comes within 200 yards of my well.”)); p. 79 (comments of James Chandler (“The pipeline cuts across Mill Creek on our property with a 100 acres watershed, numerous springs and wetlands on our property. Our well, our only water source, is rock-throwing distance from the pipeline pathway. Damage to the water source will ... endanger the water supply for Roanoke County and even Roanoke city [sic].”)).

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proximity to wells and natural water sources: (1) chemicals and compounds used for blasting can seep into and contaminate the groundwater, and (2) blasts can loosen subsurface soils causing increased turbidity.¹⁴⁷ The DEIS does not specifically describe how Mountain Valley will minimize these risks, focusing the discussion instead on the pre-construction and post-construction evaluations of wells, which will only serve to help identify an impact after it has occurred.

In comments on the Atlantic Pipeline DEIS, the EPA recommended avoidance of karst terrain given the potential impacts to water supplies:

Groundwater in shallow aquifers and karst terrain is also present in areas along the pipeline route, including in the area of 8 known private water supplies. Due to its connection with surface water through sinkholes, caves and swallets, groundwater in karst geologic terrains is especially vulnerable to contamination. EPA recommends that to prevent impacts on public and private water supplies, the pipeline should avoid karst terrain, and consider route alternatives.¹⁴⁸

The DEIS does not specifically respond to the County's objection that Mountain Valley's inadequate mitigation plan and refusal to conduct post-construction evaluations for all wells within 150 feet of the blasting areas unfairly forces landowners, rather than Mountain Valley, to bear the risk.¹⁴⁹ It does not respond to the County's request that the Commission require Mountain Valley to (1) create specialized blasting plans when the proposed project area crosses bedrock in close proximity to springs and wells, and (2) revise its mitigation plan for wells and springs within 150 feet of any proposed blasting areas.¹⁵⁰ As explained by the Forest Service, "[b]lasting could affect stream hydrology permanently by fracturing aquifers or damaging perched water tables...."¹⁵¹

All homes in the vicinity of the pipeline construction right-of-way are serviced by private wells or springs. There are no practical options or alternatives for these homeowners to connect to the public water system of Roanoke County should their private water supply be tainted.

¹⁴⁷ Roanoke County's Comment and Objection, p. 4 (*citing* Brandon Kernen, "Rock Blasting and Water Quality Measures That Can Be Taken To Protect Water Quality and Mitigate Impacts," 2010, *available at* <http://des.nh.gov/organization/commissioner/pip/publications/wd/documents/wd-10-12.pdf>) (last checked December 22, 2016).

¹⁴⁸ EPA Atlantic Sunrise Comments, Enclosure 2, p. 7; *see also* Attachment 1, p. 9.

¹⁴⁹ Roanoke County's Comment and Objection, p. 4.

¹⁵⁰ *Id.*

¹⁵¹ Forest Service Comments, Att. 1, p. 6.

LA15-14
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The County requests that that OEP *require* Mountain Valley to complete mapping of existing wells and springs immediately. OEP Staff and the Cooperating Agencies should update their environmental analysis based on this information, providing site-specific analysis. The County requests that OEP Staff require Mountain Valley to provide documentation that all existing wells and springs within 150 feet of the pipeline construction right-of-way would not be adversely affected by proposed blasting or other construction activities. This documentation should be provided to well owners for review and verification, and filed with the Commission. The County also requests that OEP Staff require more robust and impartial procedures for resolving complaints pre- and post-construction. The decision whether construction causes or contributes to an impact to wells should not be within the sole discretion of Mountain Valley, which plainly is not an impartial judge.

These issues must be addressed in a revised DEIS. Post-construction complaint procedures are absolutely no substitute for the Commission's and Cooperating agencies full consideration of the MVP Project's potential hydrogeologic impacts prior to authorization of construction.

D. Cultural Resources

LA15-15

The DEIS summarizes the National Historic Preservation Act (NHPA) section 106 consultation process conducted by Mountain Valley to date, acknowledging that the process is not yet complete.¹⁵² According to the DEIS: “[a]bout 36 miles of pipeline route remains to be inventoried. In addition, 5 above ground facilities, 65 new or to-be-improved access roads, and 91 ATWS, staging areas, and yards still require survey. Also, testing or additional research must be conducted at 57 unevaluated sites in the direct APE [Area of Potential Effect] to determine their NRHP eligibility.”¹⁵³ All of this must occur before the Commission can complete its assessment of project effects on cultural resources, and specifically historic properties within the APE.¹⁵⁴

Even with this acknowledgment, the DEIS inexplicably fails to incorporate the documentation provided to date regarding the MVP Project's impacts to the Coles-Terry Rural

¹⁵² See DEIS, pp. 4-323 – 4-338, 4-384. “About 36 miles of pipeline route remains to be inventoried. In addition, 5 above ground facilities, 65 new or to-be-improved access roads, and 91 ATWS, staging areas, and yards still require survey. Also, testing or additional research must be conducted at 57 unevaluated sites in the direct APE to determine their NRHP eligibility.” *Id.* at 4-384. All of this must occur before the Commission can complete its assessment of project effects on cultural resources, and specifically historic properties within the APE. See *id.*

¹⁵³ *Id.* at 4-384.

¹⁵⁴ The VDHR expressed concern regarding the Commission's proposal to issue a certificate prior to completion of the Section 106 process: “It is DHR's opinion that this [phased] approach limits FERC's ability to make an informed decision regarding potential effects to historic properties prior to authorization and limits the role of consulting parties in the resolution of any identified adverse effects.” See letter from Roger W. Kirchen to Kimberly D. Bose, eLibrary no. 20161221-5348 (Dec. 21, 2016) (“VDHR Comments”), p. 2. Roanoke County shares this concern.

LA15-15

Section 4.10 of the final EIS has been revised as appropriate. The section now includes information about the Coles-Terry Rural Historic District, and assessments of impacts on resources within that District, the Blue Ridge Parkway Historic District, and the Bent Mountain Rural Historic District. These assessments considered the built environment and rural historic landscapes associated with the Historic Districts.

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Historic District even though it has been determined by the Virginia Department of Historic Resources (VDHR) as eligible for listing in the National Register of Historic Places. In addition, the DEIS does not discuss the impacts to the proposed Bent Mountain Rural Historic District, even though identification efforts are currently underway. The pipeline will cut through these rural historic districts, as well as the National Register-listed Blue Ridge Parkway Historic District, all of which are located within a 20-square-mile region of the Blue Ridge highlands of Virginia, destroying significant natural and topographical features, and leaving a permanent scar on the landscape

The DEIS does not acknowledge any potential impacts – other than to man-made structures – in its assessment of the Blue Ridge Parkway Historic District. The DEIS indicates that this flawed interpretation of historic properties will be applied to future evaluations of the Coles-Terry Rural Historic District and the proposed Bent Mountain Rural Historic District. This interpretation is inconsistent with the Advisory Council on Historic Preservation’s (ACHP) regulations, which provide that an “effect” on a historic property is not limited to changes in manmade structures, but includes “alteration to the *characteristics* of a historic property qualifying it for inclusion in or eligibility for the National Register.”¹⁵⁵ As described below, the landscape surrounding these historic districts are integral to their character and historical importance.

Further compromising the adequacy of these assessments is the unduly limited geographic scope of the indirect APE, which does not account for changes in the landscape that will be visible from great distances, and will permanently alter viewsheds and vistas that are important features of these rural historic districts. The analysis of impacts to the districts is so deficient that the Commission and Cooperating Agencies should not proceed without providing revised or supplemental analysis.

1. Blue Ridge Parkway Historic District

As the DEIS acknowledges, the proposed MVP Project will cross the Blue Ridge Parkway Historic District at MVP Milepost (MP) 244.2.¹⁵⁶ The DEIS identifies a number of “associated historic architectural sites” within the indirect APE for the historic district, and then summarily concludes that it “is unlikely that the MVP would have any adverse effects on the district.”¹⁵⁷ This is a wholly inadequate assessment of MVP Project impacts on this significant historic district.

As the DEIS acknowledges, this historic district is amply documented through both its status as a National Register-listed site since 2008, and also through its recordation in the

¹⁵⁵ 36 C.F.R. § 800.16(i).

¹⁵⁶ DEIS, p. 4-348 – 4-349.

¹⁵⁷ *Id.* at 3-349.

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Historic American Engineering Record (HAER). The HAER documentation demonstrates that the significance of this historic district extends well beyond its architectural resources, and includes “traditional cultural landscapes of the southern Appalachian highlands,” “attractive natural and cultural features,” and “frequent expansive views across a changing countryside... featuring some of the finest rural and mountain scenery in the east.”¹⁵⁸

As this documentation makes clear, a major theme in the development of the Blue Ridge Parkway (Parkway) is that it traverses an enormous variety of topographic and landscape features, and that the architects and engineers of the Parkway employed great care and sensitivity in designing the road so as to heighten the traveler's appreciation of the astonishing variety of landscapes and topography contributing to the Southern highlands' subtle and profound beauty. The Parkway's creators deliberately and painstakingly routed the roadway to integrate it with lowland features such as farm fields, river bottoms, and flatlands, juxtaposed harmoniously with mountain ridges and escarpments found at the higher elevations. According to the HAER report, farm lands within the Parkway that have been kept in production through the Parkway's innovative agricultural lease program maintain the “picture” of the rural landscape.¹⁵⁹

This concept of engineering to enhance the traveler's appreciation of the variety and subtlety of the landscapes crossed by the Blue Ridge Parkway is specifically discussed in S. Herbert Evison's 1959 interview with Blue Ridge Parkway Resident Landscape Architect, Stanley W. Abbott. Mr. Abbott emphasized that the parkway's “composition is one of fields and fences, lakes and streams, and hills and valleys,” and its extraordinary achievement rested in the “the heroic panorama—a stretch here along the crest, there on mountainside, along a valley stream, through the woods, along the edge of a meadow, passing a mountain farmstead.”¹⁶⁰

In particular, the Blue Ridge Parkway's Adney Gap, through which the proposed MVP Project has been routed, has special cultural and historic significance. Adney Gap was among the first portions of the Blue Ridge Parkway to be completed.¹⁶¹ However, the historical significance of Adney Gap is not limited to its role in the development of the Blue Ridge Parkway. Rather, Adney Gap is part of the 20,000 acre tract of land that was deeded to General Andrew Lewis by General George Washington as a reward for Andrew's service in the Indian Wars and the Revolutionary War. Six to eight thousand acres of the Andrew Lewis tract were purchased from Lewis's heirs by brothers, Tazewell and Morefield Price. The Adney Gap farm

¹⁵⁸ Historic American Engineering Record (HAER) No. NC-42: Blue Ridge Parkway, Between Shenandoah National Park & Great Smoky Mountains, Asheville, Buncombe County, NC, prepared by Richard Quin and Christopher Marston (1997), available at <http://lweb2.loc.gov/master/pnp/habshaer/nc/nc0400/nc0478/data/nc0478data.pdf> (last checked Dec. 22, 2016).

¹⁵⁹ *Id.* at p. 7.

¹⁶⁰ See Oral History Interview of Stanley W. Abbott (Attachment 3).

¹⁶¹ See *United States Department of the Interior Memorandum for the Press* (August 30, 1938), a copy of which was obtained from the National Archives in College Park, MD (Attachment 4).

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fields have been actively enrolled in the Blue Ridge Parkway Agricultural Lease Program since 1979, and these historic, breathtakingly beautiful, and locally cherished fields do in fact offer a scenic reminder of our region's heritage of agriculture and rural life.

Given this detailed information demonstrating the significance of natural and topographic features, and associated views and vistas to the Blue Ridge Parkway Historic District, it is wholly unacceptable for the DEIS to focus exclusively on the MVP Project's impacts on the manmade structures. In addition to violating ACHP's regulations, this approach is contrary to the National Park Service's (NPS) guidelines for assessing the integrity of rural historic districts. The guidelines emphasize the importance of historic vistas, vegetation, and land use to maintaining historic integrity:

a rural historic landscape is defined as a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features... [A]ll contain substantial areas of vegetation, open space, or natural features that embody, through past use or physical character, significant historic values.¹⁶²

The guidelines emphasize the importance of "[h]istorical vistas that have remained open [and] often provide a general vantage point for evaluating change... Vegetation and land uses are important to an area historically significant for grazing and cropping..."¹⁶³ The guidelines further describe elements that contribute to integrity, emphasizing the importance of water bodies, mountains, and rock formations: "[l]arge-scale features, such as bodies of water, mountains, rock formations, and woodlands, have a very strong impact on the integrity of setting..."¹⁶⁴

In reviewing a challenge to the U.S. Department of Transportation's compliance with Section 106 of the NHPA, the U.S. Court of Appeals for the Third Circuit found that federal agencies "must consider more than the individual buildings and structures in an historic district when analyzing the impact of a project."¹⁶⁵

Significantly, NPS Bulletin # 30 identifies the following changes to historic landscapes that can threaten historic integrity: (1) changes in land use and management that alter vegetation; (2) changes in land use that flatten the contours of land; (3) introduction of non-historic land uses

¹⁶² National Park Service Bulletin # 30, *Guidelines for Evaluating and Documenting Rural Historic Landscapes*, U.S. Department of the Interior, NPS (1999), p. 3. Available at <https://www.nps.gov/nr/publications/bulletins/pdfs/nrb30.pdf> (last checked December 22, 2016).

¹⁶³ *Id.* at p. 21.

¹⁶⁴ *Id.* at p. 22.

¹⁶⁵ *Concerned Citizens Alliance v. Slater*, 176 F.3d 686, 697 (3d Cir. 1999).

LA15-15
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(public utilities, industrial development); and (4) loss of vegetation related to significant land uses. It is clear that the MVP Project, if constructed, will introduce each of the above-identified changes to the Blue Ridge Parkway Historic District.

The MVP Project will drastically alter the physical configuration of bodies of water, mountains, rock formations, and woodlands within the district, resulting in a profound diminution of integrity, as defined above. The DEIS, while acknowledging that “[w]e cannot make our official determinations of effect for the Blue Ridge Parkway Historic District until we receive comments from the NPS,” nonetheless appears to accept Mountain Valley’s claims that boring under the Parkway will avoid impacts.¹⁶⁶ It finds:

In the vicinity of the crossing, which is mostly pasture, few trees would need to be removed, reducing visual impacts. The pipeline would be buried underground, and after installation the right-of-way would be restored and revegetated. Operation of the pipeline should not have visual or audible effects that may alter the character or setting of the Blue Ridge Parkway Historic District.¹⁶⁷

In fact, the construction of the MVP Project across Adney Gap is likely to result in permanent, not temporary, visual effects, and would impair the historic and cultural integrity of the Blue Ridge Parkway Historic District. The project will impose a flat strip of highly condensed soil across the historic farm fields of Adney Gap, resulting in an unavoidable interruption of the visitor’s experience of the Parkway’s historic and scenic attributes. The excavation that would result from construction of the MVP Project, along with the use of heavy machinery, disruption of soil strata, severe compaction of soil on the pipeline right-of-way, and imposition of non-indigenous grass species as ground cover virtually guarantee that the site will never return to its former condition. The MVP Project will permanently impose the footprint of 21st century industrialization on the 19th century landscape of Adney Gap. This is an inappropriate use of the Blue Ridge Parkway and should be avoided in the interest of safekeeping this national treasure for the enjoyment and edification of many future generations of Americans.

That these impacts from the MVP Project’s footprint on the Adney Gap farm fields will be permanent, not temporary, are readily apparent from the photographs of the 50-year-old Transco Pipeline in Pittsylvania County, Virginia (*see* Attachment 4). As shown in the photos, the ground within the pipeline right-of-way has a different color, texture, and appearance from the adjacent lands and, in many places, the sod is not well secured and is slipping away. The grass cover is sparse in many areas, resulting in the unmistakable appearance of a “disturbed” landscape. This is after 50 years. A similar permanent disruption to the rural landscape will occur as a result of constructing the MVP Project. The DEIS’s claims to the contrary, that

¹⁶⁶ DEIS, at 4-349.

¹⁶⁷ *Id.*

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proposed measures will mitigate impacts to the Adney Gap, are not supported by substantial evidence or reasoned explanation.¹⁶⁸

2. Coles-Terry Rural Historic District

As the DEIS also acknowledges, that the MVP Project would cross the Coles-Terry Rural Historic District, which is potentially eligible for the NRHP, between MVP MP 242 and 243.¹⁶⁹ The VDHR State Review Board determined this historic district to be eligible for listing in the National Register on September 16, 2016. Despite the fact that Mountain Valley concurred in this assessment in its June 28, 2016 document titled “Responses to FERC Environmental Information Request #3,” the DEIS states that “Mountain Valley has provided no information about the Coles-Terry Rural Historic District, so it is unknown if the pipeline would affect resources within this district.”¹⁷⁰

It is clear, based on the extensive documentation that has been assembled to date, that the Coles-Terry Rural Historic District, which comprises a 2.4-mile wide expanse of land at the crest and on the east-facing slope of Poor Mountain, will be significantly impacted by the pipeline. This rural, mostly forested district encompasses about 2,500 acres on the eastern slope of Poor Mountain starting 4/10 mile east of the intersection of Poor Mountain Road and Honeysuckle Road in Bent Mountain, Roanoke County, extending 3.25 miles southwest along the crest of Poor Mountain to the Montgomery County line. It includes the headwaters of Laurel Creek and Bottom Creek where they emerge at the foot of Poor Mountain, and old apple orchards. The district contains a network of Civilian Conservation Corps forest roads and paths connecting to a fire tower at the highest point of Poor Mountain at 3,926 feet elevation. Prehistoric archaeological sites have been found along the creeks.

The MVP Project will cross the headwaters of the South Fork of the Roanoke River at Bottom Creek, at a location within the Coles-Terry Rural Historic District. The headwaters formed by Bottom Creek and Laurel Creek are written about in histories of Bent Mountain. One such history was written by Grace Fortescue Terry in an article titled “Recollections of Bent Mountain, Virginia” in the Journal of the Roanoke Historical Society, Winter 1967. Another history of Poor Mountain was written by Lee Pendleton in 1976. These historical materials make abundantly clear that the headwaters of the South Fork of the Roanoke River at Bottom Creek are important natural features that play an integral role in the history of Poor Mountain and the integrity of the Coles-Terry Rural Historic District.

The MVP Project would cross through the area of springs and first order streams described in the Terry narrative, and cross Bottom Creek four times. Construction of the MVP

¹⁶⁸ See photos of the Transco Pipeline, taken in May 2016 (Attachment 5).

¹⁶⁹ DEIS, at 4-439.

¹⁷⁰ *Id.*

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Project through the exquisitely pristine, irreplaceable headwaters of the Roanoke River would undermine the very bedrock of Roanoke County and southwestern Virginia's cherished historic landscapes.¹⁷¹ The maps and photos enclosed provide evidence that, if allowed to proceed, pipeline construction inside the Coles-Terry Rural Historic District would decimate the aquatic features of Poor Mountain esteemed by historians and residents of Bent Mountain, Poor Mountain, Roanoke County, the Commonwealth of Virginia, and all who have visited this astoundingly picturesque region.

Finally, it should be noted that the Coles-Terry Rural Historic District is visible from the Poor Mountain Overlook on the Blue Ridge Parkway. The construction of the MVP Project through the Coles-Terry Rural Historic District will drastically alter the appearance of Poor Mountain as viewed from the Poor Mountain Overlook, as well as from many points on U.S. 221 in Bent Mountain. The imposition of the MVP Project's treeless vertical scar at the crest and down the side of Poor Mountain – indelibly demarcating 21st century industrialization – will permanently impair the appearance of the mountain as viewed from the Parkway. This incursion will result in further loss of integrity of the Blue Ridge Parkway Historic District.¹⁷²

3. Proposed Bent Mountain Rural Historic District

In March, 2016, Mountain Valley issued, "Responses to FERC Environmental Information Request, Attachment RR4-20e, Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline, Roanoke County, VA, VDHR File # 2014 1194, New South Associates Project 4613, Report 2512, March 2016."¹⁷³ This report states that "New South recommends a Phase II study of the Bent Mountain community to determine its eligibility as a historic district. . . ."¹⁷⁴ Once again, however, the inventory of features within this proposed historic district focuses exclusively on "architectural resources" and fails to identify or acknowledge the natural features that contribute significantly to the integrity of this proposed rural historic district. As explained above, in the context of the Blue Ridge Parkway Historic District, any evaluation of the MVP Project's impact on this proposed rural historic district must consider impacts to landscape and topographic features and the extent to which these impacts impair the historic integrity of each district.

¹⁷¹ See Maps of Poor Mountain stream flows (Attachment 6) as well as photographs of the Stonewall Gathering Pipeline slope failure (Attachment 7).

¹⁷² See Before and After Simulated Images of Poor Mountain Overlook Visual Impacts (Attachment 8) and Before and After Simulated Images of Views from Campbell Hills Subdivision and Glenvar Library (Attachment 9).

¹⁷³ eLibrary no. 20160309-5124(31299489).

¹⁷⁴ *Id.* at p. i. See also DEIS, p. 4-362.

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E. Visual Resources

The DEIS summarizes Mountain Valley’s visual resources analysis, including assessment of impacts at key observation points (KOPs).¹⁷⁵ The list of KOPs includes four locations in Roanoke County: Camp Roanoke, Poor Mountain Natural Area Preserve, Blue Ridge Parkway, and Ferrum Mountain Road.¹⁷⁶ It finds moderate¹⁷⁷ visual impacts at the Blue Ridge Parkway, but no impacts at the other sites.¹⁷⁸ In addition to the specific concerns raised in relation to impacts to cultural resources, the County is more generally concerned about the adequacy of Mountain Valley’s visual impacts analysis.

The Forest Service has previously commented that Mountain Valley’s visual impacts analysis, which is the basis for OEP Staff’s analysis in the DEIS, does not adequately identify potential impacts. For example, it has challenged Mountain Valley’s focus on proximate views:

The data displayed ... indicates that MVP analyzed only the “nearest” potential view between project components and the viewing platform.¹⁷⁹ The nearest location of a travelway or area may not be the part that would have the greatest impact on its scenery. Intervening geology or evergreen vegetation may block the view at the nearest location, but further out along that same travelway there could be a clear view to the project area. The table should be updated to include whether other portions of travelways listed, further from the proposed project area, may also have a view of the project area.”¹⁸⁰

The Forest Service’s comments are directed to visual resources with the forest, but are relevant to other scenic areas within the region. Other commenters have challenged the evaluation of visual impacts as inadequate.¹⁸¹ Problems include reliance on the use of photographs from KOPs, which are subject to bias and limited to a fixed perspective, and “failure to use landscape visualization tools that are widely available, and are more capable of

¹⁷⁵ *Id.* at 4-229.

¹⁷⁶ *Id.* at 4-231 – 4-232.

¹⁷⁷ “Low to medium impacts were found for KOPs where the pipeline right-of-way could not be seen by viewers, either because of distance or existing landscape or vegetation screening.” *Id.* at 4-229.

¹⁷⁸ *See id.*

¹⁷⁹ Forest Service Comments, Att. 1, pp. 26-27.

¹⁸⁰ *Id.* at 28.

¹⁸¹ *See, e.g.*, letter from Carl E. Zipper to Secretary Bose, eLibrary no. 20161213-5106 (Dec. 13, 2016). (Zipper Comments), Scoping Meeting Transcript, pp. 150-151 (comments of Laura Belleville (“Visual simulations are needed to sufficiently determine the impact to the AT scenic resources.”)).

LA15-16

Section 4.8 of the final EIS has been revised to provide an updated visual impacts analysis.

LA15-16
cont'd

representing visual impacts in complex landscapes than limited numbers of fixed point simulations.”¹⁸²

Given that OEP Staff and the Cooperating Agencies have not required the analyses necessary to evaluate impacts to visual resources, the County believes that the mitigation proposed in the DEIS is inadequate. The County requests that OEP Staff and the Cooperating Agencies revise Section 4.8 to undertake further evaluation of the MVP Project’s impacts and potential mitigation measures.

F. Conserved Lands

LA15-17

The DEIS states that the MVP Project “would cross two parcels managed by the [Virginia Outdoor Foundation (VOF)] in Montgomery County, Virginia.”¹⁸³ Roanoke County understands that this statement is no longer correct as a result of Mountain Valley’s October 2016 changes to the proposed route.

Grace Terry has provided information to the County showing that Mountain Valley is now proposing a permanent access road through a parcel of her property (Tax map ID# 102.00-01-01.02-0000), which is part of a larger conservation easement (590 acres) held by the VOF. Mountain Valley’s “Access or Utility Easement Application” to VOF and accompanying maps mis-identify the parcel number, and mis-label the private access road as “Cove Hollow Trail,” rather than Honeysuckle Road.¹⁸⁴ The maps show the adjacent property as a Nature Conservancy easement, but there is no shading to indicate that her property is in a VOF easement.

Mountain Valley’s application states that, “[a]fter a vigorous siting process that evaluated alternatives in the area, the proposed access via VOF easement was determined to be the only reasonably feasible access to the proposed pipeline route.”¹⁸⁵ However, as this road was proposed after the DEIS was published, there is nothing in the DEIS to show that OEP Staff considered the impacts of the proposed road, or independently investigated alternative locations for access that would not impact conservation lands.

This omission is of significant concern to the County given the importance of conserved lands. As stated by The Nature Conservancy, “[c]onservation easements have a clear public benefit, documented in many state and federal statutes and regulations,” and are encouraged by the Commonwealth of Virginia and federal government.¹⁸⁶

¹⁸² Zipper Comments, p. 1.

¹⁸³ DEIS, p. 4-137.

¹⁸⁴ See Attachment 10.

¹⁸⁵ *Id.* at 1.

¹⁸⁶ Letter from William A. Kittrell to Kimberly D. Bose, eLibrary no. 20161219-5368 (Dec. 19, 2016), p. 2.

LA15-17

Section 4.8 of the final EIS has been revised to better discuss potential impacts on VOF easements. Section 3 of the EIS has been revised to discuss Grace Terry’s property and a permanent access road (MVP-RO-279.01).

LOCAL

LA15 – Roanoke County

LA15-17
cont'd

Roanoke County requests that OEP Staff evaluate the potential impacts of the proposed road on the VOF conservation easement, and independently investigate alternatives for access in a revised or supplement to the DEIS.

G. Roads

LA15-18

According to the DEIS, the “Applicants would mostly use existing public and private roads to gain access to their respective rights-of-way. However, many existing roads are not suitable for construction traffic. Where necessary, the Applicants would improve existing roads, through widening and/or grading.... After pipeline installation, the Applicants would remove new temporary roads and restore the land to its pre-construction condition and use.”¹⁸⁷ The DEIS further reports that, “[o]utside of public roads, Mountain Valley would use 365 private roads to access the construction right-of-way.... Virtually all of the existing private roads would require improvements. Mountain Valley would build 27 new roads for construction access. Eighty-six of the existing roads and 17 of the new roads would also be used for permanent access during project operation.”¹⁸⁸

The County is also concerned that the plans for improvements prior to pipeline construction and restoration post-construction have not been disclosed. As a result, we cannot determine whether Mountain Valley’s plans will adequately protect local interests. This puts the Roanoke County Board of Supervisors in a very difficult position as it will likely bear the brunt of complaints related to impacts to roads, but the Board will be without authority or resources to address those complaints. This would place an undue burden on Roanoke County and other local governments.

The County requests that the Commission require Mountain Valley to disclose its specific plans for pre- and post-construction changes to any roadways it plans to use, and provide sixty days for review and comment by the Virginia Department of Transportation and local governments. We also request that Mountain Valley develop and circulate proposed complaint procedures in the event there are problems with Mountain Valley’s modifications to roadways. This information should be distributed for a review and comment period before the FEIS issues.

H. Reliability and Safety

LA15-19

The DEIS describes Department of Transportation Pipeline Safety Regulations that require pipeline operators to develop and implement an Integrity Management Program applicable to all High Consequence Areas (HCA) that complies with 49 C.F.R. § 192.911 regulations. It goes on to report that OEP Staff “received comments from county officials who

¹⁸⁷ DEIS, p. 2-30.

¹⁸⁸ *Id.*

LA15-18 See the response to comment LA14-13 regarding road repairs.

LA15-19 The FERC encourages Roanoke County to coordinate with Mountain Valley regarding its Integrity Management Program.

LA15-19
cont'd

were concerned about the construction and operational impacts, as well as pipeline rupture impacts on vulnerable populations such as children. Mountain Valley has routed the pipeline and is, along with the FERC staff, continuing to evaluate route modifications that would minimize risks to local residents and vulnerable locations.”¹⁸⁹

Roanoke County is concerned that it will not be able to review Mountain Valley’s Integrity Management Program with respect to HCAs within the County prior to OEP Staff making final findings and recommendations regarding public safety in the FEIS. We request that OEP Staff direct Mountain Valley to begin consulting with Roanoke County and other local governments regarding coordination of response to a natural gas pipeline emergency immediately. It is important for the County to understand what will be expected of its emergency services so it can begin to plan accordingly and provide information to its residents.

III.

REQUESTS FOR FURTHER ANALYSIS AND PROCEDURES

LA15-20

A. OEP Staff and the Cooperating Agencies Should Prepare a Revised DEIS.

Pursuant to 40 C.F.R. § 1502.9(a), Roanoke County requests that the Commission issue a revised DEIS for the MVP Project. Since the DEIS was published in September 2016, OEP Staff and the Cooperating Agencies have received hundreds of comments, many of which go well beyond correction of incidental, factual inaccuracies, and instead challenge the basis for several of the DEIS’s findings regarding the environmental consequences of the MVP Project. The County and others¹⁹⁰ have objected that by publishing the DEIS in advance of Mountain Valley’s route changes and responses to environmental information requests, they have been denied a meaningful opportunity for review and comment on the environmental consequences of the MVP Project. “A public comment period is beneficial only to the extent the public has meaningful information on which to comment Informed public input can hardly be said to occur when major impacts of the adopted alternative were never disclosed.”¹⁹¹

The County expects that OEP Staff and the Cooperating Agencies will need to make significant changes to the DEIS based on the comments they receive. In this circumstance, the County believes that preparation and circulation of a second DEIS is required to provide an opportunity for the public to comment on the information the agencies acquired during the comment period and their updated analyses based on that information.

¹⁸⁹ DEIS, p. 4-462.

¹⁹⁰ See, e.g., letter from Ryan Talbott *et al.* to Kimberly D. Bose, eLibrary no. 20161019-5061 (Dec. 15, 2016); letter from Judy Azulay to Kimberly D. Bose, eLibrary no. 20161215-5271 (Dec. 15, 2016).

¹⁹¹ *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 708 (10th Cir. 2009).

LA15-20

See our responses to comments FA11-2, LA5-1, and LA13-1 regarding the adequacy of the draft EIS. This final EIS addresses comments on the draft and supplemental filings by Mountain Valley.

LA15-20
cont'd

In the alternative, the County requests that OEP Staff and the Cooperating Agencies issue a supplement to the DEIS pursuant to 40 C.F.R. § 1502.9(c), which addresses the new information that has been filed since the DEIS was published. “If there remains ‘major Federal action[n]’ to occur, and if the new information is sufficient to show that the remaining action will ‘affect[t] the quality of the human environment’ in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.”¹⁹² The County believes the new information presents a seriously different picture of the environmental impacts of the proposed MVP Project than that presented in the DEIS, necessitating preparation of a supplemental EIS, in the event OEP Staff and the Cooperating Agencies do not issue a revised DEIS.

B. OEP Staff and the Cooperating Agencies Should Undertake Further Analysis of Certain Impacts.

LA15-21

The County requests that OEP Staff and Cooperating Agencies provide additional information and undertake additional investigation and analysis in preparation of a revised DEIS, as discussed in Sections I and II, and summarized below.

- (1) Provide the specific basis for the assumptions in the DEIS;
- (2) Evaluate the impacts of constructing, operating, and maintaining the MVP Project in the GCSZ given evidence that the presence of several geological hazards in this area may increase damage related to even minor earthquakes;
- (3) Further evaluate the potential impacts related to constructing on steep slopes, including risk of subsidence and landslides, and whether and how these impacts can be effectively avoided or mitigated;
- (4) Undertake the further analyses recommended in Mr. Rubin’s expert report;
- (5) Undertake further studies necessary to evaluate the potential impacts discussed in the Hydrogeological Assessment;
- (6) Reevaluate the proposed “Intermediate” categorization of the Roanoke River crossing, and provide a more detailed crossing plan;
- (7) Direct Mountain Valley to develop specialized blasting plans when the proposed project area crosses bedrock in close proximity to springs and wells;
- (8) Direct Mountain Valley to revise its mitigation plan for wells and springs within 150 feet of any proposed blasting areas;

¹⁹² *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989).

LA15-21

See the response to comments LA15-1 through LA15-18 regarding these topics.

LOCAL
LA15 – Roanoke County

LA15-21
 cont'd

- (9) Direct Mountain Valley to complete mapping of existing wells and springs immediately, and provide documentation that all wells and springs within 150 feet of the pipeline construction right-of-way would not be impacted by blasting or other construction activity;
- (10) Develop more robust and impartial complaint resolution procedures for impacts to wells identified post-construction;
- (11) Undertake additional visual impacts analyses;
- (12) Evaluate the potential impacts of the proposed road on the VOF conservation easement, and independently investigate alternatives for access;
- (13) Direct Mountain Valley to disclose its specific plans for pre- and post-construction changes to any roadways it plans to use, and provide sixty days for review and comment by the Virginia Department of Transportation and local governments; and
- (14) Develop complaint resolution procedures for impacts to roadways during and after construction.

C. The Forest Service and Army Corps, as Cooperating Agencies, Should Comment on the Sufficiency of the DEIS as the Basis for Their Decisions.

LA15-22

As cooperating agencies with jurisdiction over the MVP Project, the Forest Service and the Army Corps must comment on the DEIS.¹⁹³ Further, their comments must address the sufficiency of the DEIS as the basis for their decisions whether to grant federal authorizations within their jurisdiction.

A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.¹⁹⁴

Roanoke County requests that the Forest Service, in its comments, address the sufficiency of the DEIS as the basis for two necessary authorizations: amendment of LRMP for the Jefferson National Forest and a Special Use Permit. We request that the Forest Service specify the procedures and schedule for its hearing whether to grant these authorizations.

¹⁹³ 40 C.F.R. § 1503.2.

¹⁹⁴ 40 C.F.R. § 1503.3(c).

LA15-22

See the responses to LA15-7 and LA15-8 regarding draft EIS comments from the FS and the COE.

LA15-22
cont'd

The County requests that the Army Corps, in its comments, address the sufficiency of the DEIS as the basis for permitting dredge-and-fill of jurisdictional waters under CWA section 404. We request further that the Army Corps make a preliminary determination as to whether the MVP Project complies with the terms and conditions of NWP-12, subject to public comment.¹⁹⁵

IV.
CONCLUSION

Roanoke County thanks the Commission and Cooperating Agencies for their consideration of these comments. It requests that the Commission and Cooperating Agencies grant the requests for further analysis and procedures made herein.

Dated: December 22, 2016

Respectfully submitted,



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Attorneys for ROANOKE COUNTY, VIRGINIA

¹⁹⁵ See, e.g., 33 C.F.R. § 330.6(a).

LOCAL

LA16 – Roanoke Regional Chamber

JOSH BAUMGARTNER, VP Public Policy of Roanoke Regional Chamber
210 S. Jefferson St. Roanoke VA 24011

LA16-1

The Roanoke Regional Chamber supports the continued development of infrastructure that is integral to business expansion in our region. Our prosperity depends on the presence of robust transportation – education – recreation – healthcare – telecommunication – and energy infrastructure. With these building blocks in place, our economy and our quality of life are given great opportunities for growth.

As a result of this philosophy, the Roanoke Regional Chamber supports the Mountain Valley Pipeline project and strongly encourages its development in accordance with laws and regulations of the United States and the Commonwealth of Virginia, in cooperation with property owners, and with the utmost safety and with respect for the environment and our region's beauty.

With this position, we were pleased to see that in its recently released Draft Environmental Impact Statement, the Federal Energy Regulatory Commission validated MVP's projected economic impact while also noting and that the MVP project would result in "limited adverse environmental impacts."

We are encouraged that the economic impact could result in:

-Construction Spending Benefits of over \$400 million in Virginia and 4,000 jobs during peak construction

-Long Term operational benefits and \$7 million annually in property tax revenue for Virginia counties

-And a tap installation in Franklin County in proximity to an industrial park and the Roanoke Valley where natural gas has increased 15% in 15 years,

On the environmental front, we are impressed by the work MVP has put into addressing the sensitivity of the landscape in our region with groups like the Virginia Outdoor

LA16-1

The statements are noted.

LOCAL

LA16 – Roanoke Regional Chamber

LA16-1
cont'd

Federation. Including, 11 route alternates and 572 variation changes. According to the formal application, revisions include avoidance of Spring Hollow Reservoir, Camp Roanoke, Cahas Mountain Rural Historic District, the Town of Boones Mill's water source treatment plant, the Burnsville Lake Wildlife Management Area, and the Elk River Wildlife Management area. Also, an alternative to previous plan for crossing the Blue Ridge Parkway, minimizing visual impact.

We applaud Mountain Valley Pipelines for their commitment to our region's economy, environmental landscapes and lawful surveying. Their actions and responsible approach to this project has validated the Roanoke Regional Chamber's support.

COMPANIES AND NGOs

CO1 – New River Conservancy

September 21, 2016

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426



RE: Mountain Valley Pipeline, #PF15-3-000

Dear Ms. Bose:

CO1-1

New River Conservancy vehemently denies any suggestion that we proposed that MVP be routed around the permanently protected Sizemore Conservation easement through Mr. Sizemore's home. In a letter dated May 31, 2016, NRC stated "As the grantee of the perpetual conservation easement, NRC cannot grant MVP the right to cross this property." NRC then referenced the IRS code that we're bound to follow. NRC went on to state "NRC does not believe that MVP or NextEra is sharing our position with FERC. They continue to present a pipeline route through our conservation easement. We intend to defend this easement with all legal means necessary, including filing as an intervener in this process."

In their filing dated July 18, 2016, MVP proposed an alternative which was identified as the "New River Conservancy alternative." This statement is a libelous misrepresentation of our position which NRC categorically rejects. NRC and Mr. Rick Sizemore are in complete solidarity that this pipeline should not be built at all, much less cross either Mr. Sizemore's home site or the land he donated for permanent protection.

MVP has been deceptive and manipulative throughout the entire application process. The naming of the alternative using the NRC name was a blatant attempt to undermine an 8-year relationship that began in 2008 when Mr. Sizemore first donated a conservation easement on his property.

NRC's stated opposition goes back to 2015, when we filed our initial public comments on July 15, 2015 in which we stated: "In keeping with our mission and vision, New River Conservancy is opposed to the Mountain Valley Pipeline."

NRC is investigating legal action to correct this misrepresentation and libelous attack on NRC's 40-year reputation of protecting the river and working with great stewards of the land like Mr. Sizemore.

NRC's formally submits this filing to the permanent record of FERC document numbers CP 16-10-000 and CP 16-13-000.

For the River!



George Santucci
President

The Next Generation

CO1-1

Section 4.8.2.4 of the draft EIS discussed the pipeline route through the New River Conservancy (NRC) easement and the New River Conservancy Variation. We indicated that Sizemore Inc., who granted the conservation easement to the NRC, objected to the New River Conservancy Variation, therefore we did not study it further in the alternatives section of the draft EIS. However, we have revised section 3 of the final EIS to provide an evaluation of the alternative route. The draft EIS acknowledged the May 31, 2016 letter to the FERC from the NRC. However, we stated that a FERC Certificate may override state prohibitions. Section 1.5.2 of the draft EIS indicated that the courts have held that state and local agencies and laws may not prohibit the construction and operation of FERC authorized facilities (see *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 [1988]; *National Fuel Gas Supply V. Public Service Commission*, 894 F. 2d 571 [2d Cir. 1990]; and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC 61,091 [1990] and 59 FERC 61,094 [1992]).



POST OFFICE BOX 1480 WEST JEFFERSON, NORTH CAROLINA 28691 866-481-6267
WWW.NEWRIVERCONSERVANCY.ORG INFO@NEWRIVERCONSERVANCY.ORG

COMPANIES AND NGOs

CO2 – Friends of Claytor Lake

20160922-5179 FERC PDF (Unofficial) 9/22/2016 4:16:39 PM

September 20, 2016

Friends of Claytor Lake (FOCL)
PO Box 300
Dublin, Virginia 24084

Secretary Kimberly Bose
Federal Energy Regulatory Commission
888 1st St NE
Washington DC 20426

RE CP16-10-000

Secretary Bose

CO2-1

Please accept this motion to intervene regarding the proposed Mountain Valley Pipeline by Board of Directors of the Friends of Claytor Lake (FOCL). FOCL is a 501c3 nonprofit with the mission of preserving and protecting the quality sustainability and tranquility of the environment of Claytor Lake for all. We are a 21 mile stretch of lake on the New River. We have followed the MVP pipeline request to FERC along with the proposed routes and studies. We are concerned that the recently issued Environmental Assessment does not accurately reflect many of the facts and issues with regard to his area. We do not feel that additional time to comment mitigates many of the issues associated with the pipeline. MVP has done a poor and inaccurate job of studying the many issues affecting the construction of this pipeline.

At the moment the lake itself is not in the direct proposed construction line of the pipeline, but is one of the routes which may be considered before the project is finalized, therefore we feel it necessary to file this motion to intervene. In addition the negative effect to the New River Valley watershed and the whole southwestern Virginia region for both property owners and the environment is of concern. We urge you to deny the permit for this pipeline. It benefits no one along the proposed route, while disrupting all.

Regards

Cheri C Strenz, President
Friends of Claytor Lake

CO2-1

Section 3 of the draft EIS analyzed potential alternatives to the project, including Alternative 1, which would be about 4,000 feet north of Claytor Lake. We concluded that Alternative 1 would not offer a significant environmental advantage when compared to the proposed route. Potential project impacts on waterbodies, including the New River Valley watershed, and measures that would be implemented to reduce those impacts are discussed in section 4.3 of the EIS. The EIS is not a decision document. The Commission would decide about project benefits in its Order.

COMPANIES AND NGOs

CO3 – Roanoke Appalachian Trail Club

20161019-5046 FERC PDF (Unofficial) 10/19/2016 11:40:26 AM



A RESOLUTION expressing the opposition of the Roanoke Appalachian Trail Club to construction of the Mountain Valley Pipeline as proposed across the Appalachian Trail on Peters Mountain and in the Appalachian Trail viewshed in numerous locations, including Angels Rest and along the Alternate 200 route.

CO3-1

WHEREAS, the Roanoke Appalachian Trail Club (RATC) was established in 1932 by Appalachian Trail (AT) co-founder Myron Avery, in order to build, maintain, explore and protect over 120 miles of the AT in central and southwestern Virginia, from Route 611 in Giles County to Black Horse Gap on the Blue Ridge Parkway;

WHEREAS, it is the purpose of the RATC, as noted in its Bylaws, to support the monitoring and managing of lands that were purchased for trail protection, to participate in and encourage the development of laws and regulations that protect the AT and its related interests, and to use all legal means to protect and defend the AT and its related interests;

WHEREAS, Mountain Valley Pipeline, LLC proposes to build a 42-inch fracked natural gas pipeline 301 miles long that would cross the AT near Symms Gap Meadow (mile 646.8)¹ on Peters Mountain in Giles County, Virginia and Monroe County, West Virginia and come within 1.8 miles of the AT again in Montgomery and Craig Counties as it climbs up and down Sinking Creek Mountain, along Craig Creek and up and down Brush Mountain;

WHEREAS, the RATC has previously presented detailed comments to the Federal Energy Regulatory Commission (June 2015 and November 2015) noting very serious concerns about the potential impact of the proposed pipeline on the AT and its users, specifically noting the following issues:

1. Necessity of compliance with the National Environmental Policy Act of 1970 and the Endangered Species Act of 1973 to examine cumulative impact of all proposed major natural gas pipeline crossings of the Appalachian Trail.
2. Avoidance of threats to regional air quality and human health
3. Satisfaction of criteria in the Appalachian Trail Conservancy's 2015 Policy on Pipeline Crossings of the Appalachian Trail.
4. Avoidance of threats to regional water supplies and to drinking water for Appalachian Trail hikers
5. Avoidance of karst topography and active seismic zones in the proposed AT crossing locations
6. Avoidance of specific impacts, including scenic impacts, likely with currently proposed AT crossing alternatives
7. Careful and realistic study of visual impacts of the proposed Alternate 200 route, with specific viewpoints and criteria noted in the club's November 2015 comments;

WHEREAS, the comments made by the RATC have neither been acknowledged by the developer nor significantly included in the plans and comments of the developer;

¹ All mileage references are to the April 2016 version of the [Guthook application](#), showing distance from Spring Mountain, Georgia.

CO3-1

The EIS satisfies the NEPA. The EIS addresses compliance with the ESA in section 4.7, impacts on air quality in section 4.12, impacts on the ANST in section 4.8, impacts on water resources in section 4.3, karst terrain and seismic zones were addressed in section 4.1, visual resources in section 4.8, alternatives in section 3, and cumulative impacts in section 4.13. Mountain Valley proposes to cross under the ANST using a bore, to reduce impacts on the trail and its users.

COMPANIES AND NGOs
CO3 – Roanoke Appalachian Trail Club

CO3-1
cont'd

WHEREAS, the proposed pipeline poses significant negative impacts and safety concerns for AT hikers, including the following potential impacts identified on an April 2015 backpack trip by two RATC members (described from south to north on the AT):

- Both the pipeline and the proposed widening of Pocahontas Road will be visible from Angel’s Rest Rock (mile 632.4) near Pearisburg, one of the premier viewpoints on the AT in this region, as it descends Peters Mountain in Giles County.
- The conventional bore under the AT proposed near Symms Gap Meadow (mile 646.8) on Peters Mountain – which was flagged when visited on April 28, 2016 and confirmed by MVP representatives on site at the time – is entirely unacceptable.

CO3-2

- The shallow bore would emerge only 100 feet from the AT on each side.
- Heavy boring equipment would be visible and audible throughout construction.
- At a distance of 100 feet away on each side of the trail, the developer proposes to remove all vegetation to a width of 125 feet (trees and understory) in order to dig the trench for the pipeline. Construction would be visible and audible at very close range throughout the proposed effort. In addition, there would be a permanent scar where no trees would be permitted to grow.
- Flagging shows that expansion of Pocahontas Road as an access road for pipeline construction would parallel the AT very close by for a significant distance, producing a further construction cacophony.

CO3-3

- The conventional bore under Peters Mountain would present a significant safety hazard to AT hikers, since it would contain highly volatile natural gas under 1,440 psig of pressure, located in karst topography near the middle of the Giles County Seismic Zone, scene of the largest earthquake in Virginia’s recorded history. The US Forest Service has already expressed deep reservations about construction in this environment in its March 9, 2016 comments to the Federal Energy Regulatory Commission. In addition:
 - The 2014 edition of the Pipeline Association for Public Awareness “Pipeline Emergency Response Guidelines” minimum evacuation distance for natural gas pipeline leaks and ruptures for pipelines of the size (42 inches – largest shown on the guidelines chart) and pressure (1,440 psig) is approximately 3,600 feet – about 0.68 mile on foot.
 - AT hikers on Peters Mountain would have to walk miles on steep terrain to evacuate the area around the proposed pipeline. The closest evacuation route – via Pocahontas Road – would take hikers closer to the pipeline rather than away from it. The Groundhog Trail, providing access to the West Virginia side, is over a mile away. There is no sensible evacuation route, and hiker safety does not appear to have been considered in selecting the construction location and method.

CO3-4

- Continuing north on the AT, the proposed pipeline route almost certainly re-enters the AT viewshed between Kelly Knob (mile 671.4) and the Audie Murphy Monument (mile 690.2) on Brush Mountain.
 - The developer map shows that the route is only 1.8 miles from the AT in Sinking Creek Valley.
 - The pipeline route is probably visible from numerous points on the AT in this course, including locations in the Brush Mountain Wilderness.

THEREFORE, BE IT RESOLVED by the Board of the Roanoke Appalachian Trail Club this 16th day of May 2016, to oppose construction of the Mountain Valley Pipeline as proposed across the Appalachian Trail on Peters Mountain and in the Appalachian Trail viewshed in numerous locations, including Angels Rest and along the Alternate 200 route.

CO3-2

The commentor refers to a crossing of the ANST as flagged during a site visit on April 28, 2016. However, Mountain Valley proposed a modification to the ANST crossing in June 2016, that was later adopted into the proposed pipeline route. The currently proposed ANST crossing is 500 feet to the west of the October 2015 location, is a straight line rather than diagonal crossing, and the undisturbed buffer on either side of the ANST was increased to 300 feet rather than 100 feet.

CO3-3

As discussed in section 4.12 of the EIS, the Applicants would design, construct, operate, and maintain the proposed facilities in accordance with the DOT’s Minimum Federal Safety Standards in 49 CFR 192.

CO3-4

The final EIS has been revised to include new visual simulations including other KOPs along the ANST.

COMPANIES AND NGOs

CO4 – Roanoke Appalachian Trail Club



October 19, 2016

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

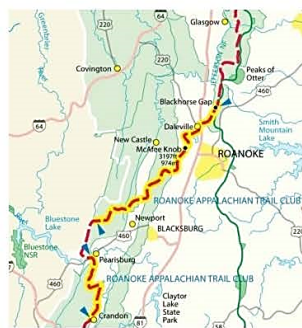
Re: Docket CP16-10-000
Mountain Valley Pipeline

Dear Ms. Bose,

Thank you for the opportunity to comment on this project.

I am writing on behalf of the Roanoke Appalachian Trail Club (RATC), a nonprofit organization in Virginia that is one of 31 clubs maintaining the Appalachian National Scenic Trail (ANST) through formal partnerships with the National Park Service, the Appalachian Trail Conservancy and the U.S. Forest Service.

CO4-1



Our volunteers maintain over 120 miles of the ANST between Va 611 and Big Horse Gap

These comments are in addition to those we submitted on June 11, 2015 and November 25, 2015. Our previous comments were sent to the FERC as hard copy documents via Fed Ex but were never posted on the e-Library nor acknowledged, so we recently reposted them. Thank you for the recent posting of the comments (Accession numbers 201610185006 and 20161018-5082).

More specifically, the comments offered here address events that moved the RATC board of directors to oppose the Mountain Valley Pipeline on May 16, 2016. We specifically addressed:

1. Negative impacts and safety hazards to hikers presented by the proposed crossing of the ANST on Peters Mountain. Misrepresentations by the developer about the visual impact of the proposed crossing were especially troubling.
2. Negative impacts of Alternate 200 on the ANST.

On April 28, 2016, members of RATC joined representatives of Mountain Valley Pipeline, the US Forest Service and the Appalachian Trail Conservancy in visiting the proposed crossing of the Appalachian ANST on Peters Mountain. The developer had stated in filings to the FERC that the conventional bore

CO4-1

See the response to comment CO3-2 regarding the buffer for the ANST crossing. Visual impacts at the ANST are discussed in section 4.8 of the EIS.

COMPANIES AND NGOs

CO4 – Roanoke Appalachian Trail Club

CO4-1
cont'd

pits located 100' on each side of the ANST would not be visible from the trail. In fact, measurement of 100' on each side of the trail at the proposed site made it quite clear that the trench and boring equipment would in fact be highly visible from the AT.

In the photo below, taken by an RATC volunteer, a USFS staff member has just measured 100' from the ANST, which is right on top of the little ridge in the center of the photo. An MVP employee in the red is resting his hand on a tree that is almost exactly 100' from the AT at a proposed bore pit site. The bore pit on the other side of the ANST would have been equally visible to hikers, and the right of way itself would have been highly visible as well.



CO4-2

Our RATC representatives were very troubled by the misrepresentations made by the developer. In both the Resource Report and the Draft Environment Impact Statement, MVP showed the photo below as the location of the proposed ANST crossing:

Legend

- Viewing Location/Direction
- Proposed Pipeline

Photograph Information

Time of photograph: 12:47 PM
 Date of photograph: 8/8/2016
 Weather condition: Cloudy
 Viewing direction: Southeast
 Latitude: 37°21'18.407N
 Longitude: 80°40'59.291W
 Photo Location: Appalachian Trail, Peters Mountain, Monroe County, WV and Giles, VA, Photo taken approximately 1.3 miles southwest of the Sugar Camp Farm Trailhead.

Proposed Condition - Pipeline right-of-way crossing the Appalachian Trail
 Due to the subterranean method, conventional bore technology chosen for the Appalachian National Scenic Trail crossing, no pipeline facilities or right-of-way would be visible from this location.

Mountain Valley

CO4-2

Section 4.8 of the final EIS has been revised to provide updated visual simulations along the ANST with “leaves off.” These new visual simulations include other KOPs along the trail, such as views from Angels Rest. The location of the ANST discussed in the draft EIS was the latest alignment that was proposed by Mountain Valley and filed with the FERC in June 2016, and later adopted into the proposed pipeline route. The ANST would be crossed via a conventional bore and not an open-cut.

COMPANIES AND NGOs
CO4 – Roanoke Appalachian Trail Club

CO4-2
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The photo does not locate the bore pits in relation to the Appalachian Trail and is entirely misleading. It is also shown with leaves on the trees, when both the Appalachian Trail Conservancy and the US Forest Service have repeatedly asked for photos with the leaves off.

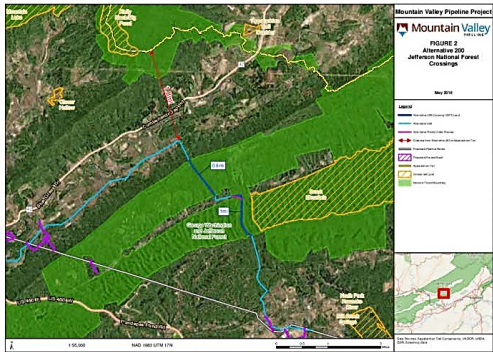


RATC members had hiked to the Angel's Rest scenic overlook on April 26, 2016 and identified the approximate proposed crossing of the ANST by MVP (see red arrow). It seems likely that the pipeline would be extremely visible for miles from the Angel's Rest overlook if it made its way over the mountains towards the New River, which is also visible in the photo.

We understand that the proposed crossing may have changed, though the Draft Environmental Impact Statement has contradictory information about both the location and the nature of the proposed ANST crossing and introduces the notion of an open cut rather than a conventional bore. These issues will be addressed in a later filing by RATC.

CO4-3

RATC's board was further concerned about the adoption of Alternate 200 route, which brings the pipeline back within 1.8 miles of the ANST at the popular and heavily visited Kelly Knob. The Alternate 200 right of way would likely also be in the viewshed of the ANST after it crossed Sinking Creek Mountain, as it crossed the Craig Creek valley and climbed through the Brush Mountain Inventoried Roadless Area, immediately adjacent to the Brush Mountain Wilderness.



CO4-3

In June 2016 Mountain Valley adopted the current pipeline crossing of the ANST. Alternative ANST crossings are discussed in section 3 of the EIS. Mountain Valley filed new visual simulation data for other KOPs along the ANST, including Kelly Knob, that are evaluated in this final EIS.

CO4-4

RATC had already identified the following concerns about the project in its comments of June and November, 2015:

1. Necessity of compliance with the National Environmental Policy Act of 1970 and the Endangered Species Act of 1973 to examine cumulative impact of all proposed major natural gas pipeline crossings of the Appalachian Trail.
2. Avoidance of threats to regional air quality and human health
3. Satisfaction of criteria in the Appalachian Trail Conservancy's 2015 Policy on Pipeline Crossings of the Appalachian Trail.
4. Avoidance of threats to regional water supplies and to drinking water for Appalachian Trail hikers

CO4-4

The EIS satisfies the NEPA. The EIS addresses compliance with the ESA in section 4.7, impacts on air quality in section 4.11.1, impacts on water resources in section 4.3, karst terrain and seismic zones were addressed in section 4.1, impacts on the ANST and visual resources in section 4.8, and alternatives in section 3.

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CO4 – Roanoke Appalachian Trail Club

CO4-4
cont'd

5. Avoidance of karst topography and active seismic zones in the proposed AT crossing locations
6. Avoidance of specific impacts, including scenic impacts, likely with currently proposed AT crossing alternatives

The RATC's May 16, 2016 resolution opposing the project is attached as a separate document. Thank you for the opportunity to comment on this project.

Sincerely,

Dr. Diana Christopulos
President
Roanoke Appalachian Trail Club
907 Greenbrier Court
Salem, VA 24153

COMPANIES AND NGOs

CO5 – Appalachian Mountain Advocates

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October 19, 2016

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Re: Draft Environmental Impact Statement for the Mountain Valley Pipeline (Docket No. CP16-10-000) and Equitrans Expansion Project (Docket No. CP16-13-000)

Dear Secretary Bose:

CO5-1 On behalf of Allegheny Defense Project, Appalachian Mountain Advocates, Appalachian Voices, Chesapeake Climate Action Network, Friends of Nelson, Friends of the Lower Greenbrier River, Greenbrier River Watershed Association, Heartwood, Indian Creek Watershed Association, Mountain Lakes Preservation Alliance, Natural Resources Defense Council, Ohio Valley Environmental Coalition, Preserve Giles County, Preserve Greenbrier County, Preserve Monroe, Preserve Montgomery County Virginia, Preserve Newport Historic Properties, Protect Our Water, Heritage, Rights (POWHR), Save Monroe, Sierra Club, Summers County Residents Against the Pipeline, The Border Conservancy, Virginia Chapter of the Sierra Club, West Virginia Chapter of the Sierra Club, West Virginia Highlands Conservancy, West Virginia Rivers Coalition, and Wild Virginia, we submit the following comments regarding the need for a Revised or Supplemental Draft Environmental Impact Statement (“DEIS”) for the proposed Mountain Valley Pipeline and Equitrans Expansion Projects (collectively, “MVP Project” or “Project”) in the above-referenced dockets. In the comments below, we outline many of the substantial deficiencies in the DEIS that must be corrected through the issuance of a Revised or Supplemental DEIS, including the failure to fully evaluate the need for the MVP Project and the failure to fully evaluate the impacts to water resources, wetlands, cultural resources, threatened and endangered species, and climate change implications. Correcting these deficiencies will require significant new analysis and the incorporation of high quality and accurate information regarding the MVP Project’s impacts. Public scrutiny of environmental decisionmaking, informed by high quality and accurate information, is essential to compliance with the National Environmental Policy Act (“NEPA”). 40 CFR § 1500.1(b). In light of these circumstances, we urge FERC to issue a Revised or Supplemental DEIS for the MVP Project, and provide sufficient opportunity for public comment. FERC must supply information and analysis regarding the MVP Project in a manner that facilitates meaningful analysis and public participation. The Commission should use this as an opportunity to correct the substantial deficiencies in the DEIS, thereby furthering the purposes of NEPA.

I. Legal Requirements for a Revised or Supplemental Environmental Impact Statement

NEPA’s EIS requirement “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Information must be provided in a timely manner to ensure that the public can

CO5-1

The draft EIS was sufficient to satisfy the NEPA. See responses to comments FA11-2, LA5-1, and LA13-1. This final EIS includes supplemental information and addresses comments on the draft. See response to FA11-12 about project need. The draft EIS evaluated impacts on water resources and wetlands in section 4.3, cultural resources in section 4.10, threatened and endangered species in section 4.7, and climate change in section 4.13.

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meaningfully participate in the decisionmaking process. *League of Wilderness Defenders/Blue Mountain Biodiversity Project v. Connaughton*, 752 F.3d 755, 761 (9th Cir. 2014) (“Informed public participation in reviewing environmental impacts is essential to the proper functioning of NEPA.”). An agency must “not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989).

When an agency publishes a draft EIS, it “must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act.” 40 C.F.R. § 1502.9(a). “If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.” *Id.* (emphasis added). “The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.” *Id.* An EIS that fails to provide the public a meaningful opportunity to review and understand the agency’s proposal, methodology, and analysis of potential environmental impacts violates NEPA. *See e.g., California ex rel. Lockyer v. U.S. Forest Service*, 465 F. Supp. 2d 942, 948-50 (N.D. Cal. 2006); *see also Idaho ex rel. Kempthorne v. U.S. Forest Service*, 142 F.Supp.2d 1248, 1261 (D. Idaho 2001) (“NEPA requires full disclosure of all relevant information before there is meaningful public debate and oversight.”).

Furthermore, NEPA requires a supplement to an EIS when significant new information or changes in a project implicate significant changes in the environmental analysis. The NEPA regulations require that:

- (1) [Agencies] . . . [s]hall prepare supplements to either draft or final environmental impact statements if: (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
- (2) [Agencies] may also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

40 C.F.R. § 1502.9(c). The use of the word “shall” is mandatory and creates a duty on the part of the agency to prepare a supplemental EIS if substantial changes are made or if there is significant new information relevant to environmental concerns. *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 372 (1989) (recognizing the duty where there are significant new circumstances or information); *see also Dubois v. U.S. Dep’t. of Agric.*, 102 F.3d 1273, 1292 (1st Cir. 1996).

When determining if new circumstances or new information require an agency to issue a supplemental EIS, the following factors should be considered: (a) the environmental significance of the new information; (b) its probable accuracy; (c) the degree to which the agency considered the new information and considered its impact; and (d) the degree to which the agency supported its decision not to supplement its impact statement with explanation or additional data. *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1025 (9th Cir. 1980); *Commonwealth of Massachusetts v. Watt*, 716 F.2d 946 (1st Cir. 1983).

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CO5-2

II. FERC must prepare a Revised or Supplemental DEIS for the MVP Project.

A. FERC must prepare a Revised DEIS due to the substantial lack of information in the DEIS regarding the need for the MVP Project and its environmental impacts.

1. FERC must analyze and discuss the purported need for the MVP Project in the DEIS.

NEPA regulations require FERC to “specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13. FERC must “exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project.” *Simmons v. U.S. Army Corps of Eng’s*, 120 F.3d 664, 669 (7th Cir. 1997) (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 209 (D.C. Cir. 1991) (Buckley, J., dissenting)). FERC “cannot restrict its analysis to those ‘alternative means by which a particular applicant can reach his goals.’” *Id.* (quoting *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986)); see also *Nat’l Parks & Cons. Ass’n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1072 (9th Cir. 2009) (finding a purpose and need statement that included the agency’s goal to address long-term landfill demand and the applicant’s three private goals was too narrowly drawn and constrained the possible range of alternatives in violation of NEPA).

Despite the clear requirement to discuss the need for the MVP Project in the DEIS, FERC says that it will not address project need until *after* the environmental analysis is over:

[T]his EIS is not a decision document, and it does not address in detail the need or public benefits of either the MVP or the [Equitrans Expansion Project]. The Commission will more fully explain its opinion on project benefits and need *in its Orders* for the MVP and the EEP.

DEIS at 1-9 (emphasis added). FERC has made similar statements in other recent DEIS documents for major greenfield pipelines. See, e.g., Atlantic Sunrise DEIS at 1-2 (“While this EIS briefly describes Transco’s stated purpose, it will not determine whether the need for the Project exists, because this will later be determined by the Commission.”) (Docket No. CP15-138-000). The EPA expressed concern that “project need will not be vetted in the [Atlantic Sunrise] EIS, but outside of the NEPA process by FERC.” EPA, *Comments on the Atlantic Sunrise DEIS – Cover Letter*, at 2 (June 27, 2016) (“EPA Atlantic Sunrise Comments”) (Ex. 1). Without assessing the need for the project in the DEIS, FERC undermines the development of alternatives to the proposed project, which is a “critical component of the NEPA process.” *Id.* EPA has stated that without this information in the DEIS, FERC failed to “provide transparency in the decision-making process,” thereby frustrating the public’s “opportunity to provide comment” on the DEIS. *Id.*

The MVP DEIS suffers from the same deficiencies. Without assessing the need for the MVP Project in the DEIS, FERC undermines the development of reasonable alternatives to the proposed project. The alternatives analysis is the “heart of the [EIS].” 40 C.F.R. § 1508.14.

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See the response to comment FA11-12 regarding need.

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Without disclosing and discussing the need for the MVP Project, FERC fails to provide transparency in the decisionmaking process and thereby frustrates the public's opportunity to provide meaningful comments on the DEIS. The public's right to weigh in on the assessment of need is particularly critical for a project such as MVP, which would impact both state and federal public lands and require the use of eminent domain over the objections of numerous landowners along the proposed route. In such instances, there must be even greater scrutiny of project need in the DEIS. The procedures of the Natural Gas Act cannot replace the full and fair public participation in the decisionmaking process that NEPA mandates. Therefore, the DEIS is "so inadequate as to preclude meaningful analysis" and FERC "shall prepare and circulate a revised draft[.]" 40 C.F.R. § 1502.9(a).

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2. Lack of Relevant Environmental Information

In addition to failing to properly disclose and consider the need for the MVP Project, the DEIS lacks sufficient information about the MVP Project and its potential environmental impacts on a wide variety of resources, including water resources, wetlands, cultural resources, threatened and endangered species, and climate change implications. The DEIS recommends that some of this missing information be supplied by the applicants either by the end of the DEIS comment period or before construction begins. *See* DEIS at 5-20 – 5-24. That means the public will not have an opportunity to meaningfully review and comment on this information before the final EIS is issued. Therefore, this information should have been included in the DEIS.

Only the issuance of a revised or supplemental DEIS that thoroughly analyzes this missing information will satisfy NEPA's public comment procedures, which "[encourage] public participation in the development of information during the decision making process." *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988). Simply adding this missing information to the final EIS is insufficient, as it does not allow the same degree of meaningful public participation. *Id.* (citing *California v. Block*, 690 F.2d 753, 770-71 (9th Cir. 1982)) ("It is only at the stage when the draft EIS is circulated that the public and outside agencies have the opportunity to evaluate and comment on the proposal...No such right exists upon issuance of a final EIS."); 40 C.F.R. § 1500.1(b).

FERC's failure to include significant amounts of critical environmental information in the DEIS seems to be part of a recent trend in draft EISs prepared by FERC for major greenfield pipelines. For example, in comments on the DEIS for the Constitution Pipeline, EPA stated that a substantial amount of information was omitted from the DEIS, including information regarding impacts to geology and soils, waterbodies, wetlands, wildlife and vegetation, air emissions, and cumulative impacts. EPA, *Comments on the Constitution Pipeline DEIS* at 3-9 (Apr. 9, 2014) (Ex. 2). EPA repeatedly explained that the lack of information prevented other agencies and the public from meaningfully participating in the NEPA process. *See, e.g., id.* at 3 (The lack of information "negates the ability of agency specialists and the public to review the analysis and comment on it.").

In comments on the Atlantic Sunrise Pipeline DEIS, EPA stated it was "concerned about the amount of detailed information that has yet to be filed and is not evaluated in the DEIS." EPA Atlantic Sunrise Comments at 2. This missing information includes:

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Courts have ruled that an EIS does not have to be based on complete plans, and can rely on partial data - see *Robertson v Methow Valley Citizens* (40 US 332, 1989). See also our response to comment FA11-2 regarding pending information.

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surveys for land, rare, species, historic resources, water supplies, air modeling, mitigation measures to manage and dispose of contaminated groundwater, proposed mitigation measures for source water protection areas, geotechnical feasibility studies for HDD crossing locations and mitigation measures to minimize drilling risks, and a detailed aquatic resource compensatory mitigation plan.

Id. EPA explained that this information is both “relevant and critical to evaluation of potential impacts” and that “a fully informed decision may not be made without this information.” *Id.* EPA also stressed that this missing information needs to be “disseminated and appropriately evaluated with the resource agencies and public stakeholder participation prior to the issuance of any certificates by FERC.” *Id.* EPA specifically recommends that FERC do this “through the use of a revised DEIS.” *Id.*

In comments on the DEIS for the Sabal Pipeline, EPA said that it had “very significant concerns over the FERC’s process and full and objective compliance with the NEPA regulations at 40 CFR Part 1500.” EPA, *Comments on the Southeast Market Pipeline Project DEIS* at 1 (Oct. 26, 2015) (Ex. 3). EPA even suggested that FERC “appear[ed] to be justifying decisions made prior to implementing the NEPA process.” *Id.* at 9.

In comments on the DEIS for the PennEast Pipeline, EPA said it had “significant concerns regarding the alternatives analysis, a number of important topics for which *information is incomplete*, and the direct, indirect and cumulative impacts of the proposed action on the environment and public health, including impacts to terrestrial resources, including interior forests, aquatic resources, and rare, threatened and endangered species.” EPA, *Comments on the PennEast Pipeline DEIS*, at 1 (Sept. 16, 2016) (Ex. 4) (emphasis added). EPA emphasized that “[a] significant amount of information is omitted from the DEIS and is proposed to be filed by the project proponent at a future date.” *Id.* at 3. EPA stressed that “[f]ailing to consider this information in the DEIS leads to gaps in the data and lack of potentially important information for the decision maker.” *Id.* As it did in comments on the Atlantic Sunrise DEIS, EPA specifically requested that FERC prepare a “revised DEIS” for the PennEast Pipeline to account for these significant deficiencies.

Recent EPA comments indicate that FERC is not remediating these deficiencies before publication of a Final EIS (“FEIS”). For example, in comments on the DEIS for the Leach Xpress Pipeline, EPA said that FERC:

... did not include estimates of the GHG emissions associated with the production, leakage, and combustion of the natural gas transported by this proposal. Because of the causal relationship between this project and the emissions, it is appropriate and consistent with NEPA and CEQ regulations to consider and disclose the emissions levels in NEPA analyses.

EPA, *Comments on the Leach Xpress Pipeline DEIS*, at 20 (June 6, 2016) (Ex. 5). EPA recommended that “the FEIS include estimates of emissions from production, leakage, and

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combustion of the natural gas transported by the proposal.” *Id.* EPA also faulted FERC for comparing project-level GHG emissions to State-wide emissions. *Id.*

In comments on the Leach Xpress Pipeline FEIS, EPA said that FERC “perpetuates the significant omission documented through our comments on the DEIS with respect to a proper climate change analysis to inform the decision making process.” EPA, *Comments on the Leach Xpress FEIS*, at 2 (Oct. 11, 2016) (“EPA Leach Xpress FEIS Comments”) (Ex. 6). In particular, EPA said that:

The FEIS did not include estimates of the indirect GHG emissions that would be caused by the proposal and its alternatives, including effects of production, and combustion of the natural gas transported by this proposal. FERC’s response to EPA’s comments on its Draft EIS indicated non-concurrence with the recommendation to calculate the indirect emissions associated with end use product combustion. Combustion of the product is a reasonably foreseeable effect of this project, and falls squarely within the obligation to consider indirect impacts under NEPA. The CEQ GHG Guidance makes this same point, and uses the end use product combustion of fossil fuel as a specific example of the kind of indirect effect that should be considered under NEPA.

Id. at 6-7. EPA was also critical of FERC continuing to compare project-level GHG emissions to State-wide emissions when “that concept is not included in the final [CEQ GHG Guidance].” *Id.* at 7. Consequently, EPA says:

We view FERC’s response to our comments as very concerning in light of CEQ’s GHG Guidance and request a headquarters level meeting with us to seek a definitive resolution to this matter before you publish a Record of Decision (ROD) and so that you do not continue to take this approach in additional NEPA documents.

Id. EPA’s comments reveal a pattern of FERC publishing significantly deficient draft statements for major greenfield pipelines before it obtains critically important information from the applicant – information that is needed in order to fully understand the project and its environmental consequences. EPA’s comments on the Leach Xpress Pipeline FEIS reveal that those deficiencies are not addressed or remedied in the FEIS.

Here, FERC has published a DEIS for another major greenfield pipeline project, the MVP Project. Once again, there is a substantial amount of critical information and analysis that is omitted from the DEIS. Notably, the MVP DEIS suffers from the same deficiencies regarding GHG emissions that EPA criticized in the Leach Xpress DEIS and FEIS.

For example, FERC estimates total annual emissions of the MVP Project at 40 million tons per year. *See* DEIS at 4-516. FERC claims that gas transported by the MVP Project could “result in the displacement of some coal use, thereby potentially offsetting some regional GHG emissions.” *Id.* At no point, however, does FERC analyze whether the MVP Project emissions are “instead of” or “in addition to” existing emissions. This is an important factor since the total

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annual emissions for the MVP Project is larger than emissions from the top three coal-fired power plants (Amos, Harrison, and Mount Storm) in West Virginia. *See* EPA, Air Markets Program Data, available at <https://ampd.epa.gov/ampd/> (Ex. 7).

In addition, FERC does not analyze the significance of the total annual MVP Project GHG emissions in any meaningful way. Instead, FERC compares the total annual GHG emissions of the MVP Project to “the global GHG emission inventory.” DEIS at 4-516. This comparison serves only to minimize the MVP Project’s GHG emissions and does not provide any meaningful information. *See id.* (noting that GHG emissions from MVP Project would be “negligible” compared to the global GHG inventory). EPA recently criticized FERC for comparing the estimated emissions of the Leach Xpress Project “to state GHG emission levels.” EPA Leach Xpress FEIS Comments at 7. EPA explained that “[c]omparing one project’s direct and indirect emissions to aggregated totals is not an appropriate way to consider the impact of emissions” and is inconsistent with the CEQ GHG Guidance. *Id.*

In addition to the significant flaws regarding GHG emissions, there is a significant amount of information regarding other environmental impacts that is missing from the DEIS and will not be provided by the applicants in a manner that facilitates meaningful public disclosure and participation. This includes the following:

- **Information that MVP does not have to provide until the end of the DEIS comment period:**
 - Documentation of continued coordination with the Forest Service and other Appalachian Trail stakeholders regarding the newly adopted pipeline crossing, including visual simulations modeling both “leaf-on” and “leaf-off” scenarios at the crossing.
 - Results of on-site surveys for the Mount Tabor Route Alternative to assess constructability and identify karst features that shall be adopted if the alternative is adopted into the proposed pipeline route.
 - Additional information on the tracts identified in table 3.5.3-1 of the DEIS.
 - A complete list of any locations not already found acceptable by FERC staff where the pipeline route or access road parallels a waterbody within 15 feet or travels linearly within the waterbody channel.
 - Plans and maps that illustrate how permanent impacts on wetlands would be avoided at the WB Interconnect. If such impacts cannot be avoided, MVP shall propose a new upland location for the facility and include new site plans and maps.
 - Site-specific justifications for each of the wetlands for which MVP requests a right-of-way greater than 75 feet.
 - A plan that describes how long-term and permanent impacts on migratory bird habitat would be minimized, with an emphasis on high quality and/or larger intact core interior forest areas.
- **Information that Equitrans does not have to provide until the end of the DEIS comment period:**

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- The current status of easement negotiations for the Redhook Compressor Station and alternative sites and analysis if those negotiations have been unsuccessful.
- Information regarding the potential construction feasibility of the Cline Route Alternative, including more detailed analysis of potential issues associated with either an open-cut or road crossing at Raccoon Creek and Raccoon Run Road.
- **Information that MVP does not have to provide until after the certificate is issued:**
 - A plan for the avoidance of active mines, or copies of agreements with coal companies regarding compensation for loss of coal resources.
 - A revised Landslide Mitigation Plan that includes:
 - An analysis of the potential landslide hazards at the GCSZ, Peters Mountain, Sinking Creek Mountain, and Brush Mountain based on the results of investigations conducted by Schultz and Southworth (1989), and further identified and discussed in USGS Bulletin 1839-E;
 - An identification of landslide hazards where the pipeline routes through areas comprised of both steep slopes and red shale bedrock of the Conemaugh, Monongahela, Dunkard, and Mauch Chunk Groups;
 - An analysis of a potential debris flow zone within the Jefferson National Forest from MP 195.5 along the Kimballton Branch to the junction of Stoney Creek; and
 - Minor route adjustments as a method to avoid areas of potential slides and debris flows.
 - Results of MVP's fracture trace/lineament analysis.
 - Site-specific plans, including details regarding materials to be used and installation methods, for the use of permanent culverts and permanent fill in waterbodies and wetlands for access roads. MVP shall include a detailed analysis of all reasonable alternatives to the use of culverts and permanent fill.
 - Results of quantitative modeling for turbidity and sedimentation associated with wet open-cut crossings of the Elk River, Gauley River, and Greenbrier River. The analysis shall address the duration, extent, and magnitude of turbidity levels and assess the potential impacts on resident biota. The analysis should also include a discussion on the physical and chemical characteristics of the sediments, the estimated area affected by the transport and redistribution of the sediments, and the effect of the suspension and resettlement on water quality as well as an assessment of the effectiveness of the proposed turbidity curtains.
 - HDD feasibility and geotechnical studies for the alternative alignments identified for the Pigg River crossing at MP 286.8 and the Blackwater River crossing at MP 262.8.
 - Contingency plans outlining measures that would be taken to minimize and mitigate potential impacts on public surface water supplies with intakes within 3 miles downstream of the crossing of the MVP pipeline, and ZCC within 0.25-mile of the pipeline.
 - Results of all remaining environmental surveys (water resources, wetlands, cultural resources, and threatened and endangered species) for all cathodic protection groundbeds.

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- Evidence of landowner concurrence with the site-specific residential construction plans for all locations where construction work areas would be within 10 feet of a residence, as indicated in bold in table 4.8.2-1.
 - Documentation that the Weston and Gauley Bridge Turnpike Crossing Plan was reviewed by the COE.
 - Documentation that the Blue Ridge Parkway Crossing Plan was reviewed by the National Park Service.
 - Documentation that the U.S. Highway 50 and North Bend Rail Trail Crossing Plan was reviewed by the WVDOT and WVDNR.
 - Documentation of further coordination with TNC and VDCR of regarding the Mill Creek Springs Natural Area Preserve and include any impact avoidance, minimization, or mitigation measures developed.
 - Documentation that MVP's VOF parcels crossing plans were reviewed by the VOF.
 - Documentation that the TNC Property Crossing Plan was reviewed by TNC.
- **Information that Equitrans does not have to provide until after the certificate is issued:**
 - HDD noise mitigation plan to reduce the projected noise level increase attributable to the proposed drilling operations at the NSAs.
 - **Information that neither MVP nor Equitrans has to provide until after the certificate is issued:**
 - The location of all water wells, springs, swallets, and other drinking water sources within 150 feet (500 feet in karst terrain) of the pipeline and aboveground facilities.
 - **Information that MVP does not have to provide until after the certificate is issued:**
 - All outstanding biological surveys for federally listed species (*i.e.*, Ellett Valley millipede, bog turtle, and running buffalo clover).
 - Remaining cultural resources survey reports, site evaluation reports, avoidance plans, or treatment plans.

DEIS at 5-20 – 5-24. This list makes clear that FERC has not “ma[d]e every effort to disclose and discuss at appropriate points *in the draft statement* all major points of view on the environmental impacts of the alternatives including the proposed action.” 40 C.F.R. § 1502.9(a) (emphasis added).

The information described above should have been included in the DEIS; without this information, FERC cannot perform a fully informed evaluation of potential impacts and pipeline routing decisions. By publishing the DEIS without the foregoing information, FERC failed to “guarantee[] that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). The missing information will almost certainly not be disclosed in time for affected landowners and the broader public to adequately review and comment during the DEIS comment period. Thus, the

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cont'd DEIS is “so inadequate” that it “preclude[s] meaningful analysis” and FERC “shall prepare and circulate a revised draft[.]” 40 C.F.R. § 1502.9(a).

B. Alternatively, FERC must prepare a Supplemental DEIS after the applicants submit all of the currently missing environmental information.

As explained above, the DEIS is inadequate due to the substantial amount of incomplete information and analysis, which precludes meaningful review. 40 C.F.R. § 1502.9(a). Thus, FERC must prepare a revised DEIS. Alternatively, due to the sheer volume of information that FERC is not requiring the applicants to provide until either the end of the DEIS comment period or before construction, this information (once submitted) will constitute significant new information for which a Supplemental DEIS “shall” be prepared. 40 C.F.R. § 1502.9(c)(1)(ii). This information is also likely to result in substantial changes to the proposed action for which a Supplemental DEIS “shall” be prepared. *Id.* § 1502.9(c)(1)(i). Moreover, preparing a Supplemental DEIS that considers this new information will further the purposes of NEPA. *Id.* § 1502.9(c)(2).

C. The issuance of a Final EIS with a comment period is inconsistent with the requirements and purpose of NEPA

Issuance of a Final EIS with a comment period, in lieu of a Revised or Supplemental DEIS, would not satisfy the requirements and purpose of NEPA. NEPA was enacted to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 CFR § 1500.1(b). It is essential that that environmental information is high quality and based upon “accurate scientific analysis, expert agency comments and public scrutiny.” *Id.* Furthermore, part of the NEPA process includes the public’s opportunity to understand the agency’s response to these comments. Even with a comment period, a Final EIS will not allow informed public scrutiny of and input into the decision making process before a “decision is made and before actions are taken.” *Id.* See also *Half Moon Bay Fishermans’ Mktg. Ass’n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988). For the reasons outlined in this letter, FERC must prepare a Revised or Supplemental DEIS that corrects the significant deficiencies in the DEIS that have been identified above.

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COMPANIES AND NGOs

CO5 – Appalachian Mountain Advocates

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CO5-3
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COMPANIES AND NGOs

CO5 – Appalachian Mountain Advocates

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CO5-3
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COMPANIES AND NGOs

CO5 – Appalachian Mountain Advocates

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CO5-3
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COMPANIES AND NGOs

CO5 – Appalachian Mountain Advocates

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CO5-3
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COMPANIES AND NGOs

CO5 – Appalachian Mountain Advocates

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CO5-3
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cc: Ted Boling (CEQ, Associate Director for NEPA)
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Jeffrey D. Lapp (EPA, Region 3, Office of Environmental Programs)
Tom Speaks (U.S. Forest Service)
Wendy Janssen (National Park Service)
Bruce Dawson (Bureau of Land Management)
Cindy Schulz (U.S. Fish & Wildlife Service)
Tieman Lennon (U.S. Fish & Wildlife Service)
Colonel Philip M. Secrist III (Army Corps, Huntington District)
Colonel Jason Kelly (Army Corps, Norfolk District)
Colonel John P. Lloyd (Army Corps, Pittsburgh District)
Randy C. Huffman (West Virginia DEP)
David K. Paylor (Virginia DEQ)
Patrick McDonnell (Pennsylvania DEP)
Gov. Earl Ray Tomblin
Sen. Joe Manchin
Sen. Shelley Moore Capito
State Sen. Ron Miller
Gov. Terry McAuliffe
Sen. Mark Warner
Sen. Tim Kaine
Rep. Robert Hurt
Rep. Gerald Connelly
Rep. Don Beyer
Rep. Bobby Scott
Rep. Robert Goodlatte
Rep. Morgan Griffith
Attorney General Mark Herring
Lt. Gov. Ralph Northam
State Sen. Creigh Deeds
State Sen. John Edwards
Delegate David Toscano
Delegate Joseph Yost

COMPANIES AND NGOs

CO6 – Roanoke Gas Company

Talking Points

CO6-1

My name is John D’Orazio and I am president and CEO of Roanoke Gas Company.

I support the MVP and agree with FERC’s recommendations and conclusion on the Draft Environmental Impact Study. I would like to briefly discuss 3 benefits that the Mountain Valley Pipeline would bring to Southwest Virginia.

The first benefit is additional gas supply or capacity to Roanoke Gas and Southwest Virginia.

- Roanoke Gas currently receives its gas from two existing transmission lines. Unfortunately, both transmission lines are at or near capacity and there are limited options for additional capacity to meet our future supply needs.
- The Mountain Valley Pipeline, being an open access pipeline and based on its proposed route, would provide Roanoke Gas Company with a third source of supply and additional capacity to our distribution system, enhancing the reliability of our system as well as bringing lower cost Marcellus Gas to our customers.

The second benefit is Economic Development for Southwest Virginia.

- Access to low cost natural gas is essential in attracting companies that require natural gas for their business process.
- The Roanoke Regional Partnership estimates that of the approximately 150 companies that have considered the Roanoke Valley as a possible site between 2013 and 2015, 80% were manufacturers. Of those 80 percent, approximately 80% required natural gas. Had natural gas been unavailable, these companies would not have considered Roanoke as a potential site location.
- The Mountain Valley Pipeline will also provide the opportunity for those areas that currently do not have access to natural gas (Franklin County) to have the ability to attract industries that utilize natural gas, which will create new jobs and investments in those communities.

CO6-1

Comments noted.

COMPANIES AND NGOs

CO6 – Roanoke Gas Company

CO6-1
cont'd

Third, having access to natural gas is an important element in retention of existing business by providing access to lower cost energy.

- A recent example of this occurred in Hillsville, Virginia, where an existing large manufacturer utilized fuel oil for their manufacturing process. After this facility was constructed, a natural gas pipeline was constructed in close proximity to Hillsville.
- The manufacturer approached the County and advised that if they could secure access to natural gas to the manufacturing facility, they would remain in the locality. If not, they would close the facility and move the operation to another state.
- Because natural gas was brought to this facility, 100 jobs in this small community were saved, as well as the tax revenue. In addition, once natural gas became available, the locality was able to attract several new businesses to their industrial park.

For these reasons: the additional gas supply to Roanoke Gas Company and Southwest Virginia, economic development for Southwest Virginia, and retention of existing businesses, I support the Mountain Valley Pipeline.

Thank you.

COMPANIES AND NGOs

CO7 – Blue Ridge Land Conservancy



A duplicate copy of this comment was filed again on 10/25/2016 (20161024-0042). The duplicate comment letter has not been included.

BOARD OF TRUSTEES

- Betty H. Lesko
President
- William M. Hackworth
President-Elect
- F. Fulton Galer
Treasurer

October 20, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Whitney H. Feldmann
Secretary

Dear Secretary Bose,

- C. Whitney Brown
- Frank G. Carter
- Diana K. Christopoulos
- Stephen M. Claytor
- M. Rupert Cutler
- Ruth T. Dickerson
- Thomas M. Dunkenberger, Jr
- Broaddus C. Fitzpatrick
- Joshua C. Gibson
- Anne M. Jennings
- George A. Kegley
- Nelson W. Lafon
- Linda W. Pharis

CO7-1

In a letter to you dated Sept. 9, 2016, Rene' Hypes, Project Review Coordinator for the Virginia Department of Conservation and Recreation, provides a recommendation concerning the proposed Mountain Valley Pipeline (MVP) that we believe is quite inappropriate.

In her letter, Ms. Hypes recommends moving the routing of the MVP away from the Slussers Chapel Conservation Site in Montgomery County, VA, and onto the ridgeline of nearby Brush Mountain. While we agree with Ms. Hypes that the MVP should avoid the Slussers Chapel Conservation Site, we do not believe that a better alternative is to route the MVP along the ridgeline of Brush Mountain, immediately adjacent to the Brush Mountain Wilderness and in the viewshed of the Appalachian Trail. The Blue Ridge Land Conservancy has passed resolutions opposing the MVP endangering federal Wilderness and the AT viewshed, which have been made part of the federal record for the MVP project.

Brush Mountain is one of the most visible mountains in Montgomery, Roanoke and Craig Counties, providing the backdrop for much of the town of Blacksburg. Routing the pipeline along the ridgeline as suggested by Ms. Hypes would require destroying the beauty of approximately two miles of this forested ridgeline to accommodate the 100 ft.-wide construction zone of the proposed pipeline. Mountain ridges are seldom flat places conducive to construction, but rather narrow, rocky spines that drop off at steep angles to the valley floor on either side. There could not be a less logical location for a 42" natural gas pipeline than along a ridgeline.

ADVISORY COUNCIL

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Project Manager
- Deborah Ullmer
Office Manager
- Erica Reed
Outdoor Educator

CO7-1

Section 3.5.1 of the final EIS has been revised to discuss VADCR's suggested route alternative to avoid the Slussers Chapel Conservation Site, as described in its September 9, 2016 letter (which we received after the draft EIS went to print).



722 First Street SW, Suite L Roanoke, VA 24016-4120 Phone/Fax (540) 985-0000 www.blueridgelandconservancy.org
Promoting the conservation of western Virginia's natural resources--farms, forests, waterways, and rural landscapes

COMPANIES AND NGOs

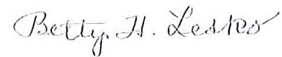
CO7 – Blue Ridge Land Conservancy

CO7-1
cont'd

Ms. Hypes' proposed route would also place the MVP immediately adjacent to the Brush Mountain Wilderness. Federally-designated Wilderness areas are meant to be "untrammelled by man." Locating a major industrial facility such as a buried natural gas pipeline would be irreparably harmful to the Brush Mountain Wilderness. Construction noise, including noise from the blasting of rock atop the mountain, would alter wildlife patterns, including those of large predators whose habitat is already highly fragmented. The remaining permanently treeless easement atop the mountain would alter sunlight and vegetation patterns, destroy wild bird and other animal habitat, and encourage invasive and non-native species establishment on the newly disturbed ground. In short, the neighboring Brush Mountain Wilderness, which would literally abut the pipeline easement atop the ridgeline, would be anything but "untrammelled by man." It would be permanently and needlessly damaged by man, to the detriment of Virginia's natural resources and those who enjoy them.

Thank you for your consideration of our concerns. While we agree with Ms. Hypes and the Virginia Department of Conservation and Recreation that the route for the proposed MVP should avoid the Slussers Chapel Conservation Site, we ask that you disregard their recommendation to reroute the pipeline along the ridgeline of Brush Mountain.

Sincerely,



Betty H. Lesko
President

cc: Virginia Governor Terry McAuliffe
Joby Timm, Forest Supervisor, George Washington and Jefferson National Forest
Molly Ward, Virginia Secretary of Natural Resources
Clyde Cristman, Director, Virginia Dept. of Conservation and Recreation

COMPANIES AND NGOs

CO8 – Virginia Outdoors Foundation

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October 19, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, D.C. 20426

**RE: Mountain Valley Pipeline, LLC
Docket No. CP16-10-000
Supplemental Materials – October
2016 Proposed Route**

Dear Secretary Bose:

CO8-1

The Virginia Outdoors Foundation (VOF), a body politic created by an Act of the Virginia General Assembly in 1966, holds nearly 4,000 easements on almost 800,000 acres that represent more than \$1 billion of public investment to ensure conservation of natural and cultural resources as enacted in the Virginia Constitution. We are writing to you in response to Mountain Valley Pipeline, LLCs (MVP) October 2016 Proposed Route filed with FERC on October 13, 2016.

Prior to the October 2016 submission and as outlined in the Draft Environmental Impact Statement, MVP was proposing to cross two VOF open space easements with the interstate gas transmission line and to request a temporary access construction easement on a third VOF open space easement. The VOF had notified MVP that the crossing of the protected open space land by the pipeline would be a violation of the Open Space Easements and result in a “conversion” of Open Space Land. MVP would need to submit applications to the VOF Board of Trustees to meet the requirements of Section 10.1-1704 of the Virginia Code as outlined below:

Section 10.1-1704 of the Virginia Open-Space Land Act states:

A. No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless (i) the conversion or diversion is determined by the public body to be (a) essential to the orderly development and growth of the locality and (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion and (ii) there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.

virginiaoutdoorsfoundation.org

Main Street Centre, 600 East Main Street, Suite 402, Richmond, VA 23219

CO8-1

The commenter’s support for adoption of the Mount Tabor Route Variation and avoidance of VOF easements is noted.

COMPANIES AND NGOs

CO8 – Virginia Outdoors Foundation

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CO8-1
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B. A public body may convey or lease any real property it has acquired and which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection A of this section.

However, with the adoption of the Mt. Tabor Route Variation as the preferred route in the October 2016 Proposed Route, MVP will avoid crossing VOF open space easements with the interstate gas transmission line. We are very pleased that MVP has taken this step to avoid crossing VOF-protected land and we hope that they will consider avoiding other important environmentally sensitive lands in the area. We will continue to work with the company throughout the FERC process to keep avoidance as the preferred strategy.

VOF appreciates the opportunity to participate in the FERC process and applauds the efforts to avoid impacts to Virginia's important conserved lands. Thank you for your consideration.

Respectfully,



Martha Little
Deputy Director

CC [EMAIL ONLY]:

- Lindsey Hesch, Senior Environmental Specialist, Nextera Energy Resources
- Brett Glymph, Executive Director, VOF

virginiaoutdoorsfoundation.org

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Page 2 of 2

COMPANIES AND NGOs
CO9 – Greater Newport Rural Historic District Committee

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects

In the Matter of the Application of:

Mountain Valley Pipeline, LLC

Docket No. CP16-10-000

COMMENT AND OBJECTION

I. Overview

CO9-1

The Greater Newport Rural Historic District Committee (Committee) has reviewed the July 18, 2016 revised report (Supplemental Information Addendum) provided to FERC by MVP in response to FERC’s Environmental Information Request regarding identifying and recording contributing historic properties in the Greater Newport Rural Historic District (District). The Supplemental Information Addendum, however, remains incomplete and inaccurate as it relates to the District and the Newport Historic District.

Using the same publicly available resources that are cited by New South Associates (NSA), the Committee has located at least 40 contributing or unevaluated historic resources in the direct and indirect Areas of Potential Effect (APE) that were not identified in the Supplemental Information Addendum. In addition, after nearly two years of preparation, the MVP Application is still substantially noncompliant with 18 CFR § 380.15 (Siting and Maintenance Requirements) and 18 CFR § 380.12 (Environmental Reports for Natural Gas Act Applications) and provides inadequate information to draft an Environmental Information Statement. The Committee renews its request for an independent consultant to conduct a resurvey of historic resources within the pipeline project APE.

CO9-2

Despite repeated reminders that the APEs are not adequate for the undertaking, these issues have never been addressed by FERC or the Virginia State Historic Preservation Officer (SHPO). Additionally, the Committee objects to the inadequate examination of alternatives that can avoid the eight historic districts adversely affected by the proposed route, when such feasible and prudent alternatives exist. Finally, the Section 106 process of the National Historic Preservation Act (NHPA) has been conducted in a manner that violates the NHPA consulting party requirements. Consequences of this mismanagement are that the contractors conducting Section 106 related reports are using APE that are not appropriate for the scope of the undertaking, and interested parties with valid legal and economic interests in historic properties are being denied due process.

CO9-1

Section 4.10 of the final EIS has been revised as appropriate. The Virginia SHPO accepted Mountain Valley’s addendum historic architectural report for Giles County (Turco, June 2016) that included new mapping and updated tables identifying the resources in the APE along the pipeline route through the Greater Newport Rural Historic District. Those data are included in the final EIS.

CO9-2

Alternatives are analyzed in section 3 of the EIS. As stated in section 4.10.6.2, the Virginia SHPO accepted our definition of the APE. Table 4.10.2-1 provides consulting party requests and data conveyance. The revised section 4.10 of the final EIS addresses the comments of the Committee and the Pezzoni report. In addition, our draft EIS was sent to the VADHR.

COMPANIES AND NGOs

CO9 – Greater Newport Rural Historic District Committee

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CO9-2
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II. Background and Issues

On October 14, 2014, MVP posted maps to its website showing a proposed pipeline route through Giles County that would adversely impact up to 6 miles of the District. On November 15, 2014, in Preliminary Filing case number PF15-3, the Committee responded to FERC, noting that the proposed route would directly affect up to six miles of the District and more than 60 contributing properties:

Attachment 1 shows the approximate pipeline route through the District. The route parallels the District for a distance of 2 miles, before crossing the District for approximately 4 miles. Using maps posted on the Mountain Valley LLC's website (dated October 7, 2014), a preliminary survey indicates that the proposed pipeline route itself crosses or adjoins 14 District listed contributing historic properties; crosses a Virginia-designated Scenic Byway in the District (the Blue Grass Trail); and severs the National Historic List village of Newport (National Register No. 94000059) from four of its five historical tributary drainage areas in the Greater Newport Rural Historic District: Mountain Lake, Clover Hollow, Plowscrew, and Sinking Creek Valley.

For an undertaking of this magnitude, the Committee believes that the area of potential effect ("APE") for evaluating cumulative cultural impacts on the District should be the District as a whole. However, even using the Virginia Department of Historic Resources' ("VDHR") State Historic Preservation Officer's ("SHPO") suggested APE of one mile on either side of the proposed corridor centerline, the Committee identified nearly 50 additional listed contributing historic District properties within the APE. Please note this number does not include yet more contributing properties belonging to the Newport Historic District in the National Register listed village of Newport (National Register No. 94000059), many of which also lie within the APE (the proposed corridor passes less than a mile from the center of the Newport Historic District).¹

The Committee also requested consulting party status in the NHPA Section 106 process, but this request was ignored by FERC. On April 27, 2015, FERC issued a Notice of Intent (NOI) in preliminary filing docket PF15-03 to prepare an Environmental Impact Statement (EIS), and requested scoping comments from the public.² In its NOI, FERC noted:

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Offices, and to solicit their views and those of other government agencies,

¹ FERC eLibrary docket PF15-3 20141117-5027, p. 1.

² FERC eLibrary docket PF15-03 20150417-3022(30500452).

COMPANIES AND NGOs

CO9 – Greater Newport Rural Historic District Committee

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CO9-2
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interested Indian tribes, and the public on the project's potential effects on historic properties.³

We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

On June 15, 2015, the Committee provided scoping comments to FERC, citing gross errors and omissions in MVP's application Resource Report 4 Cultural Resources and Resource Report 8 Land Use relating to MVP identified boundaries of the District, APE definitions, and visual impacts on historic properties.⁴ The Committee also addressed its concern that the MVP application methodology for evaluating historic properties was fundamentally flawed as it related to identifying contributing historic properties in rural historic districts.⁵ **These errors have never been corrected in the record.** In this filing, the Committee again requested consulting party status in the NHPA Section 106 process, but this request was ignored by FERC.

On October 23, 2015, MVP submitted an application for a new pipeline route that actually **increased** the adverse effects on the District from 6 miles to 8 miles of this rural historic district property, and directly impacts the Newport Historic District (NHD), a separate historic district listed on the National Register of Historic Places (NRHP) in the heart of the District.⁶ The application, included Appendix 4-G *Aboveground Resources Located within 0.5-Mile of Project in Virginia*.

On November 17, 2015, the Committee filed an intervention and protest, citing numerous findings of incomplete and inaccurate information in the MVP application:

1. During scoping for environmental and "cultural resource" studies, neither FERC's staff nor the applicant's consultants appear to have talked with possible affected parties, including parties entitled to be consulting parties under Section 106 of the National Historic Preservation Act (NHPA);

³ The Advisory Council on Historic Preservation implementing regulations for the National Historic Preservation Act are located at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

⁴ FERC eLibrary Docket PF15-3 20150617-5078, pp. 3-8.

⁵ *Id.* at pp. 5-6.

⁶ Both routes violate FERC's Guidelines for Reporting on Cultural Resource Investigations for Pipeline Projects: "The FERC prefers that projects avoid historic properties, wherever possible."

COMPANIES AND NGOs

CO9 – Greater Newport Rural Historic District Committee

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CO9-2
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2. The use of FERC's National Environmental Protection Act (NEPA) public participation process is acceptable for notifying people and soliciting formal comments, but is not a substitute for consultation under Section 106 of the NHPA;

3. The Company missed numerous contributing historic properties in both in the District and the Newport Historic District in Resource Report 4, Cultural Resources Appendix 4G Aboveground Structures; and

4. The APE maps provided in Resource Report 4 Appendix 4S Draft APE are for the APE-Newport Variation, not the preferred corridor. The Application contains no APE maps for the proposed pipeline in the District. Due to this deficiency, it is impossible for the Committee to comment conclusively on an APE for the preferred corridor that is not even presented in the Application. However, in the absence of Company maps in the Application showing the impacts of the preferred corridor on the District, the Committee provides a map (Figure 1) showing the general locations of the two pipeline corridors in relation to the Greater Newport Rural Historic District and Newport Historic District.

Most of these errors have not been corrected in the record. Maps showing the proposed indirect APE for the District were not corrected for six months, and have not been corrected for any other area outside of the District. The Committee's comments have been ignored by MVP and FERC. In this filing, the Committee again requested consulting party status.⁷ On February 18, 2016, this request was denied by FERC, citing the following:

"...we believe that our existing procedures provide the GNRHDC with sufficient opportunities to comment on cultural resources information, without having consulting party status."⁸

On December 24, 2015, FERC issued an Environmental Information Request (EIR),⁹ requesting the following information relating to the District:

9. In a November 17, 2015 filing, the Greater Newport Rural Historic District Committee stated that Mountain Valley's architectural survey missed numerous contributing properties within the Historic District. Provide a list of all contributing properties within the Historic District within 0.25 mile of the pipeline centerline. Relate these buildings to Mountain Valley's architectural survey (site numbers and descriptions), and indicate how far (in feet) the pipeline would be from each of the structures. If any of the contributing structures would be within the direct APE, provide measures for avoidance or mitigation. If any of the buildings are outside of the direct APE but within the indirect APE, discuss site-

⁷ The Committee had previously requested consulting party status in its previous filings (FERC eLibrary Docket PF15-3 20150617-5078, and PF15-3 20141117-5027.

⁸ FERC eLibrary 20160218-3027, p. 1.

⁹ FERC eLibrary Docket CP16-10 20151224-3000 (31105005) FERC EIR Dec. 24 2015, p. 23.

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specific measures that would minimize audible, visual, or other impacts from the project that may alter the character of those properties. If contributing buildings in the Historic District within 0.25 mile of the pipeline were not relocated by Mountain Valley's survey, explain why.

On January 27, 2016, MVP responded to the EIR but failed to provide adequate responses to FERC's questions about identification and locating historic resources in the District.¹⁰

The Committee responded on March 4, 2016 with wide-ranging objections about the inadequacies of MVP's EIR responses. For example,

- The scope of MVP's APEs are inadequate, failing to meet FERC guidelines to adequately address cumulative effects, combined effects with other resource mitigation strategies, cultural attachment to land, and cultural landscapes;¹¹
- MVP provided responses that failed to meet NEPA and NHPA minimum requirements;¹² and
- The information that was provided in MVP's response to EIR Question 9 was so inaccurate and incomplete, that surveys MVP claimed it relied on could not have been done in the manner reported.¹³

The Committee concluded:¹⁴

- MVP misled FERC as to why it could not find historic district contributing resources in the District. Specifically, it claims to have relied solely on data in the Virginia Cultural Resource Database (V-CRIS) - even when it was aware that this data resource was not complete and accurate; and that MVP and/or its consultants, New South Associates

¹⁰ FERC eLibrary Docket CP16-10 20160127-5356(31190465).

¹¹ *Id.* at pp. 2-6.

¹² *Id.* at pp. 6-8.

¹³ *Id.* at pp. 8-12. The Committee stated that "[t]he discrepancies are so egregious, that it raises the question of whether or not such a survey was actually performed for the proposed route described in the Application. As it relates to documenting historic resources in the Greater Newport Rural Historic District, the data provided by MVP in tables 9-a and 9-b is inaccurate, incomplete, and meaningless in satisfying the application and EIR requirements of the Commission."

¹⁴ *Id.* at pp. 12-19.

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(NSA) or TetraTech, were aware of and had previously used other publically available resources with more complete information about contributing resources in the District in documents submitted into the record;¹⁵

- That the application Resource Report 4 Cultural Resources and Resource Report 8 Land Use were still inaccurate and substantially incomplete; and
- The application record was deficient in its identification, development, and analysis of alternatives to the proposed route that can avoid the District, sufficient to meet NEPA and NHPA requirements.

On March 15, 2016, MVP submitted a report entitled *Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline, Craig and Giles Counties, Virginia*, prepared by MVP consultant New South Associates.¹⁶ On March 31, 2016, FERC requested revision of the New South Giles Architectural Survey, which among other things, required New South to identify whether any previously recorded historic sites in the APE were relocated and reevaluated by New South, and provide a map showing all contributing historic sites in the APE.¹⁷

On March 31, 2016, FERC requested revision of the New South Associates Architectural Survey (Turco et al) Giles County Report (Report), which, among other things, requested that MVP, New South Associates identify any previously recorded historic sites in the APE that were not relocated and reevaluated by New South Associates (NSA) and/or TetraTech, and provide a map showing all contributing resources in the APE.

On April 21, 2016, MVP responded to the Environmental Information Request (EIR) (these responses form collectively the Revised Report).¹⁸

On May 9, 2016, the Giles County Board of Supervisors filed an expert report from Landmark Preservation Associates' architectural historian Dan Pezzoni.¹⁹ The report identifies numerous District properties in the pipeline project APE that are potentially eligible for

¹⁵ For example, MVP's Application Appendix 4-G *Aboveground Resources Located within 0.5-Mile of Project in Virginia* (FERC eLibrary 20151023-5035(30974889)) makes widespread reference to the Greater Newport Rural Historic District NRHP Nomination Form to identify District contributing properties.

¹⁶ FERC eLibrary 20160309-5124(31299471).

¹⁷ FERC eLibrary 20160331-4008(31350027), p. 17.

¹⁸ FERC eLibrary 20160421-5195(31403829) pp. 113, 114 and 20160422-5012(31404058), Attachments DR2, RR4-4a, pp. 103, 104, RR4-4c, pp. 105-108, RR4-4d, RR4-4e, pp. 109-113, pp. 114-126.

¹⁹ FERC eLibrary 20160509-5155(31451235), Attachment 2, pp. 9-48.

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individual listing on the NRHP. **These properties have not been evaluated by MVP or its consultants for eligibility.**

On May 16, 2016, the Committee responded to the Revised Report, concluding:

After conferring with a preservation consultant, Landmark Preservation Associates, and the State Historic Preservation Officer (SHPO), the Committee concludes that the amount of errors in reporting historic resources in a very small area (approximately 6 miles of pipeline route through the GNRHD), such as the Committee has encountered, is not explainable outside of systemic flaws in the methods used by MVP and its consultants for historic resource identification and reporting. The Committee objects to MVP's studies being relied on for further evaluations of effects on historic resources by this undertaking without a thorough independent examination and correction of the errors in these reports, and determination of the cause of these errors. The Committee calls on the Commission to retain independent historic preservation expert services to resolve the facts in dispute and resurvey to correct the record, otherwise the entire process will be flawed.

On May 25, 2016, the Virginia SHPO representative Dr. Roger Kirchen responded to MVP regarding deficiencies in the New South Associates Architectural Survey (Turco et al) Giles County Report. *See Attachment 1, p. 2.* The SHPO concluded:

Finally, DHR has been notified by a representative of the Greater Newport Rural Historic District Committee (GNRHDC) of the deficiencies of the survey efforts, as reported, in Giles County. Specifically, the GNRHDC cites numerous examples of omissions in the list of contributing resources to the Greater Newport Rural Historic District and objects to the use of these studies for routing and assessment of effects. These concerns were provided directly to the FERC in a submission to the Commission on or around May 16, 2016. Similar concerns have been expressed in writing to FERC on or around May 9, 2017 by legal representatives of the Giles County Board of Supervisors. **The concerns of the GNRHDC and Giles County are many and must be taken into consideration by Mountain Valley Pipeline, LLC and the FERC before DHR is comfortable in proceeding with the assessment of effects to historic properties for this undertaking.** (emphasis added).

On June 28, 2016, FERC issued yet another EIR requesting updated information regarding Giles County and contributing resources in the Greater Newport Rural Historic District.²⁰ The SHPO's concerns again were:

²⁰ FERC eLibrary 20160628-3003(31541033), p. 10. Specifically:

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Finally, DHR has been notified by a representative of the Greater Newport Rural Historic District Committee (GNRHDC) of the deficiencies of the survey efforts, as reported, in Giles County. Specifically, the GNRHDC cites numerous examples of omissions in the list of contributing resources to the Greater Newport Rural Historic District and objects to the use of these studies for routing and assessment of effects. These concerns were provided directly to the FERC in a submission to the Commission on or around May 16, 2016. Similar concerns have been expressed in writing to FERC on or around May 9, 2017 by legal representatives of the Giles County Board of Supervisors. **The concerns of the GNRHDC and Giles County are many and must be taken into consideration by Mountain Valley Pipeline, LLC and the FERC before DHR is comfortable in proceeding with the assessment of effects to historic properties for this undertaking.** (emphasis added).

Although there has been public and nonpublic correspondence between the SHPO and MVP, the Committee notes that **as late as May 2016** there had been no consultation between FERC and the Virginia State Historic Preservation Officer (SHPO).²¹ Based upon the failure of FERC to address the SHPO's concerns, it is apparent that there still has been no meaningful consultation.

III. Greater Newport Rural Historic District Committee's Protest and Objections

CO9-3

Since November of 2014, the Committee has filed multiple objections and a protest to the FERC pre-application and application processes, and the NHPA Section 106 process. The Committee protests:

- FERC proceeding with a Draft Environmental Impact Statement (DEIS) based on a substantially incomplete application that is out of compliance with natural gas siting and maintenance and environmental report requirements;

File a revision of Turco June 2016, Addendum to the Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline, Craig and Giles Counties, Virginia that includes copies of 7.5-minute USGS topographic quadrangle maps that illustrate all areas surveyed, and the location of all historic sites in the indirect and direct APE. Clarify which sites in the indirect and direct APE were previously recorded, and which sites were recorded by New South Associates for this project. Also, address the comments of the May 25, 2016 comment letter from the Virginia SHPO.

²¹ Conference call with David Brady, Dr. Elizabeth Merritt, National Trust for Historic Places, Dr. Roger Kirchen, Marc Holma, Virginia Department of Historic Places, Dr. Anita Puckett, Virginia Tech, May 6, 2016.

CO9-3

We had adequate data at the application stage, supplemented with responses to our EIRs, to proceed with production of the draft EIS. See responses to FA11-2, LA5-1, and LA13-1. Section 4.10 of the final EIS summarizes the process of complying with Section 106 of the NHPA.

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CO9-4 • FERC’s failure to consult with interested parties and the SHPO in the Section 106 process; and the subsequent failure of FERC’s “comment” process to meet those requirements;

CO9-5 • FERC’s failure to identify and study prudent and viable alternatives to the proposed route that adversely affects eight (8) rural historic and historic districts; and

CO9-6 • FERC’s failure to determine and require APEs adequate for the proposed undertaking.

CO9-7 **IV. The MVP Application is Still Substantially Incomplete and Incorrect**

As noted in numerous previous filings, the MVP application fails to meet FERC’s own natural gas siting and maintenance requirements. For example, the “pipeline and electric transmission facilities construction” section of 18 CFR § 380.15(e)(2) requires the following:

In locating proposed facilities, the project sponsor shall, to the extent practicable, avoid places listed on, or eligible for listing on, the National Register of Historic Places; natural landmarks listed on the National Register of Natural Landmarks; officially designated parks; wetlands; and scenic, recreational, and wildlife lands. If rights-of-way must be routed near or through such places, attempts should be made to minimize visibility from areas of public view and to preserve the character and existing environment of the area.

Additionally, Resource Reports 1 and 4 are out of compliance with 18 CFR § 380.12(c)(2)(i)(D), relating to Environmental Reports for Natural Gas Act applications, which requires:

Correspondence with the appropriate State Historic Preservation Officer (SHPO) or duly authorized Tribal Historic Preservation Officer (THPO) for tribal lands regarding whether properties eligible for listing on the National Register of Historic Places (NRHP) would be affected;

Under the NHPA, FERC’s agency official is responsible for ensuring that the content of the Section 106 compliance documents meet applicable standards and guidelines.²²

On July 18, 2016, MVP submitted a revised report (Supplemental Information Addendum) in response to FERC’s June 28, 2016 EIR regarding identifying and recording contributing historic properties in the District, including a table (Table 1) and a map showing the direct and indirect APEs for some of the District.²³ While the document purports to show all

²² See 36 CFR § 800.2(a)(2).

²³ FERC eLibrary 20160718-5161(31585148) FERC Data Request 3 Responses MASTER Cultural Resources, pp. 46, 47; 20160718-5161(31585151)MVP Data Request Response Attachment 3 of 4, pp. 196-220, 249, 250, 261-286.

CO9-4 FERC’s consultations under Section 106 are summarized in section 4.10 of the final EIS.

CO9-5 Alternatives are analyzed in section 3 of the final EIS.

CO9-6 The SHPO agrees with our definition of the APE.

CO9-7 Mountain Valley’s application met the standards outlined in our regulations at 18 CFR 380. Section 4.10 of the final EIS summarized our compliance with the Section 106 process, and included references to letters from the SHPO reviewing Mountain Valley’s cultural resources investigations reports. We assessed impacts on all of the historic resources within the APE through Greater Newport Rural Historic District listed on table 1 of this letter in table 4.10.7-3 of the final EIS.

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CO9-7
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contributing properties in the District in the direct and indirect APE, FERC, MVP and its consultants have failed to locate any of the contributing and unevaluated properties listed in Table 1 below.

Using the same publicly available resources that are cited by New South Associates (NSA) in their study, and in a non-exhaustive review, the Committee found at least 40 contributing or unevaluated historic resources in the MVP-defined area of potential effect (APE) that were not identified or located by MVP and its consultants. These properties are summarized in Table 1.

Resource Number	Resource Name	Error
VDHR#035-0412-	Newport High School Campus and Fairgrounds	Unevaluated
VDHR#035-0412-	Dowdy family house 1957	Unevaluated
VDHR#035-0412-	Martin Property-springbox	Unevaluated
VDHR#035-0412-	Martin Property-sidewalk	Unevaluated
VHDR#35-0412-	Canoe Cave	Unevaluated
VDHR#035-0412-0013	Hutchenson House	Missing
VDHR#035-0412-0014	Camper Cabin (ruin)	Missing
VDHR#035-0412-0021	James Madison Reynolds House	Missing
VDHR#035-0412-0033	Ernest Reynolds Farm	Missing
VDHR#035-0412-0037	Sheldon Dowdy House	Missing
VDHR#035-0412-0038	Duke and Leslie Reynolds Place	Missing
VDHR#035-0412-0041	Price Residence	Missing
VDHR#035-0412-0060	Sibold Barn	Missing
VDHR#035-0412-0061	Frank Sibold House	Missing
VDHR#035-0412-0095	Rose Lilly	1956 House unevaluated
VDHR#035-0412-0233	Graham Farrier Residence	Missing
VDHR#035-0412-0234	Farrier Farm	Missing
VDHR#035-0412-0235	Renquist Residence	Missing
VDHR#035-0412-0238	CJE Sutphin/ Charles Atkins House	1961 house not evaluated
VDHR#035-0412-0247	Ira & Zettie Porterfield Residence	Missing
VDHR#035-0412-0281	Horton Property (with Horton Observatory)	Missing
VDHR#035-0412-0398	Sibold	Missing
VDHR#035-0412-0399	Hugh Givens Property	Missing
VDHR#35-0151	Newport Historic District	Missing
VDHR#35-151-01	Miller Building	Missing

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VDHR#35-151-02	Butler-Smith House	Missing
VDHR#35-151-04	Epling-Dunkley-Smith House	Missing
VDHR#35-151-05	Yancy and Flora Payne House	Missing
VDHR#35-151-06	Methodist Parsonage	Missing
VDHR#35-151-07	Hunter House-Newport Inn	Missing
VDHR#35-151-09	Miller Bros. General Merchandise	Missing
VDHR#35-151-10	George Buchanan House	Missing
VDHR#35-151-14	Pasterfield House	Missing
VDHR#35-151-15	C.W Hardwick House	Missing
VDHR#35-151-17	Robert Payne House (Former Methodist Parsonage)	Missing
VDHR#35-151-20	Francis Payne Service Station	Missing
VDHR#35-151-22	Pent Taylor Store	Missing
VDHR#35-151-23	Dr. C. C. Wingo House	Missing
VDHR#35-0151-	Newport Masonic Lodge	unevaluated mid-century bldg

The Committee has repeatedly disclosed these deficiencies to MVP and its consultants in filings with FERC - yet they still can't find contributing properties in the APE or unrecorded properties that have not been evaluated by the SHPO for individual eligibility. Hence, the Supplemental Information Addendum again is substantially incomplete and inaccurate as it relates to the District and the Newport Historic District, and fails to meet FERC and NHPA regulatory requirements.

CO9-8

V. The Scope of the APE is Not Adequate for the Undertaking

Section 106 of the NHPA requires that, prior to issuance of a federal permit or license, federal agencies shall take into consideration the effects of that "undertaking" on historic properties. *See* 54 U.S.C. § 306108. Agencies "must complete the section 106 process prior to *** the issuance of any license." *See* 36 CFR § 800.1. The NHPA defines undertaking as:

a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including - (1) those carried out by or on behalf of the Federal agency; (2) those carried out with Federal financial assistance; (3) those requiring a Federal permit, license, or approval; and (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.²⁴

²⁴ *See* 54 U.S.C. § 300320; 36 CFR § 800.16(y).

CO9-8 The Virginia SHPO agreed with our definition of the APE.

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Early in the NHPA process, an agency must determine the APE of a federal undertaking.²⁵ The APE is defined by regulation to include the area “within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties... The [APE] is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.”²⁶

In numerous filings, the Committee has clearly stated that the APEs used by MVP and its consultants are woefully inadequate. For the purposes of evaluating cumulative cultural impacts on the District with a construction project of this size, the APE for evaluating cumulative cultural impacts on the District should be the District as a whole.²⁷ A submittal filed by the Committee on June 15, 2015 stated:

CO9-9

Cumulative Effects and the APE

As it relates to potential impacts on historic properties, the scope of the undertaking appears to be unprecedented, and the Company’s proposed APE inadequate. The Committee can find no similar undertaking that adversely affected three rural historic districts in one state,²⁸ as the proposed Company route does. The APE should be expanded to include cumulative impacts on each of the three rural historic districts and Southwest Virginia as a whole.²⁹

An additional submittal filed on May 16, 2016 stated:

The applicant’s routing of a pipeline through seven historic districts in one state is quite possibly a record for any single pipeline project, and does not comply with either the Commission Cultural Resources Guidelines or NHPA, particularly when prudent and feasible alternatives exist that can avoid these historic resources.³⁰

At the time of this filing, the proposed MVP route now adversely affects **eight** Virginia rural historic and historic districts, crossing more than 16 miles of Virginia historic districts:

²⁵ See 36 CFR § 800.4(1)(1).

²⁶ *Id.* at § 800.16(d).

²⁷ FERC eLibrary docket PF15-3 20141117-5027, p. 1.

²⁸ At the time, the route proposed was thought to directly affect three rural historic districts, Greater Newport Rural Historic District, North Fork Rural Historic District, and Cahas Mountain Rural Historic District.

²⁹ FERC eLibrary docket PF15-3, 20150617-5078, p. 6. These prior comments were also incorporated by reference in the Committee’s November 2015 Motion for Intervention and Protest.

³⁰ FERC eLibrary 20160516-5379, p. 17.

CO9-9

The scope of the MVP is not unprecedented. There have been hundreds of FERC-jurisdictional natural gas projects in the past for pipelines of similar or greater length. Nor is uncommon for other linear-type non-FERC-jurisdictional infrastructure projects, including other pipelines, powerlines, sewerlines, waterlines, and roads, to cross through Historic Districts. This is allowable under the NHPA, as long as historic properties are identified, impacts assessed, and adverse effects resolved, in accordance with 36 CFR 800. Cumulative impacts are addressed in section 4.13 of the EIS. The Cahas Mountain Rural Historic District would not be affected by the MVP, as it is located 1.5 miles away. Nor does the proposed pipeline route cross through the boundaries of the Newport Historic District. The Big Stony Rural Historic District and the Bent Mountain Rural Historic District were created by Mountain Valley’s consultants.

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- Big Stony Rural Historic District;³¹
- Greater Newport Rural Historic District;³²
- Newport Historic District;³³
- North Fork Rural Historic District;³⁴
- Coles-Terry Rural Historic District;³⁵
- Bent Mountain Rural Historic District;³⁶
- Blue Ridge Parkway Historic District;³⁷ and
- Cahas Mountain Rural Historic District.³⁸

Maps showing the impacts on the cultural landscapes and in some cases contributing properties are shown on pages 14-20 of this document.

³¹ FERC eLibrary 20160309-5124(31299471) Attachment RR4 20d Giles 1 Report Body, p. 64.

³² FERC eLibrary 20160309-5124(31299471) Attachment RR4 20d Giles Figure 1 Report Body GNRHD Map, p. 36.

³³ FERC eLibrary 20160422-5012 (31404058) RR4 EIR Responses, Giles Maps 1-3.

³⁴ FERC eLibrary 20160309-5124 (31299504) RR4 report Montgomery County, p. 23.

³⁵ FERC eLibrary 20160718-5161(31585151) MVP Data Request Response Attachment 3 of 4 Coles Terry RHD, p. 248.

³⁶ 20160309-5124(31299489) Roanoke Proposed Eligible Bent Mtn RHD, Figure 9, p. 37.

³⁷ *Id.*

³⁸ FERC eLibrary 20151014-5277 (30951855) RR 4 Franklin Architectural Survey, Cahas Mountain RHD Figure 5, p. 24.

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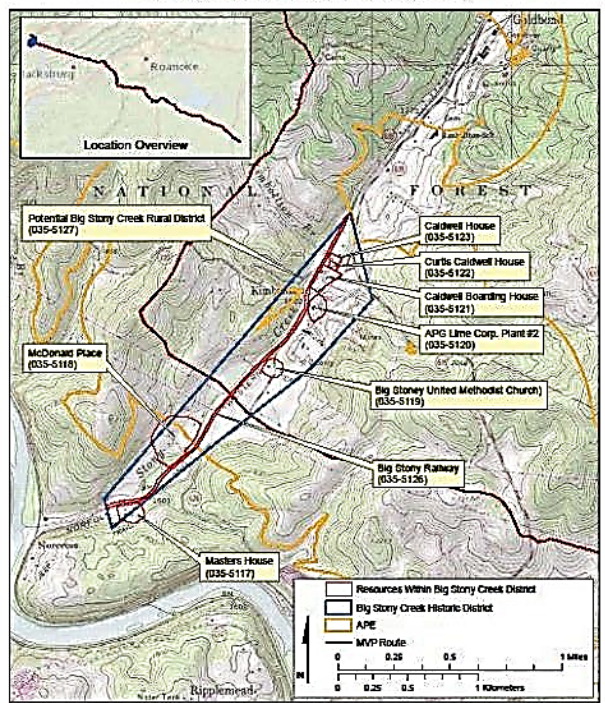
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Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline
Craig and Giles Counties, Virginia

Figure 15. Map Showing Location of Potential Big Stony Creek Rural Historic District (035-5127)



Source: USGS Lindsie and Pezinsburg, Virginia Quadrangles

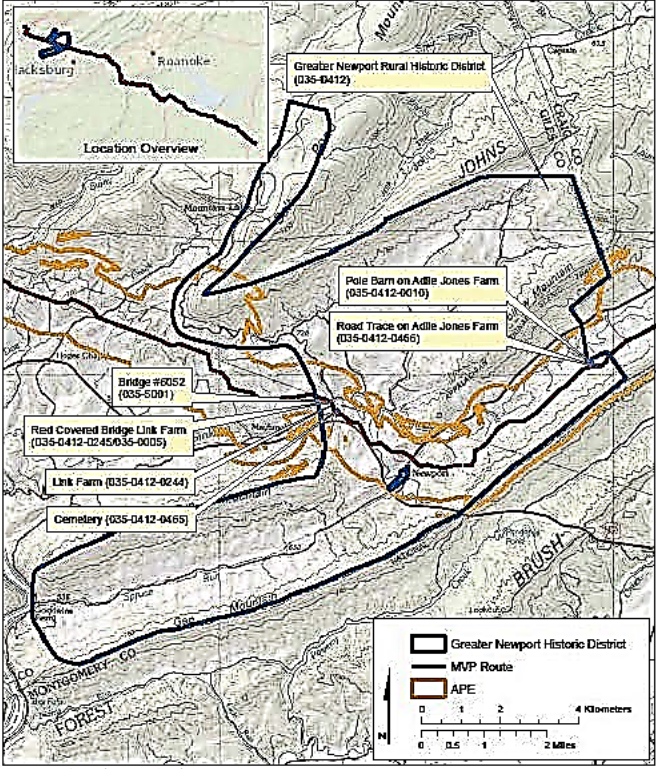
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*Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline
 Craig and Giles Counties, Virginia*

Figure 9. Map Showing Location of Greater Newport Rural Historic District (035-0412)

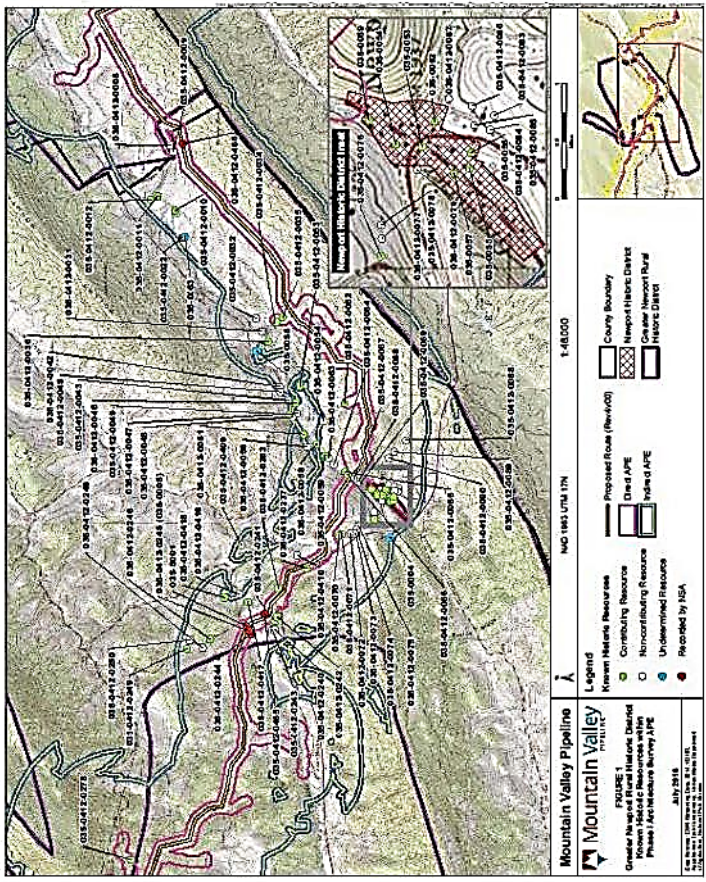


Source: USGS Newport and Eggleston, Virginia Quadrangles

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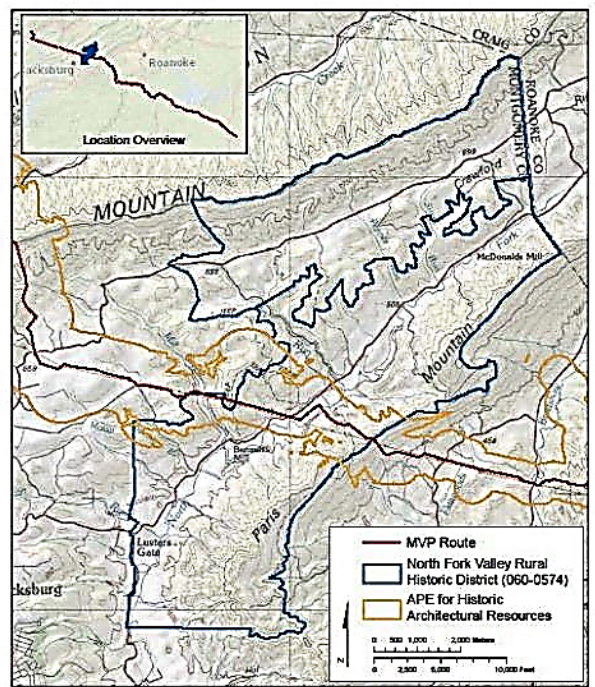
Figure X Greater Newport Rural Historic District (partial map) and Newport Historic District (partial map)



CO9-9
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*Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline
Montgomery County, Virginia*

Figure 5. Map of the North Fork Valley Rural Historic District, Montgomery County



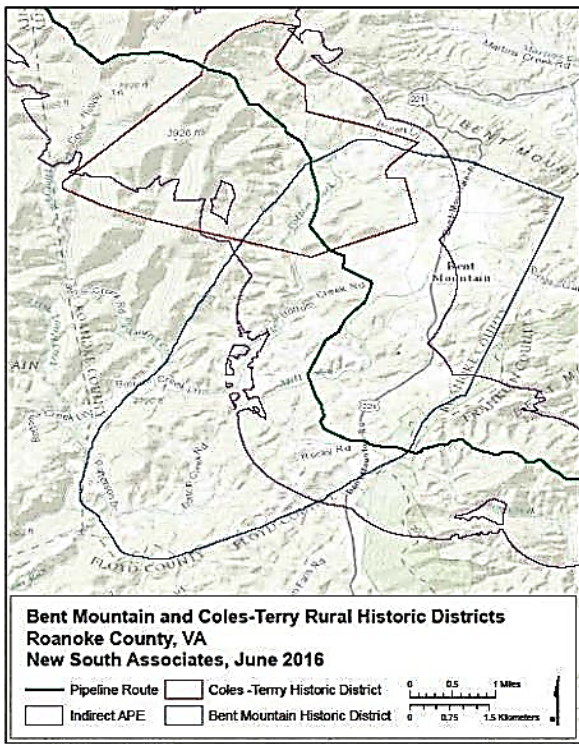
Source: USGS 7.5 Minute Quadrangle Maps, McDonalds Mill, VA (1967), Irons, VA (1972), Blacksburg, VA (1980) and Newport, VA (1977)

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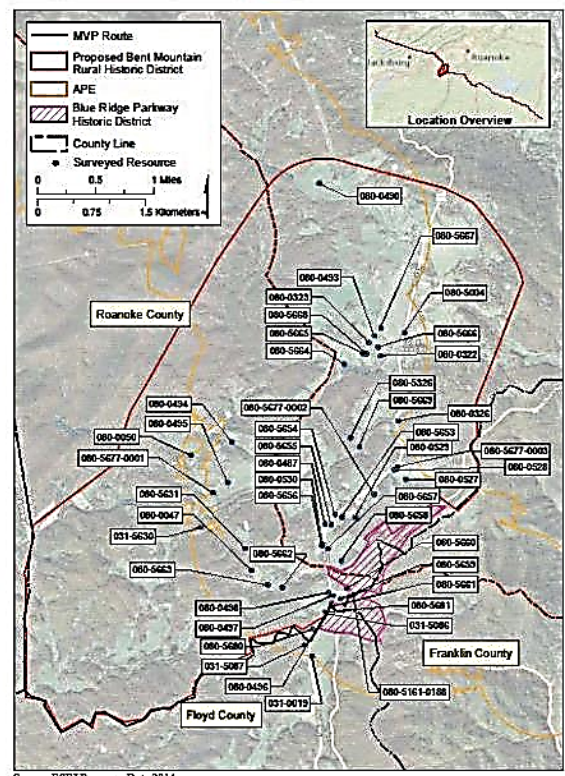


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*Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline
 Roanoke County, Virginia*

Figure 9. Preliminary Boundary for Proposed Bent Mountain Historic District

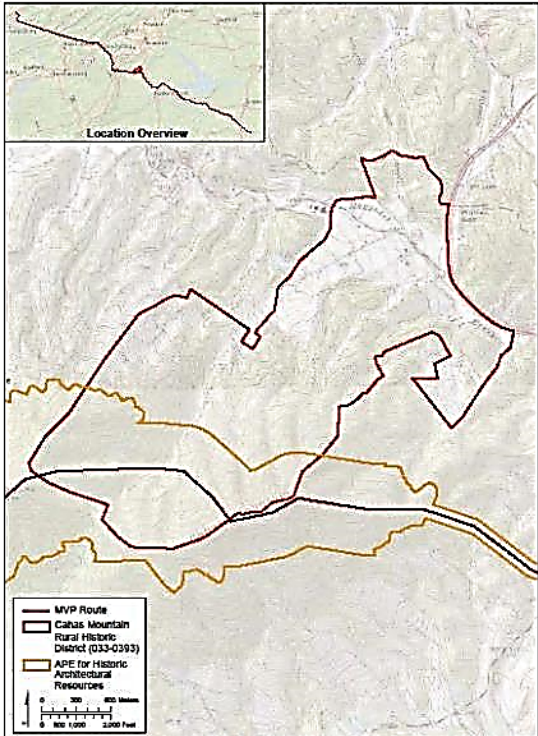


Source: ESRI Resource Data 2014

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*Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline
Franklin County, Virginia (Issue Rev 3/25)*

**Figure 5. Map of Cahas Mountain Rural Historic District
Showing Proposed Pipeline Route**



Sources: USGS 7.5 Minute Topographic Quadrangle Maps, Bent Mountain, VA (1983), Garden Clay, VA (1983), Callaway, VA (1964), and Boones Mill, VA (1979)

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The Committee can find no similar undertaking that adversely affected eight historic districts in one region of one state, as the proposed MVP route does. The APE should be expanded to include cumulative impacts on each of the eight rural historic and historic districts and Southwest Virginia as a whole.

CO9-10

VI. MVP's Section 106 APE Does Not Include Evaluation of Adverse Effects on Cultural Attachment or Cultural Landscapes

In its March 4, 2016 Comment and Objection, the Committee wrote:³⁹

Cultural Attachment

The APE fails to address the issue of the recent conclusion by MVP's Cultural Attachment Consultant, Applied Cultural Ecology, (ACE) that the entire Peters Mountain Study Area comprises a cultural landscape as it relates to cultural attachment, an area that includes the entirety of the Greater Newport Rural Historic District.⁴⁰ Previous studies have indicated that damage to cultural attachment is not mitigatable.⁴¹ The study appears to support the proposition that the Peters Mountain vicinity, including lands outside the National Forest boundary, constitute one or more traditional cultural landscapes eligible as such for the National Register of Historic Places.⁴² MVP has proposed no APE within which to analyze effects on this landscape and the cultural attachments it reflects.

MVP responded to the ACE report with a dismissive letter ignoring the conclusions of its own expert cultural anthropologists.⁴³ On August 30, 2016, the Committee filed the expert report of Dr. Thomas King, historic preservation consultant, former Advisory Council on Historic Preservation (ACHP), and co-author of National Preservation 38 Traditional Cultural Properties to augment the ACE report conclusions and the "systematically misguided" cultural resource evaluations of MVP and its consultants.⁴⁴

³⁹ FERC eLibrary FERC eLibrary 20160309-5124(31299471), pp. 4-5.

⁴⁰ FERC Docket CP16-010-000 20160127-5356(31190466) MVP Public Attachments 10 of 10, Response to EIR RR4-30, pp. 2-3 and 47.

⁴¹ FERC Docket CP16-010-000 20151023-5124 The Scientific Validity of Cultural Attachment as a Social Phenomenon and the Basis for an "All Lands" Approach in NEPA Decision-making, James Kent Associates, pp. 4, 18 and 40.

⁴² National Park Service Bulletin 38 Guidelines for Evaluating and Documenting Traditional Cultural Properties <http://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.pdf> accessed February 15, 2016.

⁴³ FERC eLibrary 20160127-5356 Letter to Paul Friedman, FERC January 26, 2016, pp. 2-5.

⁴⁴ FERC eLibrary 20160830-5133.

CO9-10

Cultural attachment is addressed in section 4.10.10 of the final EIS. We discuss Dr. King's report in section 4.10.2.1 of the final EIS.

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CO9-11

VII. MVP's APE Fails to Address Cumulative Impacts to Historic Districts: MVP Purchasing Easements for Two Pipelines - Not One.

The NHPA requires that the lead federal agency address the adverse effects of “reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.”⁴⁵ The NEPA describes “cumulative impacts” as follows:

“Cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 CFR § 1508.7.

One such reasonably foreseeable effect/impact is that the allowance of a manmade contemporary intrusion into an historic district will lead to additional intrusions along the same right of way. On March 4, 2016, the Committee wrote:

The proposed pipeline routed through a rural historic district is an intrusion of a manmade contemporary industrial project that will lead to future intrusions by other linear project sponsors seeking to cross Appalachia.⁴⁶ This is due to utility company guidelines, as well as state and federal policies and regulations (e.g., the Commission, the US Forest Service) favoring the use of alignments along existing rights of way.⁴⁷

Once the historical integrity of a rural historic district is compromised by a contemporary manmade linear intrusion, sponsors of future projects will be encouraged to route through the damaged rural historic district, along the new right of way, ensuring further damage to the integrity of these historic resources. This will

⁴⁵ See 36 CFR § 800.5(a)(1).

⁴⁶ The Committee is aware of multiple pipeline projects before the Commission that seek to cross through this region of Appalachia.

⁴⁷ See 18 CFR § 380.15(e), addressing siting and maintenance requirements for pipeline and electric transmission facilities construction. See also, George Washington and Jefferson National Forests’ April 27, 2015 Scoping Decision Memorandum for the Special Use Permit for Routing and Surveying on National Forest System Lands, p. 8:

The second [direction] is to locate new public utilities and rights-of-way in areas of this management prescriptions area where major impacts already exist and to limit linear utilities and rights-of-way to a single crossing of the prescription area, per project. We would need additional information before we could conclude whether or not a construction permit could be issued.

CO9-11

There are already existing modern infrastructure features, including other pipelines, powerlines, sewerlines, waterlines, and roads that comprise the integrity of the historic rural cultural landscape associated with the Greater Newport Rural Historic District. If the Commission authorizes the MVP, only one 42-inch-diameter pipeline would be allowed. Cumulative impacts are addressed in section 4.13 of the EIS.

COMPANIES AND NGOs

CO9 – Greater Newport Rural Historic District Committee

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lead to permanent and unmitigatable cumulative damage to the District. In the instant case, the Committee believes that failure to consider these cumulative impacts now, while route alternatives can be developed to avoid these districts entirely, will be a violation of NEPA and the NHPA, and is tantamount to the Commission condemning these districts to future destruction.⁴⁸

In the case of the MVP pipeline project, this cumulative effect is not hypothetical since MVP is planning for it. In numerous MVP contract offers to District landowners of historic properties to purchase an easement, **MVP stipulates that the contract is to purchase rights of way for not one, but two pipelines.** See Figure 1, MVP Easement Contract, ¶7, below.

After discussion with the Virginia SHPO,⁴⁹ the Committee concludes that this reasonably foreseeable adverse effect (two pipelines) is not addressed in the APE for the project. It calls into question whether the scope of the undertaking itself is erroneous, and renders the APE inadequate for analysis under the NEPA and the NHPA.

⁴⁸ FERC eLibrary 20160304-5077, p. 2.

⁴⁹ Conference call with David Brady, Dr. Elizabeth Merritt, National Trust for Historic Places, Dr. Roger Kirchen, Marc Holma, Virginia Department of Historic Places, Dr. Anita Puckett, Virginia Tech., May 6, 2016.

⁴⁹ FERC eLibrary Docket PF15-3 20150617-5078, pp. 3-8.

COMPANIES AND NGOS

CO9 – Greater Newport Rural Historic District Committee

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Figure 1: MVP Easement Contract (Page 1)

(“Grantor”), and Mountain Valley Pipeline LLC, a Delaware limited liability company, with an address of 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222 (“Grantee”)

For and in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, Grantor, hereby grants and conveys, with covenant of General Warranty, to Grantee a perpetual right of way and easement in the location depicted on “Exhibit A” attached hereto, to lay, construct, maintain, operate, renew, alter, improve, protect, repair, replace, and remove a pipeline (the “Pipeline”) up to 42 inches in diameter, for the transportation of oil, natural gas, and their byproducts, and other liquids and gases, together with all necessary or convenient rights, equipment and appurtenances thereto, including, but not limited to pipeline markers and devices for cathodic protection, together with ingress and egress thereto. Said perpetual right of way and easement is over, upon and across the lands of the Grantor being in Newport Magisterial District, Giles County, Virginia, more particularly described in a deed to Grantor from _____, and _____ by General Warranty Deed dated _____, and recorded in Book _____ in Giles County, Virginia, being _____ (the “Property”).

1. It is understood and agreed by Grantor and Grantee that the right of way and easement shall be fifty (50) feet in width.

2. It is further agreed that Grantee is granted and conveyed the following temporary rights of way and easements (which shall expire upon final completion of the construction and reclamation of the Pipeline and affected areas): (i) a right of way and easement of seventy-five (75) feet that parallels the perpetual right of way and easement; and (ii) a workspace(s) right of way and easement in the location depicted on Exhibit A. It is understood between the Grantor and Grantee that any future additional temporary workspace(s) deemed necessary by the Grantee for the pipeline constructed hereunder, if any, are to be compensated for at the same rate per acre as the aforementioned seventy-five foot (75') temporary right of way.

3. Grantor further grants the right of ingress and egress to and from said pipeline right of way on, over and through existing or future roads and the right of way herein granted, as shown on Exhibit A, for purposes of transporting pipe, materials, machinery, and equipment to and from other lands in and about the construction, operation, maintenance, replacement and removal of the pipeline constructed hereunder.

4. Grantor shall not place or permit to be placed any obstruction on or over the right of way and easement area, including but not limited to buildings, houses, garages, sheds, trees, vehicles or other items, and Grantor shall not store or permit to be stored any materials of any kind or operate or allow to be operated any heavy machinery or equipment over the easement and right of way area, nor permit the right of way area to be covered by standing water, except in the course of normal seasonal water migration. Grantor shall not change or permit to be changed the depth of cover over the right of way and easement area.

5. Grantee shall have the right to maintain said right of way and easement by keeping the right of way free from all trees, limbs, undergrowth and brush which, in the judgment of the Grantee, might interfere with the use of said right of way and easement.

6. Grantee, its successors or assigns, is further granted the right to replace all or any part of the Pipeline or any portion thereof by laying such replacement not more than fifteen (15) feet from the section of Pipeline being replaced. Grantee, its successors or assigns, is also given the right to increase or decrease the diameter of any replacement pipe.

7. For the consideration herein recited Grantor does hereby give, grant, and convey unto Grantee, its successors and assigns, a further right at any time or from time to time, to lay, maintain, operate, renew, alter, improve, protect, repair and remove one additional pipeline, and all necessary equipment and appurtenances thereto, as it may desire within the right of way and easement area. The additional pipeline to be laid approximately parallel to the first line laid and shall be considered a Pipeline as the term is used herein. For any additional pipeline constructed hereunder, Grantee shall pay an equal amount paid for the right of way and easement herein granted.

Return to: MVP, LLC, 97 Cambridge Place, Bridgeport, WV 26330
This instrument was prepared by: Mountain Valley Pipeline LLC, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222
Tract No. _____

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COMPANIES AND NGOs

CO9 – Greater Newport Rural Historic District Committee

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CO9-12

VIII. MVP's APE Fails to Address Cumulative Impacts to Historic Districts: Future Pipeline and Powerline Projects.

In its Notice of Availability for the Draft Environmental Impact Statement, FERC proposed changes to the US Forest Service's Land and Resource Management Plan (LRMP) to allow a 500 foot utility right of way on Forest Service lands on Peters Mountain, Sinking Creek Mountain, and Brush Mountain.⁵⁰ According to MVP's own easement documents, a 50 foot easement is needed. There is no justification for an easement 10 times the size, unless MVP intends to collocate other pipelines and powerlines.

Such a change would encourage future pipeline and powerline projects to use the corridor to cross the Jefferson National Forest at these points, which cannot be accomplished without also crossing the Greater Newport Rural Historic District as well. Pursuant to 40 CFR § 1508.8 of the NEPA and 36 CFR § 800.5 of the NHPA, such cumulative adverse effects to the District must be considered, but they have not been considered by the MVP.

CO9-13

IX. MVP's Evaluation of Feasible and Prudent Alternatives that Avoid the Historic Districts is not Adequate.

MVP and FERC have failed to objectively evaluate alternatives that avoid the eight historic districts, specifically, the Northern Alternative and Hybrid Alternative 1A. Hybrid Alternative 1A is especially of interest since, in addition to avoiding the 15 miles of historic districts, it also avoids many significant cultural, environmental, and recreational resources, as non-exhaustively specified in Attachment 2 and the filing of Louisa Gay.⁵¹ The advantages of Hybrid Alternative 1A include, but are not limited to, the following:

- Crossing of the Appalachian Trail at an already disturbed site as opposed to the Greenfield Crossing on Peters Mountain;
- Crossing only 1.6 miles of USFS lands, most if not all in existing Rights of way (ROWs), as opposed to 3.4 miles of greenfield crossings of Peters Mountain, Sinking Creek Mountain, and Brush Mountain;
- Avoidance of the Sizemore Conservancy protecting Little Stony Creek; and the Clover Hollow, Canoe, Cave, Slussers Chapel and Mill Creek Conservancy and Blake Preserve;
- 100 fewer miles shallow bedrock;
- 16 fewer miles of karst;

⁵⁰ See 20160916-3014.

⁵¹ See 20160509-504.

CO9-12

Mountain Valley proposes to use a nominal 125-foot-wide construction right-of-way and a 50-foot-wide operational easement. See the response to comment FA8-1 regarding the FS' proposed changes to the LRMP.

CO9-13

Alternatives are analyzed in section 3 of the EIS.

COMPANIES AND NGOs

CO9 – Greater Newport Rural Historic District Committee

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- 9 fewer miles of forest (including interior forest) that avoids impacts on USFS Unfragmented Forest Block LI-22; and
- 30 percent less wetlands crossed (feet).

X. Conclusions

CO9-14

Based on the foregoing, the Committee concludes that the MVP application cannot be utilized by federal agencies for the NEPA and NHPA processes because it continues to be factually incorrect, substantially incomplete as it relates to the District, and it does not meet the minimum requirements of the Natural Gas Act. As the Committee has repeatedly demonstrated, the methods used by MVP and its consultants to evaluate adverse effects on historic districts have resulted in multiple iterations of flawed reports. Feasible and prudent alternatives exist that avoid all eight historic districts, but these alternatives are not being pursued by MVP or FERC.

The deficiencies can be attributed to FERC not granting consulting party status to the Committee, landowners of historic properties in the district directly affected by the pipeline project, and to others, or to failing to consult with the SHPO. In its April 28, 2016 Commission letter to the Advisory Council on Historic Preservation (ACHP), the Commission assured the ACHP:⁵²

Additionally, we have ensured that parties with special expertise have received copies of cultural resources survey reports to allow them to provide us with detailed and informed comments on the potential impacts of both of these projects. I assure you that our treatment of consulting party requests is in compliance with Title 36 Code of Federal Regulations Part 800.3(f)(3), and that all stakeholders (regardless of party status) have an equal opportunity to provide comments to the FERC regarding these projects.

Far from being in compliance with Section 106 consulting party requirements, the Commission's process is designed to prevent stakeholders from obtaining relevant information in a timely manner, allows the applicant and its consultants to ignore public input, and prohibits historic districts from having representation.

The Committee respectfully requests that FERC conduct an independent assessment of the historic properties in the proposed route and alternatives to avoid the historic districts, and evaluate feasible and prudent alternatives that can avoid these historic properties. The Committee reserves the right to further comment on these matters, the recently issued Draft Environmental Impact Statement, as well as other matters of fact and law that may arise in this proceeding.

⁵² FERC eLibrary 20160428-3032(31424242) FERC Response ACHP letter, p. 2.

CO9-14

Mountain Valley's application and supplements were useful in the production of the EIS. However, the FERC staff and SHPO independently fact checked data in cultural resources investigations reports. The VADHR approved Mountain Valley's methods to identify historic properties. Alternatives were evaluated in section 3 of the EIS. Four landowners who have historic properties on their land in proximity to the proposed pipeline route within the Greater Newport Rural Historic District were granted consulting party status. Our consultations with the SHPO are documented in section 4.10. Since Mountain Valley filed historic architectural survey reports in the docket as "public," available electronically through the FERC website's eLibrary system, stakeholders had immediate access to data about Historic Districts. The FERC staff considered all comments from the public about cultural resources during the production of the EIS. Section 4.10 contains our assessment of project-related impacts on historic properties in the APE, and summarizes compliance with the Section 106 process.

COMPANIES AND NGOs

CO9 – Greater Newport Rural Historic District Committee

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Respectfully submitted,

/s/ Matthew W. Fellerhoff
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cc:

Honorable Mark Warner, United States Senate
Honorable Timothy Kaine, United States Senate
Honorable Morgan Griffith, Member, United States Congress
Honorable Terry McAuliffe, Governor of Virginia
Ms. Julie Langen, Director, Virginia Department of Historic Resources
Mr. Roger Kirchen, Virginia Department of Historic Resources
Mr. Richard McCoy, Chair, Giles County Board of Supervisors
Mr. John Fowler, Executive Director, Advisory Council on Historic Preservation
Mr. John Eddins, Program Analyst, Advisory Council on Historic Preservation
Ms. Elizabeth Merritt, National Trust for Historic Preservation
Mr. Joby Timm, Supervisor, Jefferson National Forest, United States Forest Service
Ms. Jennifer Adams, Special Assistant, Jefferson National Forest, United States Forest Service

DECLARATION OF SERVICE

CO9-14
cont'd

Mountain Valley Pipeline, LLC's Mountain Valley Pipeline Project (CP16-10-000)

I, Matthew W. Fellerhoff, declare that I today served the attached "Comment and Objection" by electronic mail, or by first-class mail if no e-mail address is provided, to each person on the official service list compiled by the Secretary in this proceeding.

Dated: October 24, 2016

/s/ Matthew W. Fellerhoff
Matthew W. Fellerhoff
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COMPANIES AND NGOs

CO10 – Cave Conservancy of the Virginias

October 31, 2016

Kimberly Bose, Secretary
Federal Energy Regulatory Commission 888 First Street,
NE Washington, DC 20426

Dear Ms. Bose and Members of the Commission,

I am unaware if this has ever been brought to your attention.

CO10-1



CCV Position Statement Regarding MVP Pipeline

October 18, 2016

The Cave Conservancy of the Virginias (CCV) is an organization dedicated to protecting and managing caves and karst resources in Virginia and West Virginia. We are also a landowner potentially impacted by the proposed Mountain Valley Pipeline (MVP) project. For both of these reasons, we are compelled to emphasize the importance of rigorous, site-specific evaluation of karst areas within the MVP project footprint before decisions regarding construction are made. This type of evaluation, including methods such as dye tracer studies, subsurface mapping, geophysical studies, and other on-site field investigations is critical to ensuring the safe construction and operation of the pipeline, as well as the protection of water resources and the ecological habitats of the area. A failure to adequately address the special and delicate nature of karst terrain, particularly in the vicinity of Canoe Cave and Slusser's Chapel Cave, could result in permanent damage to the people and the environment of the affected areas.

[HOME](#)

Respectfully,

Louisa Gay

CO10-1

The EIS addresses karst terrain and caves in section 4.1.

COMPANIES AND NGOs

CO11 – Coronado Coal, LLC.

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

)	Docket No. CP16-10-000
Mountain Valley Pipeline, LLC.)	PF15-3-000
)	
Equitrans, LP)	CP16-13-000
)	PF15-22-000
)	(not consolidated)

**ANSWER
OF CORONADO COAL, LLC**

CO11-1

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, Coronado Coal, LLC (“Coronado”)¹ submits this answer to the supplementary materials submitted by Mountain Valley Pipeline, LLC (“Mountain Valley”) in the above referenced dockets on October 27, 2016 (“Supplementary Materials”). In particular, Coronado objects to Mountain Valley’s attempts to restrict Mitigation Measure #23 of the Draft Environmental Impact Statement (“DEIS”).² As explained in greater detail below, the Commission should reject Mountain Valley’s attempt to undermine Mitigation Measure #23, and should confirm that Mountain Valley must reach an agreement with Coronado “regarding compensation for loss of coal resources” prior to construction of the pipeline, regardless of the permitting status of Coronado’s mines.

¹ Coronado submitted a motion to intervene out of time in the above referenced dockets on January 13, 2016: <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14114737>. Coronado filed Comments on Mountain Valley’s Certificate Application on August 4, 2016: <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14323062> (referencing the public version; hereinafter “Coronado Comments”).

² See Supplementary Materials, Appendix B “Responses to FERC Staff’s Recommended Mitigation in Draft Environmental Impact Statement” at P. 10 <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14385221>. Note that on October 31, 2016, Mountain Valley’s affiliate, Equitrans, L.P., filed separate responses to the mitigation in the DEIS, but Equitrans, L.P. did not respond to Mitigation Measure #23.

CO11-1

Section 4.1 of the final EIS has been revised to address the commenter’s statements.

BACKGROUND

CO11-1
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On August 4, 2016, Coronado filed its comments in these proceedings explaining that the Mountain Valley Pipeline Project crosses directly over two coal seams, Pocahontas Nos. 6 and 7, in which Coronado holds coal reserves, and that the pipeline project will adversely affect Coronado’s current and planned mining operations over nearly 500 acres.³ Based on detailed analysis, which took into account subsidence risks as well as the practical needs to adjust mining plans in light of the pipeline project,⁴ Coronado estimated that the pipeline project could cost Coronado approximately \$125 million. *Id.* at 6-8. Coronado further explained these were not speculative costs, but were grounded in the fact that Coronado was following a deliberative plan to mine its coal reserves pursuant to lease arrangements that required mining of the affected seam to begin by June 2017 and to conclude within a few years thereafter. *Id.* In addition, Coronado explained that Mountain Valley’s proposed Mining Area Construction Plan (“MACP”) was flawed because it focuses myopically on coal mines that were under permit and fails to address coal losses incurred by companies like Coronado. *Id.* at 9-11. As a result, Coronado urged the Commission to condition its certification of the pipeline project on “Mountain Valley’s commitment to compensate Coronado for any diminution of its coal reserves due to sterilization and for any increased operating costs Coronado will incur as a result of the pipeline project.” *Id.* at 11.

On September 15, 2016, the Commission Staff issued its DEIS and specifically addressed Coronado’s concerns. In particular, the Commission Staff cited to the Coronado Comments, when

³ Coronado Comments at 2-5.

⁴ To optimize Coronado’s ability to extract coal from the reserves, Coronado’s analysis took into account both the need to forego extraction of certain reserves **and** the need to extract coal “that would not have been mined if the pipeline was not constructed but will now have to be mined in order to access coal reserves that would otherwise be lost as a result of the pipeline route.” Coronado Comment at 6.

COMPANIES AND NGOs

CO11 – Coronado Coal, LLC.

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it made its recommendation regarding current and future coal mining activity affected by the pipeline project:

We received comments from Murray Energy, Alpha Companies, Coronado Coal, and Rex Coal regarding coal mining in the project area and the potential loss of coal assets due to the MVP's construction. On February 1, 2016, Murray Energy filed a letter removing its objections to the MVP. *On August 4, 2016, Coronado Coal filed with the FERC an objection to Mountain Valley's Mining Area Construction Plan, claiming a loss of coal it would be unable to mine because it is located under the proposed pipeline.* Mountain Valley is continuing to work with these coal companies in order to avoid the loss of coal resources, or come to a mutually acceptable agreement for compensation or mitigation. Since Mountain Valley has not yet reached agreements with all coal companies, **we recommend that:**

- **Prior to construction, Mountain Valley should file with the Secretary either a plan for the avoidance of active mines, or copies of agreements with coal companies regarding compensation for loss of coal resources.**

DEIS, Section 4.1.1.4 at pp. 4-16 to 4-17 (emphasis added; footnote omitted). The Commission Staff memorialized this recommendation in a formal mitigation measure, Mitigation Measure #23, at the end of the DEIS. *See* DEIS, Section 5.2 at p. 5-21.

ANSWER

Three things are exceedingly clear in this certificate proceeding. First, the Coronado Comments outlined the clear impact that the Mountain Valley Pipeline Project will have on Coronado's current *and future* operations. Second, Mountain Valley has not responded to the Coronado Comments. Third, Mitigation Measure #23 was written specifically to address the concerns raised in the Coronado Comments.

Notwithstanding those three facts, Mountain Valley is now attempting to eviscerate Mitigation Measure #23 in its response to the Commission Staff's recommended mitigation.

COMPANIES AND NGOs

CO11 – Coronado Coal, LLC.

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Rather than simply indicating that it will comply with the request, as Mountain Valley does in response to several other mitigation measures, Mountain Valley offers a novel and strained reading of Mitigation Measure #23:

Response: For purposes of this response, Mountain Valley assumes that "active mines" are the same as permitted mines. Mountain Valley is actively negotiating agreements with the operators of permitted mines. Mountain Valley will file either a plan for the avoidance of permitted mines, or copies of agreements with the operators of permitted mines, prior to construction.

Although couched as an interpretation of Mitigation Measure #23, Mountain Valley's response imposes a substantive limit on the Mitigation Measure, which is not supported by any findings in the DEIS or the record in this proceeding and which is unacceptable to Coronado. Coronado respectfully requests that the Commission reject Mountain Valley's response and make clear that, regardless of the permitting status of the mining of Coronado's reserves, Mountain Valley is obligated to reach an agreement with Coronado regarding compensation for the loss of coal reserves that will be caused by the pipeline project.

Notwithstanding Mountain Valley's attempts to obfuscate Mitigation Measure #23 in its response, the Mitigation Measure is not ambiguous. In plain language, Mitigation Measure #23 clearly states that Mountain Valley must take one of two actions prior to construction: either Mountain Valley must submit to the Commission's Secretary a plan for the avoidance of active mines or it must submit copies of agreements with coal companies regarding compensation for loss of coal resources. Neither condition refers to the permitting status of the coal companies' mines, nor there is any basis in the DEIS or in the entire record of this proceeding for limiting either condition to permitted mines. To the contrary, as noted in the Coronado Comments, which were cited by the Commission Staff as the basis for Mitigation Measure #23, the primary flaw in

COMPANIES AND NGOs

CO11 – Coronado Coal, LLC.

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Mountain Valley's MACP was that it "does not address future mining operations contemplated by Coronado's coal leases" and does not "identify Mountain Valley's responsibility to compensate Coronado for the losses and costs its pipeline will impose on such operations." Coronado Comments at 10. In fact, Coronado pointed out that the MACP appears "to shift away any responsibility [Mountain Valley] has for imposing losses and costs on coal reserves, such as Coronado's, and to put the onus on future permit applicants to provide subsidence protection." *Id.* at 10. In the past several months, Mountain Valley has not attempted to rebut these concerns, and its attempt to dismiss them at this time with a baseless assumption should be rejected.

Even if Mountain Valley could assume that the reference in Mitigation Measure #23 to "active mines" is the same as "permitted mines," there is no basis for Mountain Valley to read Mitigation Measure #23 narrowly to apply only to permitted mines. Only the first part of Mitigation Measure #23 refers to "active mines," reflecting the Commission Staff's intent to ensure that Mountain Valley does not construct its pipeline over any active mines. The second half of Mitigation Measure #23 is not limited to "active mines" and instead talks about compensation for the "loss of coal resources." This makes clear that the Commission Staff intended to protect **both** active mines from physical disruption by the pipeline construction **and** property rights, like Coronado's coal leases, from diminution as a result of the pipeline construction. Such a reading is consistent with the Coronado Comments, which the Commission Staff cited when it made its recommendation memorialized in Mitigation Measure #23.

By contrast, by asserting that it will provide only "copies of agreements with operators of permitted mines," Mountain Valley disingenuously attempts to read the "active mine" limitation from the first half of Mitigation Measure #23 into the second half of Mitigation Measure #23. Such a reading is not supported by the language used in Mitigation Measure #23, nor is the reading

COMPANIES AND NGOs

CO11 – Coronado Coal, LLC.

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consistent with the intent of Mitigation Measure #23. As explained in the Coronado Comments at 7-8, the loss that Coronado will experience will occur as a result of both interrupting active mining and also by preempting Coronado from “second mining” its reserves. Accordingly, the concern for loss of coal arises whether or not Coronado is actively mining the coal at the time the pipeline construction commences. The Commission Staff was aware of this concern when it wrote the DEIS and Mitigation Measure #23.⁵ Mountain Valley’s suggestion that the second half of Mitigation Measure #23 is implicitly limited to active or permitted mines is inconsistent with both the language and the intent of Mitigation Measure #23

Mountain Valley offers no policy argument in support of its attempts to limit its obligations under Mitigation Measure #23. In fact, there is no justification for limiting Mountain Valley’s obligation to negotiate compensation for loss of coal resources only to companies operating active or permitted mines along the pipeline route. As demonstrated in the Coronado Comments at 5, Coronado’s lease rights predate and are superior to any easement Mountain Valley could have obtained from the property owner or the surface rights lessee, and in fact, Mountain Valley’s easement explicitly disclaims any warranty of title in favor of preexisting mineral leases, such as Coronado’s leases.⁶ Therefore, regardless of whether Coronado is actively mining its coal resources, Mountain Valley would have no authority to build its pipeline in a way that diminishes Coronado’s lease rights.

⁵ See DEIS at 4-16 (acknowledging Coronado’s concern about “a loss of coal it would be unable to mine because it is located under the proposed pipeline”).

⁶ *Id.* (citing the “No Warranty of Title” provision in Mountain Valley’s surface easement, which states that “[t]his grant of easement is made without warranty of title and subject to any and all easements, rights-of-way, leases, or servitudes, of whatever kind or nature, which may be presently in full force and affecting the Premises as shown in the public record. Grantee understands and acknowledges that interests in coal and oil and gas are outstanding in parties other than Plum Creek.”)

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Moreover, Coronado has further demonstrated that it is not simply letting its coal reserves lie fallow. It has instead paid advance minimum royalties for the coal resources to be mined, obtained permits for the Pocahontas No. 7 seam to allow for commencement of mining operations by June 2017, and developed plans for completing permitting and mining in accordance with timelines established in its lease arrangements. *Id.* at 5, and 7-9. Accordingly, Coronado's plans to mine its leased reserves in the vicinity of Mountain Valley's proposed pipeline constitute "reasonably foreseeable future action," and Mountain Valley cannot avoid the issue by superficially imputing a baseless alternative interpretation into Mitigation Measure #23.⁷

Finally, even if the Commission agrees with Mountain Valley that Mitigation Measure #23 warrants clarification, Coronado submits that it has been "permitted" to mine its leased reserves in the Pocahontas Nos. 6 and 7 seams. As demonstrated in Attachment A to the Coronado Comments, a substantial portion of the Pocahontas Nos. 6 and 7 seams are currently subject to valid and effective permits issued by the West Virginia Department for Environmental Protection, which administers that state's mining and reclamation laws. Subsidence control plans are currently in place for a substantial portion of these reserves. Pursuant to standard mine permitting practices, the entire reserve will ultimately be subject to additional subsidence control plans that will be filed by Coronado as mining advances. Coronado has made substantial investments in permitting this reserve and in actual on-ground work that allows Coronado current access to the reserve. For example, Coronado has spent several hundred thousand dollars driving entries and constructing a shaft to permit access by workers and supplies into the mine. These actions were taken based on

⁷ See *Dominion Transmission, Inc.*, 135 FERC ¶ 61,239 at P. 46 (2011) ("Where coal mining in the vicinity of a proposed pipeline is a 'reasonably foreseeable future action,' we consider the impacts that mining activities might have on the proposed pipeline as part of our environmental review of the project.")

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Coronado's expectation that this permitted area will be used to mine the entire reserve area, including the area impacted by the pipeline project. Thus, while Coronado rejects Mountain Valley's attempt to inject the concept of "permitted" mines into the Commission's Mitigation Measure, even if such an unjustified revision to the Mitigation Measure were permitted, this would not allow Mountain Valley to avoid its obligation to compensate Coronado for the diminution of its coal reserves.

In its response to Mitigation Measure #23, Mountain Valley claims that it "is actively negotiating agreements with the operators of permitted mines." Whether this is based on a cleverly narrow interpretation of the word "permitted" or an overly generous interpretation of the word "actively," Coronado takes issue with this statement, and the Commission should take it with a grain of salt.⁸ In fact, **Coronado has not met with Mountain Valley since June**. While there was email correspondence after that meeting, the discussions had clearly reached an impasse by the time the Coronado Comments were filed in early August. Notwithstanding Mountain Valley's efforts to interpret away its obligations under Mitigation Measure #23, therefore, Coronado respectfully requests that the Commission confirm explicitly Mountain Valley's obligation to reach agreement with Coronado on compensation for coal losses prior to the commencement of any construction.

⁸ To the extent Mountain Valley claims to continue to be "actively negotiating agreements with operators of *permitted* mines," and yet has ceased to continue active negotiations with Coronado based on some overly rigid (and highly debatable) view that Coronado mines have not been permitted, the Commission should find Mountain Valley to be acting in an unduly discriminatory manner. Based on Mountain Valley's own submissions in this proceeding, Mountain Valley claims to continue to be in active negotiations with Rex Coal Land Co., Inc. even though the Commission and Mountain Valley both have recognized that Rex's Charmco No. 1 is "proposed, but not yet permitted." See Responses to FERC Post-Application Environmental Information Request #3 at 71, Dated June 28, 2016, Response to Request Geology 10, Docket No. CP16-10-000 <http://elibrary.ferc.gov/idmws/common/openmat.asp?fileID=14307576> (July 12, 2016); Responses to FERC Environmental Information Request at 143, Dated March 31, 2016, Response to Request Resource Report 6 - Geology 6, Docket No. CP16-10-000 <http://elibrary.ferc.gov/idmws/common/openmat.asp?fileID=14212422> (April 21, 2016).

COMPANIES AND NGOs

CO11 – Coronado Coal, LLC.

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CONCLUSION

CO11-1
conf'd

WHEREFORE, the Coronado respectfully requests the Commission (1) reject Mountain Valley's attempts to narrow inappropriately the scope of Mitigation Measure #23 and (2) confirm that, regardless of whether Coronado has obtained mining permits for the entirety of its coal reserves or is actively mining those reserves or not, Mountain Valley must commit prior to construction to compensate Coronado for any diminution of its coal reserves and for any increased operating costs Coronado will incur as a result of the pipeline project.

Respectfully submitted,

By: /s/
Joel deJesus
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801 Pennsylvania Ave., NW
Suite 610
Washington, DC 20004
(T): (202) 372-9112
(E): joel.dejesus@dinsmore.com

COUNSEL FOR CORONADO COAL, LLC

Dated: November 14, 2016

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CO11-1
cont'd

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 14th day of November, 2016.

By: _____ */s/*
Joel deJesus

COMPANIES AND NGOs
CO12 – The Teamsters Pipeline Training Fund

This comment was also submitted by
Local 491 Uniontown and Local 585
Washington as a separate submittal
(see eLibrary 20161114-0041).

November 9, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

FILED
SECRETARY OF THE
COMMISSION
2016 NOV 14 P 2:32
FEDERAL ENERGY
REGULATORY COMMISSION

Dear Ms. Bose:

ORIGINAL

Please find attached the comments submitted by the Teamsters Pipeline Training Fund for Project Docket Number PF16-10-000.

These comments are covering the Mountain Valley and Equitrans Project in the states of Virginia and West Virginia.

This is a separate and distinct entity not to be confused with comments submitted by the Teamsters Pipeline Labor Management Labor Management Cooperation Trust (LMCT).

If you have any questions contact me at 703-508-8690.

Sincerely,



Richard Stern, Administrator
Teamsters National Pipeline Training Fund

Enclosure(s)

CO12-1

CO12-1

The commenter's statements are noted.

COMPANIES AND NGOs
CO12 – The Teamsters Pipeline Training Fund

This comment was also submitted by
Local 491 Uniontown and Local 585
Washington as a separate submittal
(see eLibrary 20161114-0041).

November 9, 2016

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Sincerely,



Richard Stern, Administrator
Teamsters National Pipeline Training Fund

Enclosure(s)

CO12-1

CO12-1

The commenter's statements are noted.

COMPANIES AND NGOs

CO12 – The Teamsters Pipeline Training Fund

PROJECT DOCKET NUMBER (PF16-10-000)

CO12-1
cont'd

Comments by the Teamsters Pipeline Training Fund (TPTF) before Federal Energy Regulatory Commission (FERC) on the Environmental Impact for the Proposed Mountain Valley and Equitrans Expansion Project (herein referred to as “MV and E”)

The Teamster National Pipeline Training Fund (TPTF) representing over 70 Union Pipeline Contractors affiliated with the Pipeline Contractors Association and the International Brotherhood of Teamsters with over 1.2 million members affirms our support for the Mountain Valley and Equitrans Pipeline Project (“MV and E”) in the states of Virginia and West Virginia.

The MV and E Pipeline Project will provide Pipeline Teamsters who belong to the following local unions having jurisdiction along the MV and E's route with high wages and health insurance and pension benefits ---all who pay taxes in these 2 States:

Local 22 Collinsville, VA

Local 175 Charleston, WV

Local 179 Roanoke, VA

Local 697 Wheeling, WV

The TPTF is committed to building this project with well-trained and qualified Teamster workers most of whom reside

COMPANIES AND NGOs

CO12 – The Teamsters Pipeline Training Fund

CO12-1
cont'd

along the route of the MV and E Pipeline Project and belong to the Local Unions in the 2 States noted above.

Therefore, they have a vested interest in building this project in an environmentally safe manner since their own families could be affected by this project.

By utilizing union contractors to build the MV and E Project it guarantees that at least 50% of the workers will be from the areas in Virginia and West Virginia where the work is taking place.

The collective bargaining agreement between the Teamsters and Pipeline Contractors Association (PLCA) states:

“The words “regular employee” shall mean those who are regularly and customarily employed by the Individual Employer and because of their special knowledge and experience in pipeline construction work, are considered key men. It is anticipated that the number of regular employees shall not be more than a majority of the total number required but there shall be no limitation on the classification of such regular employees, with the understanding that these classifications will be distributed as evenly as possible.” (See Exhibit A)

Therefore, when a pipeline project such as the MV and E is built using local union labor, the majority of pipeline construction workers are from the local community.

These workers care about building the job environmentally safe because they live here too.

COMPANIES AND NGOs

CO12 – The Teamsters Pipeline Training Fund

CO12-1
cont'd

On our projects we receive Steward Reports listing information on the Teamster workers in these 2 States including home local union such as the following:

Apex Pipeline Services (domiciled in Nitro, West Virginia) showing 5 out of 5 Teamsters are from West Virginia (See Exhibit B)

Furthermore, we have pipeline contractors who specialize in Horizontal Directional Drilling (HDD) type of work.

HDD is used for the installation of pipelines beneath rivers, highways, and other environmentally sensitive areas requiring technology and equipment that can install pipelines without any disturbance to natural habitats.

Some of our specialized signatory contractors and a more detailed explanation of the work they perform in areas of great environmental concern are included in this submission. (See Exhibit C)

Prior to the construction of the MV and E Pipeline we can Provide Classroom Training Courses on the latest U.S. Department of Transportation (DOT) regulation Compliance, Safety and Accountability (CSA) and also Defensive Driving.

The Teamsters CSA/Defensive Driving Instructor has been cited as a Trend Setter by the "National Safety Council" an Award he has received from them in the past. He will teach this Course to our Teamsters who will work on the MV and E Pipeline Project prior to the work starting. (See Exhibit D)

COMPANIES AND NGOs

CO12 – The Teamsters Pipeline Training Fund

CO12-1
cont'd

Other than the classroom training noted directly above we have been providing skills training on the equipment to be used on the MV and E Pipeline Project.

A listing of the types of equipment we have trained on and the Local Unions who have work jurisdiction for this project are also provided. (See Exhibit E)

Under pages 6 and 7 in the collective bargaining agreement workers must have certain qualifications prior to working on the project. (See Exhibit F)

Under pages 16 and 17 is the language on “Drug and Alcohol Testing” to ensure a drug free work environment and our “Training/DOT Rules” to maintain high quality work standards and qualifications. (See Exhibit G)

Furthermore, the TPTF supports our Virginia and West Virginia Teamster Pipeline Veterans who will be working on the MV and E Pipeline Project, if the MV and E Project is awarded to a Union Contractor.

They will receive high wage rates of pay and health insurance and pension credits.

A Brochure of the Teamsters Military Assistance Program (TMAP) is provided at the end of this submission for greater detail on its activities on behalf of our Veterans.

In closing, we support the application for the MV and E Pipeline Project covering the states of Virginia and West Virginia based upon this written submission and its supporting Exhibits.

COMPANIES AND NGOs

CO12 – The Teamsters Pipeline Training Fund

CO12-1
cont'd

We believe it can be built in a safe and environmentally friendly manner based upon our worker training programs and our union contractors who specialize in performing pipeline construction especially in areas where wetlands, rivers and streams exist.

COMPANIES AND NGOs

CO13 – National Trust for Historic Preservation

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CO13-1

December 22, 2016

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St. NE, Room 1A
Washington, DC 20426

Re: Comments on Draft Environmental Impact Statement for Mountain Valley Pipeline,
FERC Docket Nos. CP16-10-000 and CP16-13-000

Dear Ms. Bose:

The National Trust for Historic Preservation has serious concerns about the Draft Environmental Impact Statement (DEIS) prepared for the Mountain Valley Pipeline project. Many of the issues raised by the review of this particular project reflect broader compliance problems applicable to the Federal Energy Regulatory Commission (FERC), and inconsistencies between FERC's review process and the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), 36 C.F.R. Part 800.

• Interests of the National Trust

The National Trust for Historic Preservation is a private nonprofit organization chartered by Congress in 1949 to facilitate public participation in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. *See* 54 U.S.C. §§ 312102(a), 320101. With almost 800,000 members and supporters around the country, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition, the National Trust is designated by Congress as a member of the Advisory Council on Historic Preservation (ACHP), *id.* § 304101(a)(8), which is responsible for overseeing agency compliance with Section 106. We have extensive experience in reviewing undertakings subject to federal licenses and permits, not only as a consulting party, but also by enforcing compliance with the NHPA through litigation, either as a plaintiff or a friend of the court.

The National Trust requests the opportunity to participate in the Section 106 review for this project as a consulting party, pursuant to 36 C.F.R. 800. §§ 800.2(c)(5) and 800.3(f)(3).

CO13-2

Like the ACHP, the National Trust has been contacted by members of the interested public, historic preservation organizations, and representatives from local governments, concerned about this and other pipeline projects. In particular, we are hearing expressions of frustration from those attempting to ensure that FERC will engage in meaningful consultation under Section 106.

The Watergate Office Building 2600 Virginia Avenue NW Suite 1100 Washington, DC 20037
E law@savingplaces.org P 202.588.6035 F 202.588.6272 www.PreservationNation.org

CO13-1

FERC follows 36 CFR 800 to comply with the NHPA. The status of our compliance is documented in section 4.10 of the EIS.

CO13-2

Consultations under Section 106 are discussed in section 4.10 of the EIS. As documented in section 4.10 of the EIS, the FERC accepted the requests of all local governments to be consulting parties. We also accepted the request of the NPS and the ATC because of their special status as managers of the BRP and ANST. Likewise, we accepted the requests of four landowners within the Greater Newport Rural Historic District who have historic properties near the pipeline. We declined the requests of others who could not demonstrate a legal or economic relationship to the project, as required by Part 800.2(c)(5). However, FERC has procedures in place to ensure consideration of the views of the public on potential impacts on historic properties, in accordance with Part 800.2(d).

COMPANIES AND NGOs
CO13 – National Trust for Historic Preservation

CO13-2
cont'd

- **FERC has failed to respond to consulting party requests, or has improperly rejected consulting party requests, even from local governments.**

FERC's pattern of denying requests from stakeholders interested in participating as consulting parties is not consistent with the Section 106 regulations, as discussed in detail in letters to FERC dated December 21, 2016, from both the ACHP and the Virginia State Historic Preservation Office (SHPO). One particularly egregious violation is FERC's exclusion of local governments as consulting parties, even though the Section 106 regulations explicitly require that "a local government with jurisdiction over the area in which the effects of an undertaking may occur is *entitled to participate* as a consulting party." 36 C.F.R. § 800.2(c)(3) (emphasis added). When local governments request the right to participate in Section 106 consultation, FERC has no authority to decline those requests.

CO13-3

- **FERC has failed to engage in proper "consultation."**

Consultation is defined in the Section 106 regulations as a "process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process." 36 C.F.R. § 800.16(f). "Consultation is built upon the exchange of ideas, not simply providing information." 63 Fed. Reg. 20,496, 20,504 (Apr. 24, 1998) (Secretary of the Interior's Standards & Guidelines for Federal Agency Historic Preservation Programs Pursuant to the NHPA). This process of dialogue is simply not occurring as part of FERC's review process.

CO13-4

- **The DEIS fails to substantiate the purpose and need for the project.**

In September 2016, the Southern Environmental Law Center and Appalachian Mountain Advocates released a study by Synapse Energy Economics, Inc.,¹ which concludes that the Mountain Valley Pipeline and the Atlantic Coast Pipeline are *not needed*, because existing pipelines can supply sufficient power to the region through 2030. The DEIS fails to address this analysis.

CO13-5

- **FERC has failed to identify historic resources accurately and comprehensively, even when specific information is supplied by a local government or a knowledgeable historic preservation advocacy group.**

The Greater Newport Rural Historic District Committee (Committee), in its Comment and Objection dated October 24, 2016, outlined in detail its efforts to correct serious errors and omissions regarding the identification of historic properties in the Newport Historic District and the Greater Newport Rural Historic District. Many of the corrections submitted by the

¹ Synapse Energy Economics, Inc., *Are the Atlantic Coast Pipeline and the Mountain Valley Pipeline Necessary? An examination of the need for additional pipeline capacity into Virginia and Carolinas* (Sept. 12, 2016). The report can be accessed at: https://www.southernenvironment.org/uploads/words_docs/Synapse_Report_WV-VA_Proposed_Pipelines_FINAL_20160909.pdf?cachebuster:42.

CO13-3

Read section 4.10 of the EIS. We engaged in proper consultations.

CO13-4

See the response to FA11-12 regarding need.

CO13-5

We disagree. Section 4.10 of the EIS accurately identified historic resources. See response to comment SA2-3 regarding historic properties and the Greater Newport Historic District.

COMPANIES AND NGOs
CO13 – National Trust for Historic Preservation

CO13-5
 cont'd | Committee have not yet been incorporated into the documentation for evaluating the impacts of the project.

CO13-6 | • **FERC has failed to acknowledge and disclose the magnitude of the potential adverse effects to historic properties.**

FERC admits in the DEIS that it has not completed the process of assessing adverse effects on historic properties (or even the process of *identifying* all historic properties that are potentially affected). DEIS at 4-347, 4-384. However, FERC proceeds to speculate that adverse effects on historic properties will not be significant. *E.g.*, DEIS at 4-347 (“our preliminary evaluation is that the MVP pipeline should not have long-term significant adverse effects on the [Greater Newport Rural Historic] district.”)² We strongly disagree, and so does the Virginia SHPO, in its letter dated December 21, 2016.

CO13-7 | • **FERC erroneously treats rural historic districts as discontinuous collections of architectural resources, without adequate consideration of the landscape and setting of the historic districts.**

According to the Comment and Objection submitted by the Committee, the proposed pipeline would physically cut through at least eight historic districts—although the DEIS only discloses five (DEIS at 4-345 to 4-346)—and would have extremely close proximity to several others. FERC fails to adequately acknowledge the adverse effects of this direct, physical intrusion on so many historic districts, the majority of which have significant contexts and settings as rural historic landscapes.

Although the analysis remains incomplete, FERC seems to be assuming that as long as the pipeline route weaves in between contributing structures in the district, it will avoid having an adverse effect on the historic district itself, even if it would cut right through the heart of the district. This assumption is not consistent with the requirements of Section 106. The agency “must consider more than the individual buildings and structures in an historic district when analyzing the impact of a project.” *Concerned Citizens Alliance v. Slater*, 176 F.3d 686, 697 (3d Cir. 1999).

According to NPS Bulletin # 30, the following changes to historic landscapes can threaten historic integrity: (1) changes in land use and management that alter vegetation; (2) changes in land use that flatten the contours of land; (3) introduction of non-historic land uses (public utilities, industrial development); and (4) loss of vegetation related to significant land uses. NPS, *Guidelines for Evaluating and Documenting Rural Historic Landscapes* (1999) (<https://www.nps.gov/nR/publications/bulletins/pdfs/nrb30.pdf>). It is clear that the MVP, if constructed, would introduce each of these types of changes, and would threaten the historic integrity of the affected landscapes.

² It is also important to note that, for purposes of Section 106, the standard is not whether the adverse effects would be “significant” or “long-term.” Instead, Section 106 requires the agency to take into account *all* adverse effects, and to seek alternatives and modifications to the project that would avoid, minimize, or mitigate those adverse effects. 36 C.F.R. §§ 800.1(a), 800.6(a).

CO13-6 Effects on historic properties are discussed in section 4.10 of the EIS.

CO13-7 Section 4.10 of the EIS discusses Historic Districts within the context of the built environment, as rural historic landscapes, and as potentially traditional cultural properties.

COMPANIES AND NGOs
CO13 – National Trust for Historic Preservation

CO13-8

- **FERC has failed to coordinate NEPA and Section 106 review, and released the Draft EIS before completing the identification of historic properties or initial assessment of effects.**

The DEIS explicitly acknowledges that FERC has not yet completed even the initial identification of historic properties. DEIS at 4-384. Approximately 36 miles of the pipeline route have not been inventoried, and surveys to identify historic properties have not been completed for 5 above-ground facilities, 65 new or to-be-improved access roads, and 91 additional temporary workspaces, staging areas, and yards. In addition, 57 already-identified sites have not yet been evaluated for their National Register eligibility, because necessary testing or research has not been completed. *Id.*

CO13-9

In addition, even for those historic resources that *have* been identified, the DEIS fails to adequately analyze the effects that the pipeline would have on the resources, and in some cases, fails to provide even an *initial* determination of what the effects could be. *See, e.g.,* DEIS at 4-349 (“no information about the Coles-Terry Rural Historic District, so it is unknown if the pipeline [which the DEIS acknowledges would physically cut through the district] would affect resources within this district”).

CO13-10

These major gaps in the identification of historic properties and potential adverse effects make it impossible for the DEIS to perform its essential function of *disclosing*—to the public and to the agency—the potential impacts of the proposed action. “If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives [which it is in this case,] and the overall costs of obtaining it are not exorbitant, the agency *shall include* the information in the [EIS].” 40 C.F.R. § 1502.22(a) (emphasis added).

The inadequacy of the evaluation of historic resources in the DEIS is further illustrated by guidance issued recently by the Council on Environmental Quality (CEQ) and the ACHP regarding the integration of NEPA and Section 106. The guidance states that proper coordination of the two review processes “ensures that determinations regarding which alternatives to advance for detailed analysis and which alternative is selected as the preferred alternative are made with an appropriate awareness of historic preservation concerns.” *Id.* at 27. A chart included in the guidance describes the correct sequence of procedural steps:

CO13-8

36 CFR 800.4(b)2 allows for the lead agency to use a phased process to conduct identification and evaluation efforts. At the time of the writing of this final EIS, Mountain Valley has inventoried 96 percent of its pipeline route. We have recommended a condition that allows for the completion of the Section 106 process after a Commission Order authorizing the project is issued, and access can be obtained for the other parcels.

CO13-9

FERC is consulting with SHPOs for all determinations of eligibility and project effects. Section 4.10 of the final EIS has been updated as applicable.

CO13-10

There are no major gaps in the identification of historic properties, as only four percent of the pipeline route remains unsurveyed at this time. Section 4.10 discloses to the public the status of our compliance with Section 106.