



December 22, 2016

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Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426
Submitted Via FERC eFiling Feature on the FERC Web Site

Re: Comments on DEIS for the Mountain Valley Pipeline Proposal, FERC Docket No. CP16-10-000, In Response to Notice of Availability of Draft Environmental Impact State for the Mountain Valley Pipeline, September 16, 2016

Board of Directors:

Dear Ms. Bose:

I am transmitting the comments included in this document, on behalf of Wild Virginia, Heartwood, and Ernest Q. Reed, Jr. In addition to this document, I am submitting the following documents separately as attachments to these comments:

Bette Dzamba
Howard Evergreen
Jennifer Lewis
Laurie Miller
Ernie Reed
David Sellers
Deirdre Skogen
Elizabeth Williams

- A letter from Wild Virginia to BLM and the Forest Service, dated November 18, 2016 (document labeled "USFS&BLMLetter.11.18.16")
- A Report Entitled "Impacts of the MVP on Headwater Streams" by David Sligh (document labeled "Impacts of the MVP on Headwater Streams.pdf")
- Four documents, labeled as follows:
 - K Spring by AT.pdf
 - L Pipeline, springs, roads, early 2016.pdf
 - M Springs on both sides of the pipeline 5-16.pdf
 - P Forest Service spring, hemlocks, chestnuts 10-16.pdf

Thank you for accepting these comments.

Sincerely,

_____/s/_____
Ernest Q. Reed, Jr.

Comments on Draft Environmental Impact Statement
for
Mountain Valley Pipeline LLC
Docket No. 16-10-000
From Wild Virginia, Heartwood, and Ernest Q. Reed, Jr.

Introduction

Wild Virginia, Heartwood, and Ernest Q. Reed, Jr. (collectively “Wild Virginia”), all intervenors on Docket CP16-10-000, strongly object to the approval of the proposed Mountain Valley Pipeline (“MVP”). Through these comments, we explain the reasons why the Federal Energy Regulatory Commission (“FERC” or the “Commission”) may not legally issue the requested Certificate of Public Convenience and Necessity (“Certificate”), based on both procedural and substantive grounds.

Wild Virginia also objects to the proposed issuance of a Certificate of Public Convenience and Necessity (“Certificate”) by FERC, to a Right-of-Way Grant (“Grant”) to Mountain Valley for crossings of federal lands, and to related proposals to amend the Jefferson National Forest Land and Resource Management Plan (“Plan Amendments”). The proposals for these administrative actions cannot be upheld, based on procedural violations in the current administrative process and because the proposal would cause unacceptable damages and risks to humans and the environment. The environmental review process now underway flagrantly violates the National Environmental Policy Act; the construction, operation, and maintenance of the pipeline and associated activities (roads, work spaces, etc.) would violate the procedural requirements and resource protection requirements that the Bureau of Land Management (“BLM”) and the United States Forest Service (“Forest Service”) are charged with upholding.

In the following sections, we describe some of the ways that the DEIS is inadequate and fails to meet legal standards. Many additional reports and comments in the FERC record expand the list of issues ignored or poorly represented in the DEIS greatly. In addition, we describe the ways in which the impacts of the proposed project would be unacceptable and fail to satisfy regulatory environmental protections standards and to serve the public interest.

Incomplete Record to Support Decisions and Adequately Inform the Public

FERC has failed to meet its obligations for review of this project under the National Environmental Policy Act (“NEPA”) by failing to compile and include necessary information in the DEIS. The Draft Environmental Impact Statement (“DEIS”) now under review fails to meet legal standards which govern its content and quality.

FERC has undertaken a process under NEPA to review a proposal by Mountain Valley Pipeline, LLC (“Applicant”) to construct, operate, and maintain a 42-inch natural gas pipeline through portions of West Virginia and Virginia. In pursuance of its duties under NEPA, FERC published a Draft Environmental Impact Statement (“DEIS”) and a notice requesting public comments on the DEIS on September 16, 2016. Federal regulations implementing NEPA command that a DEIS “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). FERC’s DEIS for the MVP fails to meet this mandate, in a number of respects, as described below.

The BLM and Forest Service have independent authorities and duties for this project proposal (the Grant and Plan Amendments) and must also fulfill all NEPA requirements, as well as the requirements of their governing laws. Under NEPA, BLM and the Forest Service are acting as “cooperating agencies” in this EIS process. As such, these resource agencies may adopt FERC’s DEIS, if that document meets both the substantive and procedural requirements that govern their regulatory decisions. These requirements arise from NEPA and from the agency-specific regulations that govern these agencies’ resource protection duties. If the FERC DEIS fails to meet those requirements, as we assert, then the BLM and Forest Service must undertake their own separate NEPA reviews. As Wild Virginia has explained in its letter to BLM and the Forest Service dated November 18, 2016 (attached),

the current FERC DEIS fails as a basis for meeting these agencies' responsibilities under both NEPA and these agencies' own regulations. Therefore, a revised and sufficient DEIS must be prepared, either in cooperation with FERC or through a separate action.

The materials submitted by Applicant to support its request for a Grant and associated Forest Plan amendments to "occupy and use" National Forest System lands fall far short of the regulatory requirements that specify the information and justifications that must be submitted to allow the permit and Plan amendments to be approved.¹ The failure of the DEIS to provide this information, at this stage in the NEPA process, also prevents these agencies from meeting their procedural duties under NEPA and agency requirements, because, even if the deficiencies were to be remedied at a later time, the public will have been deprived of its rights to review the necessary information and make effective comments in time for those comments to be fully considered and addressed in the Final Environmental Impact Statement ("FEIS").

Under law, the applicant bears the burden of supplying sufficient information and analyses to meet all applicable requirements. Likewise, the law places the burden on the federal agencies adopting a DEIS to provide a "detailed" review of the pertinent information and explain the bases for their decisions. Both Applicant and FERC have failed to meet their respective burdens of evidence.

The decision on MVP's application for a special use permit to "occupy and use" National Forest System lands is governed by federal regulations at 36 C.F.R. § 251.54. Under the regulations, the applicant must submit, "at a minimum," information detailed at 36 C.F.R. § 251.54(e). In addition, the Forest Service and BLM may allow the MVP to occupy or use National Forest lands "only if" these agencies make specific findings in accordance with the Forest Service Manual ("FSM"). The requisite findings, in pertinent parts, are that:

- a. The proposed use is consistent with the mission of the Forest Service to manage National Forest System lands and resources in a manner that will best meet the present and future needs of the American people, taking into account the needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values; and
- b. The proposed use cannot reasonably be accommodated on non-Natural Forest System land. . . .

FSM 2703.2(2).

The record fails to include information conforming to the minimum requirements set out in 36 C.F.R. § 251.54(e) and is wholly inadequate to justify the findings required by the Forest Service Manual. As demonstrated by the requests for information made by the Forest Service, both before and after issuance of the DEIS, and by deficiencies identified by Wild Virginia, the U.S. Environmental Protection Agency ("EPA"), and other members of the public, the applicant has failed or refused to provide the necessary information and analyses. The evidence, in fact, indicates strongly that the threshold requirements for issuing a Special Use Permit cannot be met.

1. By letter dated October 24, 2016, Joby P. Timm, Forest Supervisor, George Washington and Jefferson National Forests (GW&JNF) (Docket submittal no. 20161025-5044) requested Applicant to provide "site specific design of stabilization measures in selected high-hazard portions" of the proposed MVP's route in the Jefferson National Forest. The Forest Service explained in its letter that the proposed MVP "would cross some very challenging terrain in the central Appalachians" posing "potentially difficult situations," including "steep slopes, presence of headwater streams, geologic

¹ While the Grant of a Right-of-Way is applied for in this case, the requirements for a Special Use Permit apply, because Forest Service lands are among the federal lands that would be crossed or occupied. Therefore, this analysis focuses primarily on the Forest Service rules related to Special Use Permit Applications.

formations with high slippage potential, highly erodible soils, and the presence of high-value natural resources downslope of the high hazard areas.”

The Forest Service substantiated its concerns, noting that “[s]imilar hazards on other smaller pipeline projects in the central Appalachians have led to slope failures, erosion and sedimentation incidents, and damages to aquatic resources.” The possibility that similar problems would occur for this much larger pipeline, according to the Forest Service, “could present a high risk of failures that lead to resource damage.”

The October 2016 letter was not the first time the Forest Service had raised these issues. In fact, the agency has insisted that these potential problems be assessed through extensive and detailed comments and requests for information, from its earliest involvement in this process. Those questions have been met by Applicant with “general descriptions and conceptual drawings” of methods proposed to stabilize slopes and control erosion/sedimentation.

The Forest Service makes clear that the requested information for high hazard sites is necessary for it to deem the application for a Special Use Permit complete and ready for further processing and that the information is necessary to “clarify the likelihood that the MVP can be constructed through the Jefferson National Forest without undue risk of resource damage.” Given these findings, the analyses in the DEIS cannot be considered adequate to meet the BLM and Forest Service requirements under NEPA.

The deficiencies identified implicate several portions of the requirements the agencies must satisfy. First, one of the minimum requirements contained in the regulations is that the applicant must “provide sufficient evidence to satisfy the authorized officer that the proponent has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the project for which authorization is requested. . . .” Without knowing, in detail, how the hazards identified will affect the pipeline’s construction and maintenance, whether the technical challenges can be surmounted, and, if so, at what cost, the BLM and Forest Service cannot deem this minimum requirement to have been met. In expressing the need to “clarify the likelihood that the MVP can be constructed . . . without undue risk of resource damage,” the Forest Service has questioned whether the pipeline can be built in the National Forest in a safe and protective manner.

Second, even if the pipeline can be built in this terrain, the lack of information about the hazards described prevents the BLM and Forest Service from making properly-supported findings as to the impacts that would occur. Thus, these agencies do not have a basis of fact on which to rest conclusions about the ways this proposal would affect the uses and values of the National Forest, nor to properly weight the costs and benefits of this proposal, a “no-action alternative,” or any other alternative.

2. The Forest Service has also demanded a detailed Plan of Development, to ensure that site-specific procedures for construction, maintenance, and implementation of pollution control and stabilization/restoration measures fit the needs of the many varied environments that would be impacted. Here too, the Forest Service’s own demands for more and better information that was not included in the DEIS demonstrates clearly that the draft statement does not meet the Service’s technical needs and cannot be deemed adequate to satisfy legal mandates.
3. The BLM, in a December 1, 2016 letter to FERC, emphasize that important information was still missing from the application. BLM stated that “[t]he project proponent’s delay in providing key information about the lands subject to the Mineral Leasing Act [and, therefore, to the Forest Service requirements] application substantially hinders the BLM’s ability to provide a concrete date or official timetable.” That fact that information deficiencies make it impossible for BLM to even project a schedule for making its decision demonstrates forcefully that the information is insufficient to make valid assessments..
4. The DEIS does not include an adequate analysis of an alternative route for the MVP that would not cross National Forest lands, as federal regulations require and as specified at FSM 2703.2(2)b. The

minimum threshold for deciding whether *any* crossing of National Forest lands may be allowed, is a finding that the “proposed use cannot reasonably be accommodated on non-Natural Forest System land.” By contrast, FERC stated in the DEIS “[w]e evaluated route alternatives and variations as compared to Mountain Valley’s filed proposed route to determine whether their implementation would be preferable to the proposed corresponding action.” DEIS, p. 3-16. This assessment does not reflect the standard by which the USFS/BLM must judge whether any alternative that crosses Forest Service land is acceptable.

5. FERC expressly allows for numerous important studies and reports to be submitted by Applicant at the end of the DEIS comment period or, even much later, when the public would have absolutely no way to learn of, review, or comment on the contents of the documents in a meaningful way, if at all. Just a few of these deferred submittals include:

“prior to the end of the draft EIS comment period”

- Surveys to assess constructability and identify karst features to be avoided [without which the final route alternative cannot possibly be chosen].
- A plan that describe how long-term and permanent impacts on migratory bird habitat would be minimized. [If it cannot be shown through credible assessments and plans that these impacts can be minimized to an acceptable degree, then major changes to the project would certainly be required]

“prior to construction” or “before construction is allowed to begin”

- An adequate landslide mitigation plan. [again, a final route cannot be chosen without this information]
 - A fracture trace/lineament plan.
 - Turbidity modeling results for certain wet open-cut stream crossing locations.
 - Contingency plans for minimizing and mitigating potential impacts on public surface water supplies downstream from pipeline facilities.
6. The information in the DEIS about groundwater wells, springs, and karst features is, by design, woefully incomplete. First, the assessment ignores the fact that pollutants from upland areas will flow down-gradient and enter the karst system through losing streams. Second, Applicant and FERC have limited the area in which water wells, springs, and swallets (“karst features”) must be identified to a region that is within 500 feet of the pipeline and aboveground facilities. DEIS, p. 5-23. and 4-73 & 74. This arbitrary distance limits is shown by the overwhelming weight of scientific consensus to be without any basis and totally inadequate to provide any reliable protection for groundwater or surface waters.
 7. Findings of Wild Virginia and citizens reveal that, even those inadequate attempts to identify groundwater and karst features discussed in 6. above, have missed important natural features. These omissions, which cannot be attributed to lack of field access by company personnel, are, further, an illustration of the fact that Applicant’s efforts to characterize the environment through which the pipeline would cross, whether through databases or field surveys is grossly inadequate. Features not identified by Applicant are shown and described in the attached documents labeled: K Spring by AT.pdf; L Pipeline, springs, roads, early 2016.pdf; M Springs on both sides of the pipeline 5-16.pdf, P Forest Service spring, hemlocks, chestnuts 10-16.pdf.
 8. DEIS does not look at the need to protect the Forest from future changes produced by climate change that can already be predicted and does not place this project in that context as an additional disturbing factor - would raise temperatures in streams, in caves and groundwater feeding them, and terrestrial environments, where interior forests are removed and edge areas and clearings created.

Flawed Analyses and Unsupported Conclusions

In addition to the large body of necessary information and analyses that are missing from the DEIS prepared by FERC, there are numerous issues for which FERC makes incomplete and flawed analyses and offers conclusions that are unsupported by facts or sound reasoning.

1. The DEIS analysis of possible cumulative impacts on water bodies, particularly on headwater streams is superficial and incomplete. See the attachment labeled “Impacts of the MVP on Headwater Streams.pdf” for discussion of some of the flaws in this analysis.
2. The DEIS makes no attempt to assess the impacts of this proposed pipeline on the Appalachian Trail in context with other pipelines and other existing or potential impacting activities/existing conditions. projects that would damage the AT’s character and value. Thus, any conclusions related to the scenic, recreational, or economic impacts on the AT, from crossings or viewing areas, are without great value. This failure violates FERC’s duty to perform an adequate cumulative impacts analysis under NEPA.
3. Analysis of stream and GW impacts does not look at all activities and factors that, when combined, present an extreme threat to water bodies and drinking water sources. This is related to the FS’s demand for analyses in the high hazard areas but is applicable throughout the proposed pathway and for roads, work areas, etc. Blasting, potential landslides and slumps, karst impacts from activities on and upstream of features, highly erodeable soils, changes in hydrologic cycles and flow patterns inherent in replacing forests with scrub and grassed areas, etc. must all be looked at together. The same concerns expressed by the Forest Service are just as pertinent in many other areas the pipeline would cross and impact; the same types and levels of information the Forest Service is demanding for federal lands must also be provided for non-federal lands.

Unacceptable Harms and Threats to Humans and the Environment

The proposed project cannot be approved, as currently proposed, because it fails to meet requirements for protection of the environment and human health and welfare, as mandated by the Natural Gas Act (“NGA”) the Clean Water Act (“CWA”), and statutes and regulations providing protections for federal lands, as explained below. We hereby incorporate, by reference, the previous submittal by Wild Virginia to the pre-filing docket PF15-3, Docket Submittal No. 20150609-5060, which describes a wide range of impacts the proposed project would cause.

1. Proposed Plan Amendment 1 will severely compromise the wilderness character of Peters Mountain and Brush Mountain Wilderness areas by fragmenting the forest and cutting off the wilderness areas from the remainder of the intact forest. The easement corridor will become a vector for invasive and opportunistic species and facilitate intrusion into the wilderness areas. It will create conditions that facilitate illegal use by ORV and ATVs throughout the area. It will also impact the scenic integrity of the wilderness areas. These issues need to be considered in a programmatic analysis that assesses impacts cumulatively as other areas which are part of the National Wilderness Preservation System are currently under impact in these aforementioned ways from oil and gas leasing and infrastructure nation-wide. The continual degradation of the National Wilderness Preservation System is unacceptable and these impacts cannot be mitigated.
2. Proposed Plan Amendment 2 would allow construction to exceed existing restrictions on Soil and riparian corridor conditions. These impacts cannot be mitigated and impacts will be both immediate and ongoing.
3. The route through old growth and roadless area on Brush Mountain and Proposed Amendment 3 violate the 2001 Roadless Area Rule 36 CFR Part 294.13 which prohibits timber cutting, sale, or removal of timber in inventoried roadless areas. In addition, the cleared path would become a defacto “road” utilized both by MVP for clearing and maintenance and by illegal ORV/ATVs for destructive and illegal vehicular use. The pipeline’s impacts would produce all of the same negative

effects that roadless management is intended to avoid and probably more. Invasives, water quality and hydrologic problems, etc.

4. Proposed Amendment 4 which would change in Scenic Integrity Objective for the Rx4A from High to Moderate would be a permanent change to the visual quality and the recreation values of the Appalachian National Scenic Trail. The cumulative impacts to the ANST, as well as those to the National Wilderness Preservation System are of a programmatic nature as there are currently numerous crossings of the ANST proposed including one other in Virginia (Atlantic Coast Pipeline). The continual degradation of the ANST is unacceptable and these impacts cannot be mitigated. To give a 5-10 window where there are virtually no required scenic integrity objectives for this area would be absolutely unacceptable.
5. The DEIS does not provide a basis for either VA or WV to “ensure” that their water quality standards will be met, as they are required to do before they may provide “water quality certifications” under their duties in section 401 of the Clean Water Act. This applies to both surface water and groundwater standards. Groundwater standards are especially stringent in Virginia, prohibiting any increase in pollutants from existing levels, where no existing criteria violations exist.

Conclusions

These comments present only a small sampling of the issues that make FERC’s DEIS so deficient, in both technical and legal aspects. We are fully aware that other parties, including federal agencies, describe many more problems that cannot be ignored. Still, based on the evidence presented in these comments alone, the DEIS is unacceptable and must be replaced through a revised version.

The current version of the DEIS is so grossly inadequate and the information submitted by Applicant is so incomplete that to proceed with the EIS process under these circumstances would constitute a flagrant violation of NEPA and of procedural rules applicable to each of the federal decision-makers. If FERC fails or refuses to issue a revised DEIS, then the BLM and Forest Service are legally obligated to undertake a separate NEPA process and prepare their own DEIS documents. Otherwise, the public’s rights to review adequate documents and to make informed and effective comments, to contribute fully to the subsequent FEIS and Records of Decision will have been flagrantly denied. Even if the deficiencies present in the DEIS were to be corrected in an FEIS, the breach of NEPA’s procedural mandates would not be repaired.

Also, the substantive determinations that are to be made, to ensure that the broader public interest is served and the environment and human health, including our public lands, are adequately protected must conclude that this project, as currently proposed, cannot be built in conformance with the law. This conclusion is inescapable, even with the flawed and incomplete record so far compiled. The terrain through which the pipeline would cross, with high risks of landslides, unstable and highly erodible soils, karst terrain and the associated harm that will accrue to water resources and subterranean environments, the high values and vulnerabilities of biological resources, and many other factors all combine to make this proposal unacceptable. To ignore or improperly weigh these factors against the need for the project (which is unproven) and the supposed benefits (which would primarily accrue to private, profit-making corporations at the expense of all other interests) would clearly be an arbitrary and capricious act.