



U.S. Department of the Interior
Bureau of Land Management

Record of Decision Mountain Valley Pipeline and Equitrans Expansion Project Decision to Grant Right-of-Way and Temporary Use Permit



January 2021

BLM Mission

It is the mission of the Bureau of Land Management to sustain health, diversity, and productivity of the public lands for use and enjoyment of present and future generations.

**United States Department of the Interior
BUREAU OF LAND MANAGEMENT**

**Environmental Impact Statement: FERC/FEIS-0272F (CP16-10-000 and CP16-13-000)
Supplemental Environmental Impact Statement: FS/FSEIS
Agency Number Case File Numbers: VAES-058143-02 and VAES-058143-03**

RECORD OF DECISION

**Mountain Valley Pipeline and Equitrans Expansion Project¹
Decision to Grant Right-of-Way and Temporary Use Permit**

**Monroe County, West Virginia
Giles and Montgomery Counties, Virginia**

Bureau of Land Management
Eastern States Office, Falls Church, Virginia
5275 Leesburg Pike
Falls Church, Virginia 22041

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Flowood, Mississippi 39232

With the Concurrence of:

U.S. Department of Agriculture, George Washington - Jefferson National Forests
5162 Valleypointe Parkway
Roanoke, Virginia 24019

January 14, 2021

¹ The Equitrans Expansion portion of the larger Mountain Valley Pipeline project does not impact National Forest System lands, and therefore this document has no bearing on the Equitrans Expansion Project.

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ACRONYMS AND ABBREVIATIONS

ANST	Appalachian National Scenic Trail
AO	Authorized Officer
Bcf/d	Billion Cubic Feet Per Day
BO	Biological Opinion
BLM	U.S. Department of the Interior, Bureau of Land Management
BMP	Best Management Practice
Certificate	Certificate of Public Convenience and Necessity
C.F.R.	Code of Federal Regulations
Dth/d	Dekatherms Per Day
DSEIS	Draft Supplemental Environmental Impact Statement
FEIS	Final Environmental Impact Statement
EPA	Environmental Protection Agency
EPAct	Energy Policy Act
FERC	Federal Energy Regulatory Commission
FERC's Order	Certificate of Public Convenience and Necessity
FRAP	Federal Rules of Appellate Procedure
FS	U.S. Department of Agriculture, Forest Service
FSEIS	Final Supplemental Environmental Impact Statement
Forest Plan	2004 Jefferson National Forest Revised Land and Resource Management Plan
Fourth Circuit or the Court	United States Court of Appeals for the Fourth Circuit
Grant	BLM's Right-of-Way Grant and associated Temporary Use Permit
JNF	Jefferson National Forest
LRMP	Land and Resource Management Plan
Mountain Valley	Mountain Valley Pipeline, LLC
MLA	Mineral Leasing Act
MVP	Mountain Valley Pipeline
NAGPRA	Native American Graves Repatriation Act
NEPA	National Environmental Policy Act
NFMA	National Forest Management Act
NFS	National Forest System
NGA	Natural Gas Act
NHPA	National Historic Preservation Act
NOA	Notice of Availability
NOI	Notice of Intent
NTP	Notice to Proceed
PA	Programmatic Agreement
POD	Plan of Development
RFSS	Regional Forester Sensitive Species
ROD	Record of Decision
ROW	Right-of-Way
SEIS	Supplemental Environmental Impact Statement
SIO	Scenic Integrity Objective
TUP	Temporary Use Permit
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Department of Interior, Fish and Wildlife Service

Record of Decision

Executive Summary

This Record of Decision (ROD) documents the Department of the Interior's (DOI or Department) decision and rationale for approving a right-of-way (ROW) and temporary use permit (TUP) for the Mountain Valley Pipeline (MVP) project (Project) on federal lands under the jurisdiction of the U.S. Department of Agriculture Forest Service (Forest Service or FS) in Virginia and West Virginia.

Consistent with the Mineral Leasing Act (MLA) (30 U.S.C. § 185), the Bureau of Land Management (BLM) is responsible for reviewing Mountain Valley's ROW application, considering a decision to grant or deny the ROW and TUP application, and, if the application is approved, issuing a ROW grant through the federal lands involved. The entire 303.5-mile interstate natural gas pipeline Project was certificated by the Federal Energy Regulatory Commission (FERC) on October 13, 2017 (FERC 2017b). The BLM participated as a cooperating agency, along with the FS and U.S. Army Corps of Engineers (USACE), in the FERC's Final Environmental Impact Statement (FEIS) for the Mountain Valley Project and Equitrans Expansion Project (FERC 2017a).

Of the total acreage of MVP's proposed route, 1.2 percent crosses about 3.5 miles (75 acres) of National Forest System (NFS) lands managed by the FS, Jefferson National Forest (JNF), in Monroe County, West Virginia and Giles and Montgomery counties, Virginia. The MVP route also crosses about 60 feet of the Weston and Gauley Bridge Turnpike Trail, in Braxton County, West Virginia, managed by the USACE. The BLM's previous ROW grant (BLM 2017b) for the portion of the MVP crossing USACE land remains valid.

On May 1, 2020, Mountain Valley submitted a revised ROW application (DOI 2020a) to address the issues identified by the U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit). The revised application again seeks a ROW across approximately 3.5 miles of NFS lands through the JNF in West Virginia and Virginia. On May 29, 2020, the BLM deemed Mountain Valley's revised application complete.

The FS, and the BLM as a cooperating agency, prepared the Mountain Valley Pipeline and Equitrans Expansion Project Final Supplemental EIS (FSEIS)(FS 2020b) in compliance with the National Environmental Policy Act (NEPA) and other relevant Federal and State laws and regulations. The FS FSEIS was prepared to address the issues identified by the Fourth Circuit and consider relevant new information and changed circumstances. The FSEIS supplements the 2017 FERC FEIS.

The FS FSEIS evaluated the no action and the proposed action alternative in detail. In response to additional alternatives identified in MVP's revised ROW application, BLM prepared the addendum to the BLM's 2018 Practicality Analysis of Collocation Route Alternatives for the MVP Project Consistent with 30 U.S.C. § 185(p) on September 2, 2020, included as Appendix A in the FS FSEIS.

Based on the FERC FEIS and the FS FSEIS, the FS issued a ROD on January 11, 2021 to amend the 2004 JNF Land and Resource Management Plan (LRMP). The FS submitted concurrence to the BLM for the issuance of the ROW Grant on January 11, 2021 and is included as Attachment B of this ROD.

The BLM has independently reviewed and adopted the FERC FEIS and the FS FSEIS per 40 C.F.R. 1506.3, and the BLM has prepared this ROD for project-related actions affecting NFS lands based on information contained in the FERC FEIS and the FS FSEIS. This decision will specifically affect the NFS lands detailed in the FERC FEIS, MVP's Plan of Development (POD) (MVP 2020a, Attachment A, Exhibit B), and described in the FS FSEIS.

After extensive environmental analysis, consideration of agency, tribal, and public comments, and application of pertinent Federal laws and policies, and in accordance with 43 C.F.R. Part 2880, it is the decision of the BLM to authorize a 30-year ROW and associated TUP for the construction, operation, maintenance, and termination of the selected alternative for MVP across NFS lands. The Grant will be for the route certificated by FERC (FERC 2017b), analyzed in the FERC FEIS and FS FSEIS (FS 2020b) and detailed in the POD.

This ROD constitutes the Department's and BLM's final decision for the MVP Project, including mitigation and monitoring requirements.

Final Agency Actions

Issuance of Right-of-Way Grant

Eastern States Director's Recommendation

I recommend approval of a 42-inch, steel-welded, underground natural gas pipeline Right-of-Way Grant and associated Temporary Use Permit (VAES-058143-02 and VAES-058143-03) to Mountain Valley Pipeline, LLC, subject to terms, conditions, stipulations, and environmental protection measures developed by the Federal Energy Regulatory Commission, U.S. Department of the Interior, Bureau of Land Management and U.S. Fish and Wildlife Service, and U.S. Department of Agriculture Forest Service, and identified in this Record of Decision, including attachments, and the Plan of Development developed by Mountain Valley Pipeline, LLC.

MITCHELL LEVERETTE

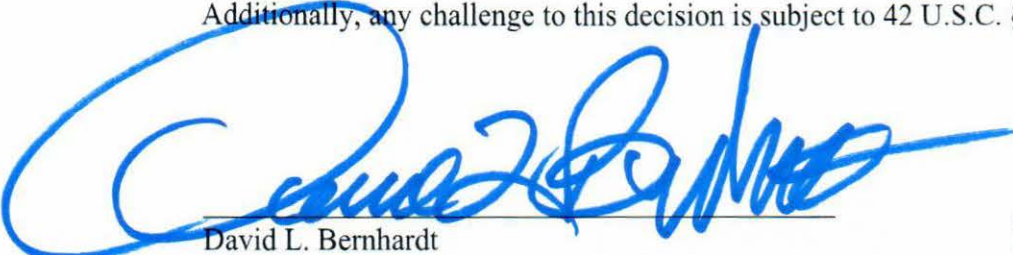
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Date: 2021.01.11 15:27:45 -05'00'

Mitchell Leverette
State Director, Bureau of Land Management, Eastern States

Date

Approval by the Secretary

I hereby approve the decision recommended by the Eastern States Director, subject to terms, conditions, stipulations, and environmental protection measures developed by the Federal Energy Regulatory Commission, U.S. Department of the Interior Bureau of Land Management and U.S. Fish and Wildlife Service, and U.S. Department of Agriculture Forest Service, and identified in this Record of Decision, including attachments, and the Plan of Development developed by Mountain Valley Pipeline, LLC. My approval of this decision constitutes the final decision of the Department of the Interior. In accordance with 15 U.S.C. § 717r(d)(1), any challenge to this decision must be brought in the United States Court of Appeals for the Fourth Circuit. Additionally, any challenge to this decision is subject to 42 U.S.C. § 4370m-6.



David L. Bernhardt
Secretary of the Interior

Date

11/14/2021

Appeal of this Decision

Section 313(b) of the Energy Policy Act (EPA) of 2005, which amended the National Gas Act (NGA), grants the United States Courts of Appeals original and exclusive jurisdiction to review Federal decisions to issue, condition, or deny a Federal authorization for any facility that will be constructed or operated subject to 15 U.S.C. § 717b or 15 U.S.C. § 717f:

The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as “permit”) required under Federal law, other than the Coastal Zone Management Act of 1972.

This Decision is an order or action of a Federal agency issuing a permit, as that term is used in the EPA, 15 U.S.C. § 717r(d)(1), because it is an agency decision to issue and condition a BLM Grant for the use of Federal lands involved in the MVP Project, which is a facility that will be constructed and operated pursuant to 15 U.S.C. § 717f. Accordingly, this Decision is appealable directly to an appropriate United States Court of Appeals in accordance with 15 U.S.C. § 717r and the Federal Rules of Appellate Procedure (FRAP).

FRAP 4(a)(1)(B) states that in cases where the United States or its officer or agency is a party, the notice of appeal “may be filed by any party within 60 days after entry of the judgment or order appealed from.” Similarly, the NGA requires that any party aggrieved by a FERC order on rehearing file a notice of appeal with the appropriate United States Court of Appeals within sixty (60) days, 15 U.S.C. § 717r(b). Thus, any notice of appeal of this Decision must be filed in the appropriate United States Court of Appeals within sixty (60) days of the date of this Decision.

1 Introduction

This Record of Decision (ROD) documents the Department of the Interior’s (DOI or Department) decision and rationale to grant a right-of-way (ROW) and temporary use permit (TUP) to Mountain Valley Pipeline, LLC (Mountain Valley), pursuant to the Mineral Leasing Act (MLA), 30 U.S.C. § 185, and Bureau of Land Management’s (BLM) regulations implementing the MLA, 43 C.F.R. § 2880, *et seq.*, to cross 3.5 miles of federal land managed by the U.S. Forest Service (FS) in Virginia and West Virginia. The ROW grant is in connection with 303.5-mile long natural gas pipeline, known as the Mountain Valley Pipeline (MVP) Project, as certificated by FERC (FERC 2017b). While no BLM-administered lands are associated with the Project, the BLM is responsible for considering a ROW and TUP application when lands administered by two or more federal land management agencies are involved, per the MLA.

Consistent with 40 C.F.R. § 1506.3, the Department is adopting, and relying on, the environmental analyses and documentation in the FERC FEIS (FERC 2017a) and the FS FSEIS (FS 2020b), prepared by FERC and the FS respectively, pursuant to NEPA, 42 U.S.C. § 4321, *et seq.* The Department has conducted an independent review of FERC FEIS and the FS FSEIS and concluded the FERC and the FS addressed the BLM’s comments and suggestions. As further documented in this ROD, the Department’s decision also conforms to and complies with all applicable environmental laws and regulations, including, but not limited to, the Federal Land Policy and Management Act, 43 U.S.C. § 1701, *et seq.*, Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, and the National Historic Preservation Act, 54 U.S.C. § 306108. The FS also concurs with the Department’s issuance of the ROW and TUP under the MLA through 3.5 miles of NFS land managed by the FS, consistent with 43 C.F.R. § 2884.26 (Attachment B).

In reaching this conclusion, the Department refers to the expert opinions of the Federal agencies that administer the lands over which the pipeline will cross and the FERC’s and the FS’ opinions and roles as lead agencies for NEPA compliance for this complex interstate project. The BLM does not directly manage any land involved in the MVP project. In cases that do not involve land managed by BLM, BLM’s analysis of a proposal is based in large part on “the agencies that are impacted from the proposal and their review of the proposal in light of the purposes for which the land they administer is dedicated.” *Navajo Refining Co.*, 149 IBLA 14, 21 (1999).

1.1 Background and Project Information

In February 2016, Mountain Valley notified the FERC that the MVP would cross Federally owned lands managed separately by both the FS (as part of the Jefferson National Forest, JNF) and the U.S. Army Corps of Engineers (USACE) (as part of the Weston and Gauley Bridge Turnpike Trail). Under the MLA, 30 U.S.C. § 185 *et seq.*, the BLM is the Federal agency responsible for the issuance of a ROW grant to Mountain Valley for a pipeline easement across federal lands, in this case lands administered by the FS and USACE. The MVP pipeline route will cross about 3.5 miles (75.25 acres or 1.2 percent of the total MVP acreage) of the JNF (managed by the FS) in Monroe County, West Virginia and Giles and Montgomery Counties,

Virginia. The MVP pipeline route will cross about 60 feet of the Weston and Gauley Bridge Turnpike Trail, managed by the USACE, in Braxton County, West Virginia. The FS and USACE must concur with the Department's decision to issue a ROW and TUP across Federal lands.

The Mountain Valley objectives for the 303.5-mile MVP Project is to transport natural gas produced in the Appalachian Basin to markets in the Northeast, Mid-Atlantic, and Southeastern United States. The MVP is designed to transport about 2.0 million Dth/d, equivalent to about 2.0 billion Bcf/d of contracted volumes of natural gas. The Equitrans Expansion Project will transport up to 400,000 Dth/d (about 0.4 Bcf/d) of contracted firm capacity of natural gas. A specific description of the MVP Project's purpose and need is found in the FERC FEIS, pages 1-8².

FERC has authority over the siting, construction and operation of interstate natural gas pipelines. Under Sections 3 and 7 of the Natural Gas Act of 1938 (NGA), as amended, FERC issues Certificates for natural gas pipelines and authorizes construction and siting of facilities for the import or export of natural gas. FERC also authorizes construction and operation of natural gas pipelines consistent with the Natural Gas Policy Act of 1978 (15 U.S.C. §§ 3341-3348). Accordingly, FERC is the Lead Agency for Mountain Valley's application for the MVP Project. On October 13, 2017, FERC issued a Certificate of Public Convenience and Necessity to Mountain Valley for the MVP Project (FERC 2017b), following publication of the Final EIS consistent with NEPA (FERC 2017a). The Certificate authorized Mountain Valley to construct, operate, and maintain:

- approximately about 303.5 miles of new underground 42-inch-diameter pipeline extending from the new Mobley Interconnect in Wetzel County, West Virginia to the existing Transcontinental Gas Pipe Line Company LLC (Transco) Station 165 in Pittsylvania County, Virginia;
- 3 new compressor stations (Bradshaw, Harris, Stallworth) in West Virginia, totaling about 171,600 horsepower;
- 4 new meter and regulation stations and interconnections (Mobley, Sherwood, WB, and Transco);
- 3 new taps (Webster, Roanoke Gas Lafayette, and Roanoke Gas Franklin);
- 8 pig launchers and receivers at 5 locations; and
- 36 mainline block valves.

² The Fourth Circuit's vacatur and remand of the FS ROD (FS 2017) and the BLM's MLA ROW decision (BLM 2017a) and the revised application considered in this Record of Decision does not alter the Project's purpose as reflected in the FERC FEIS.

On December 1, 2017, the FS adopted the FERC FEIS and the JNF Forest Supervisor issued a ROD (FS 2017) amending the Jefferson National Forest Revised Land and Resource Management Plan (LRMP) to modify certain Forest Plan standards that precluded the use of standard pipeline construction methods for the MVP. The ROD included terms and conditions to protect Forest resources, which the FS provided as part of its concurrence of the BLM's approval of a ROW grant to cross the JNF.

The USACE provided the BLM with concurrence to cross their lands on December 17, 2017.

On December 20, 2017, the BLM adopted FERC's FEIS and issued a decision (BLM 2017a) approving Mountain Valley's proposed 3.5-mile ROW and TUP across the JNF and 60-foot ROW and TUP across USACE land³. The ROD included terms and conditions to protect the environment and other requirements consistent with the MLA and BLM's implementing regulations. On December 27, 2017, the BLM and Mountain Valley executed the ROW grant (BLM 2017b), which included the conditions and requirements reflected in BLM's ROD, and Mountain Valley began the implementation of the Project shortly thereafter.

Several groups filed a lawsuit in the Fourth Circuit challenging the FS's ROD and the BLM's ROD for failing to comply with NEPA, National Forest Management Act (NFMA), and MLA. On July 27, 2018, the Fourth Circuit issued a decision rejecting most of the petitioners' NEPA claims, including that the BLM's and FS's reliance on FERC's FEIS, except with respect to the sedimentation analysis as noted below, was deficient for various reasons (U.S. Court of Appeals 2018a). The Fourth Circuit, however, held that the BLM violated the MLA by failing to determine whether the proposed route "utilize[d] rights-of-way in common . . . to the extent practical" as required by Section 28(p) of the MLA, 30 U.S.C. § 185(p). It also held that the FS violated NEPA by adopting the FERC FEIS because FERC did not resolve issues raised by the FS regarding sedimentation analysis. Further, the Fourth Circuit held that the FS's amendment of the JNF LRMP violated NFMA. On these narrow bases, the Fourth Circuit vacated the FS's decision approving the JNF LRMP amendment and the BLM's decision approving the MLA ROW across the JNF and remanded the decisions back to the agencies. At that time, Mountain Valley had completed ROW clearing activities on Sinking Creek and Brush Mountains and had felled, but had not removed the trees, on Peters Mountain, nor started trenching and installing pipe.

On May 1, 2020, Mountain Valley submitted a revised MLA ROW application (DOI 2020a) to the BLM seeking to construct and operate the natural gas pipeline across the JNF, which included a revised plan of development (POD) and several new alternatives. Mountain Valley also requested that the FS amend the Forest Plan consistent with the issues identified by the Court. On May 29, 2020, the BLM deemed Mountain Valley's revised application complete. To

³ The BLM's decision to authorize a ROW across the USACE land (BLM 2017a) was not vacated by the United States Court of Appeals for the Fourth Circuit (U.S. Court of Appeals 2018b), continues to be a valid ROW (BLM 2017b), and is not implicated by Mountain Valley's revised application considered in this Record of Decision.

address the NEPA and NFMA deficiencies identified by the Fourth Circuit, the FS initiated the process of supplementing the FERC FEIS.

With the BLM serving as a cooperating agency, the FS prepared a SEIS, which considered changes to Mountain Valley's proposed ROW application and significant new circumstances or information relevant likely to have environmental effects, consistent with 40 C.F.R. § 1502.9(c)(1)(i)-(ii).

On September 25, 2020, the Environmental Protection Agency (EPA) published a notice of availability of the Draft SEIS in the Federal Register, starting a 45-day comment period. On December 11, 2020, the EPA published a notice of availability of the Final SEIS in the Federal Register. On January 11, 2021, the FS issued their ROD approving the Forest Plan amendment (FS 2021). The FS submitted the terms and conditions the BLM for inclusion in the ROW grant/TUP and provided the BLM with its concurrence for the approval of a ROW grant and TUP to cross 3.5 miles of JNF. The FS concurrence letter is provided in Attachment C.

As discussed below, the BLM has a responsibility under the MLA (30 U.S.C. § 185(p)) to analyze and determine whether the proposed route utilized ROWs in common (i.e., collocation with other existing ROWs) to the extent practical. On September 2, 2020, BLM prepared the addendum to the BLM's 2018 Practicality Analysis of Collocation Route Alternatives for the MVP Project Consistent with 30 U.S.C. § 185(p), which is Appendix A of the FS FSEIS and is incorporated by reference. BLM's Practicality Analysis and addendum analyzed all alternatives with the potential to collocate with existing ROWs on federal lands that would be impractical.

1.2 BLM Purpose and Need

The BLM's purpose and need for federal action is to respond to Mountain Valley's revised MLA ROW application for the MVP project to construct and operate a natural gas pipeline across NFS lands consistent with the MLA at 30 U.S.C. § 185 and BLM's implementing regulations at 43 C.F.R. Part 2880. Under the MLA, the Secretary of the Interior has delegated authority to the BLM to grant a ROW and TUP on Federal lands under the jurisdiction of two or more Federal agencies. Before issuing the Grant, the BLM must receive the written concurrence from the FS in accordance with 43 C.F.R. § 2884.26. A ROW grant permits long-term operation and maintenance activities and a TUP permits short-term construction activities.

Accordingly, the BLM has responsibility for reviewing Mountain Valley's ROW application and authority to issue a decision on whether to approve, approve with modifications, or deny the application. Consistent with 30 U.S.C. §185(p), BLM must require utilization of rights-of-way in common to the extent practical. The BLM's review of the ROW application has focused, in part, on the FS supplemental analysis for NFS lands as well as the FERC FEIS, consistent with the Fourth Circuit's decision. The BLM participated as a cooperating agency with the FS to complete the necessary environmental analysis to address the issues identified by the Fourth Circuit.

2 Decision

After extensive environmental analysis, consideration of agency, tribal, and public comments, and application of pertinent Federal laws and policies, and in accordance with 43 C.F.R. Part 2880, it is the decision of the BLM to adopt FERC's 2017 FEIS and FS's 2020 FSEIS and grant ROW VA-ES-058143-02 and the associated TUP VA-ES-058143-03 for the construction, operation, maintenance, and termination of the Proposed Action alternative from the FERC FEIS and FS FSEIS for MVP across NFS lands. The BLM will incorporate the terms and conditions identified in the FS concurrence letter as part of the ROW and TUP. BLM's decision also complies with the provision in the MLA, 30 U.S.C. § 185(p), requiring that the ROW be collocated with existing rights-of-way on federal lands to the extent practical.

In response to the Fourth Circuit's decision to vacate and remand BLM's December 20, 2017 ROD and consistent with 30 U.S.C. § 185(p), the BLM analyzed whether collocating Mountain Valley's proposed ROW with existing rights-of-way on federal lands was practical, which is reflected in a BLM's August 23, 2018 Practicality Analysis and the BLM's September 2, 2020 addendum to the 2018 Analysis for additional route alternatives provided in MVP's revised application of May 1, 2020. The 2018 Analysis set forth in detail the criteria BLM utilized to satisfy the directive in 30 U.S.C. § 185(p) - (1) the extent of collocation on federal lands, and (2) whether such route alternatives are practical. As noted in the 2018 Analysis, BLM established how the analysis interpreted the term "practical" because "practical" is not defined in the MLA or the regulations. While the BLM referred to various sources for support in defining the term "practical," the BLM did not adopt any other agency's definition, including the U.S. Army Corps of Engineers' definition of the term "practicable." This analysis is included as Appendix A in the FS FSEIS. This analysis applied the criteria to the applicable route alternatives and reasonably concluded that the proposed ROW, which the BLM is approving through this decision, does provide for collocation with existing rights-of-way on federal land to the extent practical.

The Grant will be for the route certificated by FERC (FERC 2017b). Specifically, the Department, with concurrence from FS, has decided to:

1. Grant a ROW authorizing the construction, operation, and maintenance of a 42-inch, steel-welded underground natural gas pipeline. On NFS lands, the ROW will be 50 feet wide (including the ground occupied by the pipeline) and 3.5 miles long and will encompass 21.62 acres more or less in Monroe County, West Virginia, and Giles and Montgomery counties in Virginia (See Table 1-1 in Attachment A). The term of the grant is thirty (30) years with the right of renewal. This ROW grant is issued under authority of the MLA, as amended (30 U.S.C. § 185).
2. Issue a TUP in association with the MVP Pipeline Project ROW authorizing the use of Temporary Workspace outside of the permanent ROW during the construction of the project. The TUP will encompass an area on NFS lands (in addition to the permanent 50-foot ROW). A 75 foot wide temporary construction ROW encompasses approximately 53.63 acres. The term of the TUP will be approximately 3 years with a

right of renewal. This TUP is issued under authority of the MLA, as amended (30 U.S.C. § 185). See Table 1-1 in Attachment A.

3. In accordance with 43 C.F.R. Part 2800, Mountain Valley has provided the BLM with a final POD, entitled the MVP Project POD dated July 31, 2020 (Attachment B), which details how the pipeline and associated facilities will be constructed in compliance with Grant terms, conditions, and stipulations. The BLM approves this POD and includes it as a part of the Grant. Mountain Valley shall construct, operate and maintain the facilities, improvements and structures within the ROW, and areas authorized by the TUP in strict conformity with the POD. Any relocation, additional construction, or use that is not in accordance with the approved POD shall not be initiated without the prior written approval of the Authorized Officer (AO).

2.1 Project Construction and Operation

The Department has considered and reviewed Mountain Valley’s POD (Attachment B), submitted as part of the ROW application process consistent with 43 C.F.R. 2884.11. Table 1 shows the POD’s project-specific plans developed to reduce construction impacts.

These and other mitigation plans and procedures are referenced in and included as appendices to the POD.

Table 1: Project Specific Plans in the Plan of Development

Appendix	Appendix Name
A	Map Appendix
B	Details Appendix
C	Erosion and Sedimentation Control
D	Spill, Prevention, Control and Countermeasure (SPCC) Plans and Unanticipated Discovery of Contamination (UDC) Plans
E	Contingency Plan for the Proposed Crossing of the Appalachian National Scenic Trail
F	Landslide Mitigation Plan
G	Site-Specific Design of Stabilization Measures in Selected High-Hazard Portions of the Route of the Proposed Mountain Valley Pipeline Project in the Jefferson National Forest
H	Restoration Plan
I	Timber Removal Plan for the Jefferson National Forest
J	General Blasting Plan for Jefferson National Forest
K	Water Crossing Plans
L	Karst Mitigation Plan
M	Winter Construction Plan
N	Environmental Compliance Management Plan
O	Plan for Unanticipated Historic Properties and Human Remains
P	Plan for Unanticipated Discovery of Paleontological Resources
Q	Framework Construction Emergency Preparedness and Response Plan
R	Framework for Operations, Maintenance, and Emergency Response Plan
S	Exotic and Invasive Species Control Plan
T	Herbicide Use Plan
U	Stormwater Pollution Prevention Plan
V*	Plant and Wildlife Conservation Measures Plan

W	Fugitive Dust Control Plan
X	Fire Prevention and Suppression Plan
Y	Hazardous Materials Management Plan
Z	Flagging, Fencing, & Signage Plan
AA	Off-Highway Vehicle Management Plan

* Appendix V incorporates the May 2017 MVP Migratory Bird Conservation Plan (ROD, Attachment F)

As a condition of the ROW Grant, Mountain Valley shall not begin construction or other surface disturbance associated with the Grant in this Decision until it receives a written Notice to Proceed (NTP) from the AO or delegated agency representative. See 43 C.F.R. § 2886.10. Any NTP shall authorize construction or use only as therein expressly stated and only for the particular location, segment, area, and use described. In order to receive a NTP, Mountain Valley must:

1. Comply with all pre-construction requirements included in FERC’s Order certifying the MVP Project (FERC 2017b) and adhere to the project timeline in FERC’s Order extending the MVP Project completion date to October 13, 2022 (FERC 2020a). This includes written confirmation from FERC’s Director, Office of Energy Projects, that Mountain Valley has complied with Condition 28 of Appendix C of FERC’s certifying Order.
2. Comply with all pre-construction requirements included in the ROW Grant.
3. Comply with all pre-construction requirements included in the December 20, 2017 National Historic Preservation Act (NHPA) Section 106 Programmatic Agreement (Appendix D)
4. Provide the BLM and FS with documentation that Mountain Valley’s obligations pursuant to FERC’s Order have been met.

2.2 Bonding – Note: determination of the bonding amounts is in progress

In December 2017, Mountain Valley posted a performance bond in the amount of \$8,665,838 to ensure adequate adherence to all terms and conditions on Federal lands. The bond applies to the following:

- Restoration and reclamation of disturbed areas and other requirements relative to the construction phase of the project until these have been accepted by the Authorized Officer. Other requirements include, but are not limited to, completion of all required reports, providing all essential records, and permanent curation of artifacts. Upon completion, or partial completion of these construction related requirements, the Authorized Officer may terminate or reduce the amount of the bond. Bonding amount for reclamation activities is \$3,909,838.
- Accommodating all cultural resources costs associated with implementing the Programmatic Agreement (PA) (FERC 2017c) and approved treatment plans or other mitigation activities, as negotiated by the Holder where they contract for services in support of the PA. Such costs may include, but are not limited to treatment, field work, post-field analyses, research, and report preparation, interim and summary reports

preparation, the curation of project documentation and artifacts collects (except for Native American Graves Protection and Repatriation Act [NAGPRA]) related human remains and cultural artifacts) in an Agency-approved curation facility, and costs associated with the repatriation of NAGPRA items. Bonding amount for cultural work is \$2,500,000.

- Implementing decommissioning activities, including physical disconnection; cleaning and purging; filling and sealing; pipeline removal; surface reclamation, and purchase of fill and reclamation materials. Bonding amount for decommission activities is \$1,256,000.
- Liability for damages or injuries resulting from releases or discharges of Hazardous Materials or Hazardous Waste during the construction and reclamation phase of the project. Bonding amount for Hazardous Materials or Hazardous Waste liability is \$1,000,000.

The bond may be released as specific tasks are completed and accepted by the BLM. This bond must be maintained in effect until temporary improvements used during construction are removed; restoration and reclamation of the ROW has been accepted by the AO; and all products required by the PA and the Grant have been accepted by the BLM and the FS, as appropriate.

2.3 Decommissioning on Federal Lands

Upon termination of the Grant, all facilities on Federal lands will be decommissioned in accordance with an abandonment plan that will be reviewed and approved by the BLM, FS, and FERC. Any aboveground pipeline facilities or markers will be completely removed and the associated location will be restored to as near original condition as possible. The underground pipe will be purged of gas, cleaned, isolated from interconnections with other pipelines, sealed, and left in place.

2.4 Mitigation Measures

The Proposed Action incorporates required mitigation measures and design features. The BLM has determined that all practicable means to avoid or minimize environmental effects of the Proposed Action have been analyzed in the FERC FEIS and the FS SEIS and will be incorporated into the ROW grant. The terms and conditions (including stipulations) are required for protection of the environment and the public interest, as required by 30 U.S.C. § 185(h)(2); 43 C.F.R. 2885.11(b).

2.4.1 Terms, Conditions, and Stipulations

This decision is contingent on meeting all terms, conditions and stipulations for NFS lands included in the BLM's Grant and in FERC's Certificate. The ROW Grant includes additional stipulations identified by the FS in its concurrence letter.

As outlined in Section 2.2.2.2 of the FS FSEIS, an integral part of the proposed action is the POD which outlines the steps that MVP must follow during the construction, operation, and

maintenance of the project on federal lands, including mitigation measures and project design features. The POD includes resource mitigation for reducing or eliminating effects to resources. Specific resource mitigation plans are included in the POD as appendices, which was approved by the FS and BLM. No relocation, additional construction, or use that is not in accordance with the approved POD can be initiated without the BLM's prior written approval (see FS FSEIS Section 1.4.2).

Mitigation measures incorporated into the POD are designed to minimize the potential for soil movement and ensure adequate restoration and revegetation. The mitigation measures are outlined in the Erosion and Sediment Control Plan (POD, Appendix C), Landslide Mitigation Plan (POD, Appendix F), the Site-Specific Design of Stabilization Measures in High Hazard Portions of the Route (POD, Appendix G), the Restoration Plan (POD, Appendix H), and the Winter Construction Plan (POD, Appendix M). In addition, the project will be compliant with the FERC Upland Erosion Control, Revegetation, and Maintenance Plan (FERC 2013a) and the FERC Waterbody and Wetland Construction and Mitigation Procedures (2013b); and it will follow Best Management Practices (BMPs) for the states of West Virginia and Virginia. During initial construction activities, monitoring identified instances where ECDs needed repair or replacement due to excessive precipitation or other factors. Enhanced ECDs were added to these areas to reinforce protection of resources and to minimize the risk of future damage or ECD failure.

The Proposed Action incorporates required mitigation measures and design features. The BLM has determined that all practicable means to avoid or minimize environmental effects of the Proposed Action have been analyzed in the FERC FEIS and the FS SEIS and will be incorporated into the ROW grant.

Requirements in the 2020 Biological Opinion

The ROW grant and TUP incorporate the reasonably prudent measures, terms and conditions, and monitoring and compliance reporting requirements in the U.S. Fish & Wildlife Service's (USFWS) 2020 Biological Opinion (BO), prepared in compliance with Section 7 of the ESA, that apply to actions on NFS lands (USFWS 2020). The FERC or the applicant shall notify the USFWS regarding the projected and actual re-start dates, progress, and completion of the project and verify that all conservation measures were followed, and provide a report containing this information by December 31 of each year until construction is complete. The BO requirements include:

Candy Darter

- Provide information to individuals involved in project construction on how to avoid and minimize potential effects to the candy darter.
- Minimize and monitor incidental take caused by elevated suspended sediment concentration (SSC)/turbidity and sedimentation due to construction activities.

Indiana Bat

- Provide information to individuals involved in project construction on how to avoid and minimize potential effects to the Indiana bat.
- Finalize the Memorandum of Understanding regarding federally listed bat mitigation prior to the completion of project construction.
- Prior to initiation of on-site work, notify all prospective employees, operators, and contractors about the presence and biology of the Indiana bat, special provisions necessary to protect the Indiana bat, activities that may affect the Indiana bat, and ways to avoid and minimize these effects. This information can be obtained by reading Indiana bat-related information in the 2020 BO or a fact sheet containing this information can be created and provided by FERC or the applicant.
- FERC or the applicant shall notify the USFWS regarding the projected and actual re-start dates, progress, and completion of the project and verify that all conservation measures were followed. Provide a report containing this information by December 31 of each year until construction is complete.

Northern Long-Eared Bat

- Finalize the Memorandum of Understanding regarding federally listed bat mitigation prior to the completion of project construction.
- FERC or the applicant shall notify the USFWS regarding the projected and actual re-start dates, progress, and completion of the project and verify that all applicable conservation measures were followed. Provide a report containing this information by December 31 of each year until construction is complete.

2.5 Compliance Monitoring and Reporting

Mountain Valley will continue to fund third-party compliance environmental inspectors/monitors for pipeline construction, access road upgrades, and aboveground facility construction. These monitors will report directly to the BLM, FS, and FERC. Their role and responsibility is to ensure compliance with all terms, conditions, and stipulations of the Grant, FERC's Certificate, and other permits, approvals and regulatory requirements as described in Table 1.5-1 of the FERC FEIS. The environmental inspectors/monitors shall follow the Environmental Compliance Management Plan included in the POD (Attachment A, Appendix N). Mountain Valley will also be responsible for funding third-party monitoring of the reclamation and stabilization of the pipeline over the long term. Included in this requirement, among other things, is the yearly monitoring of the ROW for invasive plants and, if necessary, spraying as outlined in the Exotic and Invasive Species Control Plan and Herbicide Use Plan included in POD Appendices S and T, respectively of the POD (Attachment A).

The FS will continue to monitor implementation of the mitigation measures on NFS lands to assure that the terms and conditions of the ROW grant issued by BLM are carried out (40 C.F.R.

§ 1505.3) and that negative impacts from construction and operation of the pipeline on federal lands are minimized to the extent possible. As during initial construction activities, compliance monitors will be present on a full-time basis to inspect construction procedures and mitigation measures and provide regular feedback on compliance issues to FERC, the FS, and the BLM. Objectives of the compliance monitoring program are to facilitate the timely resolution of compliance issues in the field; provide continuous information to FERC regarding noncompliance issues and their resolution; and review, process, and track construction-related variance requests. The FERC, BLM and FS have the authority to issue a stop work order for the Project on NFS lands in the event of serious non-compliance that could reasonably be expected to result in a risk of death or harm to persons or repeated violations of environmental requirements that have a detrimental effect to sensitive resources (ROW Grant and POD, Appendix N-Environmental Compliance Management Plan).

Changes to approved mitigation measures, construction procedures, and construction work areas due to unforeseen or unavoidable site conditions are subject to the variance reporting and authorization procedures described in the POD, Appendix N-Environmental Compliance Management Plan.

3 Alternatives Considered

The BLM and the FS considered a range of alternatives originating from the following sources: the FERC FEIS (FERC 2017a), the revised MVP application (DOI 2020), and comments received on the FS DSEIS (FS 2020a). The description and evaluation of alternatives is described in Section 3 of the FERC FEIS, Section 2 of the FS FSEIS, and the BLM Practicality Analysis (as amended).

The FS FSEIS includes the evaluation of the additional alternatives from MVP's revised application and from comments received on the FS DSEIS. Section 2 of the FS FSEIS (pp. 46-63) provides a summary, evaluation information, and rationale for each alternative. The FS FSEIS also includes Appendix A, the BLM Practicality Analysis and addendum that analyzed whether the additional utilization of existing ROWs across federal lands under the applicable alternatives would be impractical.

3.1 FERC FEIS

Section 3.0 of the FERC FEIS included the no action alternative, the proposed action, major route alternatives, route variations, alternative modes of transportation, and system alternatives. The analysis and screening process for alternatives was detailed in Section 3.2 of the FERC FEIS (pp. 3-4 to 3-119).

3.1.2 Major Route Alternatives Considered in Detail

In addition to the Proposed Action and the No Action Alternatives, the FERC FEIS evaluated four major route alternatives to the MVP proposed pipeline route or major portions (i.e., exceeding 50 miles in length) of the routes: Alternative 1; Hybrid 1A; Hybrid 1B; and the Northern Pipeline–ACP Collocation Alternative (FERC FEIS, 3-20 to 3-32). With the exception

of the No Action Alternative, all of these alternatives crossed NFS lands for some portion of the overall project.

3.1.2.1 No Action Alternative

The No Action Alternative evaluated the resulting environmental effects from taking no action as compared with the effects of permitting the proposed activity.

3.1.2.2 Proposed Action Alternative (Environmentally Preferable)

The environmentally preferable alternative is the Proposed Action described in Section 2.0 of the FEIS for the MVP Pipeline Project as modified to include mitigation measures required by FERC, BLM, FS, USFWS, and other Federal agencies.

The Proposed Action identified in the FERC FEIS applicable to NFS lands included:

- Construction of a 42-inch pipeline across 3.5 miles of the JNF.
- The use of a 125-foot-wide temporary construction ROW for pipeline installation and trench spoil. Once construction is complete, the MVP would retain a 50-foot permanent ROW to operate the pipeline.
- The use of above-ground facilities, limited to pipeline markers (e.g., at road and trail crossings) to advise the public of pipeline presence, and cathodic pipeline protection test stations that are required by U.S. Department of Transportation.

3.1.2.3 Alternative 1 and Hybrid 1A

Alternative 1 and Hybrid 1A were designed to collocate with existing transmission lines to the extent possible. Hybrid 1A combined the northern half of the proposed route with the southern half of Alternative 1 and both crossed 1.9 fewer miles of NFS lands, although at a different location from the proposed route. These routes crossed the ANST but at a different location from the proposed route. Over the entire route, these alternatives were 20 miles longer, crossed the New River twice, and crossed about 43 more miles of steep slopes, 7 more miles of side slopes and 14 more miles of karst terrain. FERC concluded that Alternative 1 and Hybrid 1A do not offer a significant environmental advantage when compared to the proposed route.

3.1.2.4 Hybrid Alternative 1B

Hybrid 1B was the combined northern half of Alternative 1 with the southern half of the proposed route, where it crossed the JNF at the same locations as the proposed route. Hybrid 1B increased the total route length by almost 15 miles and crossed 28.7 more miles of steep slopes and 22 more miles of side slopes compared to the proposed route. FERC concluded that Hybrid 1B does not offer a significant environmental advantage when compared to the corresponding proposed route.

3.1.2.5 Northern Pipeline–ACP Collocation Alternative

The Northern Pipeline-ACP Collocation Alternative involved building the MVP adjacent to the proposed Atlantic Coast Pipeline, also a 42-inch diameter pipeline for about 205 miles. The collocated route did not cross the JNF but crossed the George Washington National Forest (GWNF) for about 12 miles and the Monongahela National Forest for about 5 miles. This alternative crossed the ANST on the GWNF. However, because the collocation would require a 250-foot-wide construction ROW to accommodate both pipelines, much of which presented significant constructability issues related to topography and space, FERC concluded that this alternative does not provide a significant environmental advantage over the proposed route. It should be noted that the ACP project has been cancelled so collocation is no longer an option.

3.1.3 Route Variations Considered in Detail

Route variations are shorter than major route alternatives, but are generally longer and more substantial than minor route deviations designed to avoid or further reduce impacts on specific localized resources. The FERC FEIS included evaluation of 12 route variations that affect NFS lands: Highway Collocation; Variations 110, 110R and 110J; SR-635-ANST; Columbia Gas of Virginia; American Electric Power-ANST; Brush Mountain 1 and 2; Slusser Chapel; State Route (SR) 635-ANST; and American Electric Power (AEP)-ANST (FERC FEIS, pp. 3-44 to 3-55). FERC concluded none of these variations offer a significant environmental advantage when compared to the proposed route.

Two route variations for crossing the ANST at different locations were the SR 635-ANST and the AEP-ANST. A comparative analysis of environmental impacts of the proposed route and the SR 635-ANST and AEP-ANST Variations was presented in table 3.5.1-6 of the FERC FEIS.

3.2 FS FSEIS

The FS FSEIS described and compared the alternatives considered for the MVP, directly responding to the deficiencies identified in the Fourth Circuit's decision in Section 2, pp. 33-63. It also responded to the Fourth Circuit's decision directing the FS to demonstrate that it independently reviewed the reasonable off-forest routes. The FS included the No Action alternative as required by the NEPA regulations and the Proposed Action alternative developed to respond to the FS's purpose and need for the project. The alternatives presented in the FS FSEIS reflected the narrow scope and decision space the FS and BLM have in context of the broader FERC decision.

The FS FSEIS also included BLM's August 23, 2018 Practicality Analysis and the September 2, 2020 addendum to the 2018 Analysis, which addressed the deficiency in BLM's December 20, 2017 ROD as identified in the Fourth Circuit's decision. Consistent with 30 U.S.C. § 185(p), the BLM analyzed whether collocating Mountain Valley's proposed ROW with existing rights-of-way on federal lands was practical, concluding that the proposed ROW does provide for collocation with existing rights-of-way on federal land to the extent practical. See FS FSEIS, Appendix A.

3.2.1 Alternatives Considered in Detail

3.2.1.1 No Action Alternative

Under the No Action alternative analyzed in the FS FSEIS, the Forest Plan would not be amended, and no concurrence would be provided to the BLM for granting of a ROW across NFS lands for the construction, operation, and maintenance of the MVP. Concurrence for issuing the TUP for the construction phase of the project would not be provided. BLM would not issue a ROW or a TUP. The current Forest Plan would continue to guide management of the project area and no Forest Plan amendment would be necessary. Mountain Valley would have to utilize other lands for the pipeline in order to satisfy the stated demand for natural gas and energy in the project area, or end users would have to seek alternate energy from other sources such as other natural gas transporters, fossil fuels, or renewable energy.

Mountain Valley would be required to restore the JNF project area to its pre-project condition. Materials including sections of pipe would be removed from the ROW (pipe has been laid on the ROW surface, but no trenching has occurred and no pipe has been installed), stockpiled topsoil would be amended as needed and spread over the disturbed portion of the ROW, and the ROW would be restored. Upon successful restoration, erosion control devices (ECDs) would be removed.

3.2.1.2 Proposed Action (Environmentally Preferred Alternative)

The FS further analyzed the Proposed Action in the FS FSEIS (Section 2.2.2) and concurred with FERC's conclusion (FERC FEIS, Section 3.1.1) that the No Action alternative does not meet the stated purpose of the MVP and likely would not offer a significant environmental advantage.

The FS FSEIS considered changes to the Proposed Action as contemplated and authorized by FERC. Since publication of the FERC FEIS, it has been determined that the ROW can be accessed using only off-NFS roads; use of Pocahontas and Mystery Ridge roads is no longer part of the Proposed Action.

Similarly, FERC approved a variance request from Mountain Valley to change the crossing method of the four unnamed tributary streams on NFS lands from a dry-ditch open cut method as indicated in the FERC FEIS to conventional bores to reduce effects to Waters of the United States and potential sedimentation effects in the JNF (FERC 2020b). Water Crossing Plans are in the POD, Appendix K, and are discussed in the 2020 Biological Opinion (BO) (USFWS 2020). The FS FSEIS analyzed both the originally proposed dry-ditch open cut crossing method and the conventional bore method in the variance request. Conservation measures would be implemented to reduce potential risks to aquatic habitats during construction of stream crossings (see Section 2.2.2.2).

As required by 40 C.F.R. § 1505.2(b), an agency must specify the alternative or alternatives considered to be environmentally preferable. The environmentally preferred alternative is the alternative route that, on balance, appears to have the lowest overall impact on the natural, human, and cultural environment, including resources uses.

4 Management Considerations and Decision Rationale

The BLM, with concurrence from FS, selected the proposed action across NFS lands analyzed in the FERC FEIS and the FS SEIS because the proposed use is consistent with the purpose for which the FS manages the lands described in the ROW application (see FS Concurrence letter, Attachment B), the infrastructure will support the nation's energy demand, and because it is the environmentally preferred alternative. In 2017, FERC examined the natural gas demand issue and determined "end users will generally benefit from the projects because they will develop gas infrastructure that will serve to ensure future domestic energy supplies and enhance the pipeline grid by connecting sources of natural gas markets in the Northeast, Mid-Atlantic, and Southeast regions" (FERC 2017d). Additionally, the MVP project is a Fixing America's Surface Transportation (FAST) Act project and was identified as an infrastructure investment critical to the nation's economic recovery from the COVID-19 emergency pursuant to Executive Order 13927 "Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities." Other executive orders, including Executive Order 13766 "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects," Executive Order 13807 "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure," and Executive Order 13868 "Promoting Energy Infrastructure and Economic Growth," stress the importance of infrastructure investments and projects such as the MVP Project. The ROW and TUP across JNF lands will allow for the completion of the pipeline, of which approximately 276 miles of the 303.5-mile pipeline (91 percent) is already constructed, according to MVP.

The proposed action is considered the environmentally preferred alternative because it includes mitigation measures required by FERC, BLM, FS, USFWS, and other Federal agencies that must be applied during construction and operation of the pipeline, as well as restoration of the TUP areas. The no action alternative lacks requirements for environmental mitigations in the event of off-NFS construction and requires removal of existing erosion-control structures that were installed after FERC issued a Stop Work Order in July 2018⁴ and restore JNF lands to pre-project conditions. While the proponent would be required to restore JNF lands, they could pursue completion of the pipeline along a different route and a potential increase in area of disturbance would occur on non-NFS lands or along new alternative locations on NFS lands. The proposed action will require additional disturbance of NFS lands as felled trees are removed from the site, the pipeline is installed, and stream crossings are constructed across four streams and the ANST, but mitigation measures will preserve natural, historic, cultural, and other important aspects of our heritage including the ANST. In balancing environmental consequences disclosed in the FERC EIS and FS FSEIS with the benefits of supporting the nation's energy demand, the proposed action is the environmentally preferable alternative.

⁴ On the JNF, much of the disturbance to the physical and biological environment occurred in early 2018 following the FS 2017 decision and the BLM issuance of the ROW grant in December 2017.

Based on FERC's Certificate (FERC 2017b), the record supporting FERC's decision, previous USACE concurrence, past and current FS concurrence, and the Department's independent review of the project, the Department concludes that the proposed use will be in the public interest. Based on the information Mountain Valley submitted in its application, the Department has determined that Mountain Valley is qualified to hold a grant and can demonstrate the technical and financial capability to construct the pipeline and operate facilities within the ROW. The Department has not issued a deficiency notice related to this project, and Mountain Valley complied with all of FERC's Environmental Information Requests. The Department has determined that issuing the ROW and TUP as conditioned is consistent with the MLA, BLM's regulations, and other relevant laws. The Department's stipulations require the operator to comply with Federal and State standards for public health and safety, environmental protection and siting, construction, operation and maintenance, if these State standards are more stringent than Federal standards for similar projects.

In coming to the decision to grant the ROW and TUP for the MVP Project, the Department independently considered the environmental impacts described in the FERC FEIS and FS FSEIS, public comments submitted during the FERC EIS and FS SEIS processes, results of consultation efforts, the final POD dated July 31, 2020, and FS's concurrence with the issuance of a ROW grant and TUP and decision to amend the JNF LRMP. The Department also considered the proposed action's conformance with applicable land use plans. Since there are no lands administered by the BLM associated with the MVP project, the project is not subject to BLM land use plan conformance. The FS ROD (FS 2021) approved an LRMP amendment that allowed the MVP project to be consistent with several standards in the JNF LRMP.

The FERC FEIS identified and addressed the impacts associated with Mountain Valley's proposed alternative across all land jurisdictions, including Federal lands. The FS FSEIS addressed the key issues identified by the Fourth Circuit and any relevant new information and changed circumstances on NFS lands. Those key issues were: (1) the purpose and effect of the Forest Plan amendment on the utility corridor management area and resources including soil; riparian; water; threatened and endangered species; old growth; the ANST; and scenic integrity; (2) the feasibility and practicality of utilizing ROWs in common on federal land; and (3) the potential for erosion, sedimentation, and adverse water quality effects in relation to the anticipated effectiveness of mitigation measures. The FS FSEIS analyzed in detail the proposed action's impact on the following resources on NFS lands: soils; water resources; threatened, endangered and sensitive species; and those related to amending the JNF LRMP under the NFMA (utility corridors, soil and riparian, old growth, the ANST, and scenic integrity). For other resources, the FS FSEIS provided a rationale to support why the analysis in the FERC FEIS remain adequate.

To determine potential impacts to soils, water resources, and threatened, endangered and sensitive aquatic species on NFS lands, the FS FSEIS considered two hydrologic analyses for sedimentation in response to the Fourth Circuit's decision that the FS failed to conduct an independent review of and take a hard look at the sedimentation analysis in the FERC FEIS. The *Hydrologic Analysis of Sedimentation for Streams near Suitable Habitat for Threatened and*

Endangered Aquatic Species, Virginia and West Virginia (“*Hydrologic Analysis for Aquatic Species*”; Geosyntec Consultants 2020a) was prepared in support of the FWS Endangered Species Act consultation process for the MVP project. The *Hydrologic Analysis of Sedimentation for the Jefferson National Forest, Virginia and West Virginia* (“*Hydrologic Analysis for the JNF*”; Geosyntec Consultants 2020b) was developed using the same methodology as the *Hydrologic Analysis for Aquatic Species*, but its scope is specific to the 3.5 miles of the proposed ROW on NFS lands. BLM conducted an independent review of the revised sediment models and associated analysis for the MVP project on NFS lands as described in the FS FSEIS (p. 83) and concluded that the analyses were adequate.

As detailed in the FERC FEIS and in the FS FSEIS, construction and operation of the selected alternative will result in some adverse environmental impacts. These impacts will be reduced or avoided with the implementation of Mountain Valley’s mitigation measures in the POD (Attachment A, Exhibit B), State BMPs, and FERC’s Upland Erosion Control, Revegetation and Maintenance Plan (FERC 2013a) and FERC’s Wetland and Waterbody Construction and Mitigation Procedures (FERC 2013b). Additional details regarding the consideration of impacts to specific resources from the proposed action are provided below.

Water Resources

Effects associated with the anticipated two-year-long construction period on NFS lands will be minor, which is consistent with the conclusions in the FERC FEIS. Construction activities are not likely to significantly affect groundwater resources because the majority of construction will involve shallow excavations. The project will prevent or adequately minimize accidental spills and leaks of hazardous materials into groundwater resources during construction and operation by adhering to its spill prevention, control, and countermeasure plan in the POD. To reduce effects on waterbodies, the POD identifies measures to minimize effects, such as BMPs and ECDs. Long-term impacts will be associated with post-construction restoration and operation and will be minor in intensity, which is consistent with the conclusions in the FERC FEIS (FS FSEIS pp. 96-102). MVP will use the conventional bore method for the four stream crossings on NFS lands, as approved by FERC (FERC 2020), which will further reduce impacts to water resources.

Threatened, Endangered and Sensitive Species

The FS prepared a Supplemental Biological Evaluation (SBE) in December 2020. A total of 16 ESA-listed, 1 proposed for ESA-listing, and 21 Regional Forester Sensitive Species (RFSS) species could be affected by the MVP in the JNF. The FS concurred with the USFWS determination that the MVP project on NFS lands *May Affect, Likely to Adversely Affect* three species: candy darter, Indiana bat, and northern long-eared bat. Formal consultation with the USFWS determined appropriate mitigation measures for potential effects to federally listed species. The FS determined that the project will be unlikely to cause a Trend Toward Federal Listing or Loss of Viability for RFSS. Implementation of required conservation measures in the POD will reduce project effects to threatened, endangered, and sensitive species (FS FSEIS pp. 105-130).

Utility Corridors

There are no direct environmental effects of not designating the MVP corridor as Management Prescription 5C as listed in the JNF LRMP Standard FW-248. This standard has been modified to exempt the proposed location from designation as Management Prescription 5C. In addition, there is no indirect or cumulative effects of not changing the land allocation because it is too speculative to assume a future utility line will be collocated within the MVP corridor and may not be logistically feasible or environmentally preferable, and there are no reasonably foreseeable future utility corridors proposed or known that will be proposed in the vicinity of MVP on the JNF (FS FSEIS, p. 135). There will be short- and long-term beneficial effects to the local and regional economy from increased employment and demand for services during construction and an increased tax base (FS FSEIS table 5, p. 63).

Soil and Riparian

Effects associated with the anticipated two-year-long construction period on NFS lands will be minor to moderate, which is consistent with the conclusions in the FERC FEIS. Long-term impacts will be associated with post-construction restoration and operation and will be minor in intensity, which is consistent with the conclusions in the FERC FEIS. Mitigation measures in the POD and Project Design requirements will minimize construction-related effects to soils, such as clearing, grading, trench excavation, backfilling, contouring, and the movement of construction equipment. To facilitate restoration activities, soil amendments will be used to increase the soil quality of stockpiles and help restore soil productivity to pre-project conditions over the long term (FS FSEIS pp. 86-89).

Modifications to six soils and riparian standards in the JNF LRMP will result in greater adverse effects to erosion and sedimentation, soil compaction, soil porosity, runoff potential, soil fertility, revegetation potential, and soil carbon budget. Mitigation measures, ECDs, and best management plans included in the POD will ensure that a substantial lessening of protections to soils, riparian, and water resources does not occur. However, the MVP project will only cross 4 streams on the JNF and if conventional boring under the streams were to occur, this will substantially minimize impacts to riparian areas (FS FSEIS table 5, p. 63; pp. 135-136).

Old Growth

Modification to the JNF LRMP Standard 6C-007 and 6C-026 will allow effects to old growth forest as well as create more forest edge habitat. The limited area (2 acres out of approximately 30,200 acres of JNF old growth or about 0.00007% of the total old growth on JNF) of effect on old growth forests has resulted in a minor effect on Brush Mountain that was adequately analyzed in the FERC FEIS. The old growth trees were cleared in 2018 prior to issuance of the stop work order (FS FSEIS table 5, p. 63; pp. 136-137).

Appalachian National Scenic Trail

Temporary, minor adverse effects to trail users during periods of active construction will occur from noise, dust, and visual intrusions from crossing underneath the ANST via a 600-foot-long bore. Those impacts will be localized to the immediate area around the ANST crossing. The

subsurface boring method will be completed with no ground disturbance or clearing of trees and vegetation on the ANST's surface. The long-term effects will be minor due to an approximate 300-foot buffer on either side of the trail and vegetative screening of the bore holes. The forested buffer provides trail users with a visual experience that is much the same as the current experience on that portion of the trail. The southern bore hole will not be visible from the trail because the ANST is located on the northern-facing slope of Peters Mountain and the entry bore hole will be located on the southern-facing slope, blocked from view by the ridge of the mountain. The northern bore hole will be located downhill from the ANST and due to topography and existing vegetation will not be visible during construction. Once construction is complete, both bore holes will be revegetated to provide additional visual screening.

There are about 30,700 acres of the JNF allocated to management prescription 4A (Appalachian National Scenic Trail); approximately 2.5 acres of the ROW are within 4A, which is less than 0.01% of all 4A acres on the JNF (FS FSEIS table 5, p. 63; p. 137). Modification to the JNF LRMP Standard 4A-028 will allow location of this project where major impacts do not currently exist.

Scenic Integrity

Modification to the JNF LRMP Standard FW-184 will allow the project to be temporarily unable to achieve the high Scenic Integrity Objective (SIO) for two areas or the moderate SIO for four areas on NFS lands. Although this an adverse effect to scenery, it is not a substantial adverse effect due to the limited extent of the project crossing the JNF (FERC FEIS p. 4-347), because SIOs will be met within 5 years with the project's mitigation measures that will apply to temporary workspaces and the temporary and permanent ROW that are found in the Section 7.9 of the POD (FS FSEIS table 5, p. 63; p. 137-138).

5 Public Involvement

5.1 FERC EIS

The FERC FEIS, Section 1.4 (pp. 1-27 to 1-38), documented the public involvement that occurred from April 2015 through the DEIS comment period that ended on December 22, 2016, and is incorporated by reference. In summary, Section 1.4 described the publication of the Notice of Intent (NOI) to prepare an EIS in the Federal Register on April 17, 2015. The NOI was sent to 2,846 parties, including federal, state, and local government agencies; elected officials; environmental groups and non-government organizations; Native Americans and Indian tribes; affected landowners; local libraries and newspapers; and other stakeholders who had indicated an interest in the MVP.

The NOI initiated a 60-day formal scoping period and the FERC sponsored six public scoping meetings in the project area. The BLM provided an extra 30-day opportunity for public comment. Approximately 650 people attended those meetings. In addition to the NOI and the public scoping meetings, the FERC sent out brochures that updated the status of the environmental review process. The FERC received 964 comment letters during the scoping period and 428 letters after the scoping period had ended.

Table 1.4-1 in the FERC FEIS summarized the environmental issues and concerns identified by the commenters during the scoping process and identified the EIS section where each issue is addressed. The topics that generated the most interest and concerns over potential effects included water quality and aquatic resources, socioeconomics, and geology and soils.

On September 16, 2016, the Notice of Availability for the DEIS was published in the FR, and the 90-day comment period ran until December 22, 2016. The notice was sent to approximately 4,400 parties and during the comment period, seven meetings were held in the vicinity of the project area. The FERC received 1,237 written individual letters or electronic filings commenting, and Table 1.4-2 in the FERC FEIS summarizes the topics and where they are addressed in the FEIS. The topics that were of most concern included water quality and aquatic resources (including wetlands) and geology and soils.

In response to issues relative to the project and NFS lands, the FERC evaluated route alternatives and eliminated from detailed analysis some routes that would have located the project off of NFS lands (FERC FEIS, Section 3.4). Environmental effects specific to the JNF were disclosed in Section 4.

The main issues raised in public comments on the FEIS:

- Concerns regarding NEPA process and BLM adoption of FEIS
- Concerns regarding purpose and need and consideration of alternatives
- Concerns regarding specific resources analyzed in the EIS, including:
 - forest fragmentation,
 - visual impacts,
 - surface waters and groundwater, and
 - impacts to endangered and threatened species.
- Concerns about cumulative impacts
- Concerns about climate change impact analysis

The BLM reviewed and considered the comments on the Final EIS in the preparation of this ROD. The BLM response to comments is included in the FERC FEIS, Appendix AA. In addition to the concerns directed towards BLM's action, several commenters included objections to the FS Draft ROD for a plan amendment to the JNF to accommodate the MVP. The FS completed its own internal objection process prior to release of their final ROD and concurrence with the BLM. The BLM did not have any jurisdiction over the FS objection process or the FS decision to amend the JNF LRMP.

5.2 FS SEIS

On July 30, 2020, FS and BLM published in the Federal Register a notice of intent to prepare a supplemental EIS for Mountain Valley's revised application for a ROW to cross the JNF. The FS SEIS NOI clarified that scoping, a requirement for an EIS (40 C.F.R. § 1501.7; 36 C.F.R. § 220.4(c)(1)), was completed and summarized in the FERC FEIS (FEIS, Section ES-1.4). Additionally, the FS SEIS NOI served as the public notification under 43 C.F.R. § 2884.20(a). A revised NOI was published December 2, 2020 to correct information regarding pre-decisional administrative review and the responsible official.

A Notice of Availability (NOA) was published by the EPA in the Federal Register on September 25, 2020, offering a 45-day comment period. FS distributed a postcard announcing the availability of the DSEIS to the 3,326 individuals on the FERC FEIS mailing list. In addition, postcards were sent to federal agencies, federally recognized tribes, state and local governments, and organizations representing a wide range of views (SEIS Section 4.4.1). The public comment period ended on November 9, 2020. Approximately 4,400 comment letters were received during the 45-day comment period. Timely comments were given full consideration and were analyzed for substantive content (40 C.F.R. 1503.3 and 40 C.F.R. 1503.4) (1978, as amended in 1986 and 2005). BLM participated in the review and response to public comments on the DSEIS. Content from analysis of comments yielded 134 statements which summarized the concerns expressed through public comment. Literature and references submitted with public comments was also reviewed for consideration. Where new information was found, it was assessed and, in some cases, resulted in changes to the FSEIS. These concern statements with FS and BLM responses can be found in Appendix C of the FS FSEIS. A NOA of the FS FSEIS was published in the Federal Register on December 11, 2020. Comments received outside a formal public comment period have been reviewed and are a part of the project record.

6 Consultation and Coordination

6.1 Cooperating Agencies

A cooperating agency may adopt an EIS of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied (40 C.F.R. § 1506.3). The FS and BLM were cooperating agencies for the FERC FEIS.

Section 1.5 of the FERC FEIS discusses the permits, approvals, and regulatory requirements pertaining to the MVP Pipeline Project. Within this discussion, Table 1.5-1 lists the major permits, approvals, and consultations required, and the FERC FEIS has been used by numerous Federal agencies for this purpose. The geographic scope and complexity of the project necessitated extensive data gathering, consultation and analysis with agencies at all levels of government.

BLM regularly met with and consulted with the FS regarding technical analysis related to each agency's respective decisions and coordinated SEIS outreach efforts. Additional regularly scheduled consultation and coordination meetings between the USFS, BLM, USACE, and FERC

took place. FERC regularly consulted with the USFWS throughout the development of the 2020 BO.

6.2 Consultation under Section 7 of the Endangered Species Act

FERC was the lead agency for consultation with the USFWS for the FERC FEIS. On November 21, 2017, the USFWS provided with a Biological Opinion (BO). On August 28, 2019, FERC requested reinitiation of Section 7 consultation due to the listing of the candy darter and on September 11, 2019, the USFWS accepted FERC's request. In October 2019, the Fourth Circuit stayed the 2017 BO pertaining to the entire MVP project, pending the resolution of a legal challenge. However, the Fourth Circuit also granted the USFWS's request to suspend the legal challenge until the USFWS had revised and reissued it.

A Supplemental Biological Assessment (SBA) was submitted to the USFWS in April 2020 and was revised in May 2020 (MVP 2020b). The SBA changed the determination of effects for several federally listed aquatic species and eliminated some species from consideration. None of the identified species have designated Critical Habitat on NFS lands. The USFWS issued a revised BO and Conference Opinion on September 4, 2020 that replaces the 2017 BO in its entirety (USFWS 2020). The FS FSEIS incorporates the USFWS findings and includes USFWS reasonable and prudent measures, terms and conditions, and monitoring and reporting requirements that are in the 2020 BO (see SEIS Section 2.2.2 and Section 2.2.2.2).

Information from the supplemental Biological Assessment was also used to prepare the FS SEIS. The BA and USFWS's revised BO dated September 4, 2020 (Attachment C) were considered by the BLM in issuing this ROD.

6.3 Consultation under Section 106 of the National Historic Preservation Act

Section 106 of the NHPA requires each Federal agency to take into account the effects of its actions on historic properties prior to approving expenditure of Federal fund on an undertaking or prior to issuing any license. Historic properties include historic sites, districts, buildings, structures, objects, or properties of traditional religious or cultural importance to an Indian tribe that are listed or eligible for listing on the National Register of Historic Places.

FERC remained the lead agency for compliance with Section 106 of the NHPA. FERC and the other cooperating Federal agencies, including FS and the BLM, executed a single PA with the West Virginia and Virginia State Historical Preservation Offices (SHPOs), which reflects the obligations for compliance with the NHPA. Under the PA, FERC has responsibility to ensure that the stipulations in the PA are followed and that any required cultural resource treatment plans for sites on NFS lands have been completed.

6.4 Government-to-Government Tribal Consultation

Consultations with Native American and Indian Tribes were documented in Section 4.10.5 of the FERC FEIS. Between issuance of the FERC FEIS and execution of PA (FERC 2017c) to address effects to National Register-eligible properties, FERC received a letter from Eastern

Band of Cherokee Indians in North Carolina (dated October 31, 2017) that supported treatment plan for archaeological site 44GS241 and requested to monitor data recovery. Excavations at this site have not occurred to date because it is within the 25-miles surrounding Jefferson National Forest where FERC stopped construction work. The Cherokee Nation of Oklahoma, in a letter to FERC dated October 31, 2017, stated that it does not object to the Project, if tribal monitors are employed at site 44GS0241 during data recovery excavations. As reflected in the Grant, Mountain Valley has agreed to employ tribal monitors at this site. FS will require the use of Eastern Band of Cherokee Indians and Cherokee Nation of Oklahoma monitors on site 44GS0241. The Cherokee Nation of Oklahoma also requested to be a consulting party to the PA and signed the PA as a concurring party. The Stockbridge-Munsee Band of the Mohican Nation responded on May 4, 2015 to FERC's letter, indicating that the MVP is not located within their area of tribal interest (Final EIS, Section 4.10.5).

FERC also received letters from the Monacan Indian Nation requesting FERC amend the PA to include the Nation as a consulting party. FERC responded that only a signatory to the PA can have the agreement amended. The Monacan Indian Nation's request was filed after FERC had completed NEPA and NHPA compliance.

On July 8, 2020, the FS initiated tribal consultation for the SEIS by sending letters to the following tribes:

- Cherokee Nation: Elizabeth Toombs, Tribal Historic Preservation Officer
- Eastern Band of Cherokee Indians: Stephen Yerka, Tribal Historic Preservation Office
- Monacan Indian Nation: Kenneth Branham, Tribal Chief; Kaleigh Pollak, Tribal Office
- United Keetoowah Band of Cherokee Indians in Oklahoma: Whitney Warrior, Historic Preservation Director

Tribal leaders from the following tribes were sent the Draft FS SEIS:

- Cherokee Nation Tribal Historic Preservation Office
- Eastern Band of Cherokee Indians
- Monacan Indian Tribe
- Nansemond Indian Tribal Association
- Rappahannock Tribe
- United Keetoowah Band of Cherokee Indians in Oklahoma
- Wyandotte Nation

7 Notification of ROD and Contact Person

The following steps have been taken to notify the public of this decision:

1. Distributed a news release about the ROD to local and regional media;
2. Published the ROD on BLM's ePlanning website;
3. Provided a copy of the ROD to all who requested it.

Contact Person:

Vicki Craft
Realty Specialist
Bureau of Land Management
Southeastern States District Office
273 Market Street
Flowood, MS 39232
601-919-4655
601-919-4700

8 References

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- DOI (Department of the Interior). 2020a. Standard Form 299 Application for Transportation and Utility Systems and Facilities on Federal Lands completed by Mountain Valley Pipeline, LLC. May.
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- FERC. 2017a. Mountain Valley Project and Equitrans Expansion Project. Final Environmental Impact Statement. June.
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- FERC. 2017c. Programmatic Agreement among the Federal Energy Regulatory Commission, U.S. Department of the Interior Bureau of Land Management and National Park Service, U.S. Department of Agriculture Forest Service, U.S Army Corps of Engineers, the State Historic Preservation Offices for West Virginia and Virginia, and the Advisory Council on Historic Preservation Regarding the Mountain Valley Project. (FERC Docket No. CP16-10-000). December.
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- FS (Forest Service). 2004. Revised Land and Resource Management Plan. USDA Forest Service, Jefferson National Forest, Roanoke, Virginia.
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Geosyntec Consultants. 2020b. Hydrologic Analysis of Sedimentation for the Jefferson National Forest, Virginia and West Virginia. May 8.

MVP (Mountain Valley Pipeline, LLC). 2020a. Plan of Development. Mountain Valley Pipeline Project. July.

MVP. 2020b. Supplement to the Biological Assessment. April, Revised May.

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U.S. Court of Appeals. 2018b. *Sierra Club, Inc. et al. v. U.S. Forest Service et al.* U.S. Court of Appeals for the Fourth Circuit.

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