

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

**Environmental Impact Statement: FERC/FEIS-0272F (CP16-10-000 and CP16-13-000)
Case File Numbers: VAES-058143 and WVES-058142**

RECORD OF DECISION

Attachment C – Right of Way Grant & TUP

Exhibit D – Stipulations

2880 (020) VC
VA-ES-058143
WV-ES-058142

Exhibit D
Special and Standard Stipulations for Right-of-Way Grant and Temporary
Use Permit (VA-ES-058143, WV-ES-058142)

Definitions

The following definitions apply to the terms used in these Stipulations to the Mountain Valley Pipeline (MVP) Right-of-Way Grant and Temporary Use Permit. They shall also apply to terms used in documents to which these Stipulations are attached unless specifically provided otherwise in such documents.

“Agency” means the federal agency (Bureau of Land Management [BLM], Department of the Interior [DOI], United States Department of Agriculture [USDA], George Washington and Jefferson National Forest [GWJNF], USDA Forest Service [FS], or U.S. Army Corps of Engineers [USACE]) having jurisdiction over issuance of this Grant or over lands or interests in lands included in this Grant. The singular term can mean one or more Agencies.

“Agency Official” means an employee of an Agency who has been delegated authority to carry out some or all of Agency’s responsibilities under this Grant and the governing laws. The singular term can mean one or more Agency employees.

“Authorized Officer,” means the appropriate Agency Official. With respect to issuance, Notices to Proceed, amendment, renewal, termination, variances, or bonding, the BLM Eastern States Director or their delegate is the Authorized Officer. With respect to regulation of the Grant and TUP activities in conformance with the Act, appropriate regulations, and the terms and conditions of the Grant and TUP, the Agency Official of the Agency administering the Federal Lands involved is the Authorized Officer.

“Holder” means Mountain Valley Pipeline, LLC, its successors and assigns.

“Construction Segment” or “Spread” means a portion of the Pipeline System as agreed upon by the Holder and the Authorized Officer, which constitutes a complete physical entity or stage, in and of itself, which can be constructed independently of any other portion or stage of the pipeline in a designated area or between two given geographical points.

“Emergency Condition” means a Pipeline breach, damage to structures, equipment failure, an explosion, fire, natural disaster, and/or serious personal injury.

“Federal Lands” means all lands owned by the United States and included in this Grant.

“FERC Order” means the order issued by the Federal Energy Regulatory Commission (FERC) on October 13, 2017, granting a Certificate of Public Convenience and Necessity to Mountain Valley Pipeline, LLC for the Pipeline System.

“Gas” means a gaseous mixture, principally of methane and other paraffinic hydrocarbons suitably conditioned to an acceptable specification for transportation by the Pipeline.

“Grant” means Right-of-Way (ROW) Grants VA-ES-058143 and WV-ES-058142 and the associated Temporary

Use Permit (TUP).

“Hazardous Waste” means oil or toxic or hazardous substances as defined by the Environmental Protection Agency, the Department of Transportation or as specified in writing by the Authorized Officer in consultation with the Environmental Protection Agency and the Department of Transportation’s Authorized Officer during the review of the Holder’s hazardous substances control, cleanup and disposal plan.

“In-Service Date” means the date when the continual flow of Gas begins through the Pipeline.

“Initial Operation” means operation during the one-year period beginning on the In-Service Date.

“Monitoring” means those actions, pursuant to 43 CFR 2886.11, the Federal government performs to ensure compliance with the terms, conditions, and stipulations of this Grant.

“Notice to Proceed” means written permission from the Authorized Officer to initiate Pipeline construction that is issued in accordance with 43 CFR 2886.10, or any subsequent written permission required by these stipulations and detailed below.

“Notice to Proceed for Initial Pipeline Operations” means written permission from the Authorized Officer to commence operation of the Pipeline.

“Oil” means oil of any kind or any form, including but not limited to fuel oil, sludge, oil refuse, and oil mixed with Waste.

“Pipeline” means all parts of those Mountain Valley Pipeline facilities through which the Gas moves.

“Pipeline System” means all Facilities, whether or not located on Federal Lands, used by the Holder in connection with the construction, operation, maintenance or termination of the Mountain Valley Pipeline. It does not include facilities, such as urban administrative offices, which are only indirectly involved in the transportation of Gas; nor does it include facilities used by others in the production, gathering or conditioning of Gas.

“Related Facilities” means those structures, devices, improvements and sites on Federal Lands, other than the Pipeline, whose substantially continuous use is necessary for the operation and maintenance of the Pipeline. Related Facilities includes, if applicable: supporting structures; access roads; compressor stations; valves and other control devices; bridges, culverts and low-water crossings; monitoring and communication devices; retaining walls, berms, dikes, ditches, cuts and fills, including hydraulic control structures; structures and areas for storing supplies and equipment; cathodic protection devices; and other facilities of a similar nature together with related yards, fences and buildings.

“Revegetation” means the establishment of plant cover on disturbed lands through techniques including, but not limited to, seedbed preparation, seeding, planting, fertilizing, mulching and watering.

“Right-of-Way” or “ROW” means the rights conveyed by the Grant pursuant to 30 U.S.C. 185.

“Roads” means existing roads located on Federal Lands and/or under the jurisdiction of an Agency or roads approved for construction on Federal Lands which are necessary for access to and from the ROW Grant and TUP for construction, operation, maintenance or termination of the Mountain Valley Pipeline.

“Temporary Use Permit” or “TUP” means the rights conveyed by the Grant pursuant to 30 U.S.C. 185(e).

“Waste” means all discarded matter other than construction spoils. It includes, but is not limited to, human waste,

trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.

“Plan of Development” means the Plan of Development that was approved and made part of the Grant (Exhibit C of the Grant), and any supplements, amendments, or revisions thereof.

“Programmatic Agreement” means the Programmatic Agreement entered into pursuant to Section 106 of the National Historic Preservation Act, dated December 14, 2017.

“Hazardous Material” means any substance, pollutant, or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9601 *et seq.*, and its regulations; any hazardous waste as defined in the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 *et seq.*, and its regulations; and any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA section 101(14), 42 U.S.C. § 9601(14), nor does the term include natural gas.

1. **APPLICABILITY.** These Stipulations shall apply to the design, construction, operation, maintenance, and termination of the Mountain Valley Pipeline. Unless clearly inapplicable, the requirements, responsibilities and prohibitions imposed upon the Holder by these Stipulations are also imposed upon the Holder’s agents, employees, contractors, and subcontractors, and the employees of each of them.

Nothing in these Stipulations shall be construed as applying to activities of the Holder that have no relation to the Mountain Valley Pipeline.

Nothing in these Stipulations shall be construed to affect any right or cause of action that otherwise would be available to the Holder against any person. The United States and the Holder do not intend to create any rights under these Stipulations that may be enforced by third parties for their own benefit or for the benefit of others.

2. **RESPONSIBILITIES.** The Holder shall ensure compliance with these Stipulations and implementing orders of the Authorized Officer or Agency Official. Failure or refusal of the Holder’s agents, employees, contractors, subcontractors, or their employees to comply with these Stipulations shall be deemed to be the failure or refusal of the Holder.

The Holder shall require its agents, employees, contractors and subcontractors to understand and include these Stipulations, as appropriate, in all contracts and subcontracts which are entered into by any of them, together with a provision that the other contracting party, together with its agents, employees, contractors and subcontractors, and the employees of each of them, shall likewise be bound to comply with these Stipulations.

Prior to any ground disturbing activities, the Holder shall:

- a) File an affirmative statement with the Authorized Officer, certified by a senior Holder official, that all Holder personnel, environmental inspectors, and contractor personnel have been or will be trained in the implementation of these Stipulations and the environmental mitigation measures appropriate to their jobs.
- b) Obtain a written statement from the Authorized Officer of all delegations of authority for administration of these stipulations; and
- c) Identify all landowners and parties with property interests on Federal Lands, and where the United States holds property interests on private lands, determine any and all adverse impacts to said parties which may be attributed to the construction, Initial Operation, maintenance, and termination of the Pipeline. The Holder shall procure negotiated settlements with the affected parties to the satisfaction of the Authorized

Officer.

The Holder shall designate a representative who shall be empowered on behalf of the Holder to communicate with, and to receive and comply with all communications and orders of the Authorized Officer or Agency Official. The Holder shall also designate field representatives who shall be authorized to, and at all times be available to communicate and cooperate with, field representatives of the Authorized Officer or Agency Official. The Holder shall keep the Authorized Officer and Agency Official informed of any change of the Holder's representatives during the construction, operation, maintenance, and termination of the Mountain Valley Pipeline.

Upon written order from the Authorized Officer, the Holder shall furnish any or all data related to design, construction, operation, maintenance, and termination activities undertaken in connection with the Mountain Valley Pipeline, as may be reasonably relevant to the Authorized Officer's or Agency Official's responsibilities in Section 28 of the Mineral Leasing Act of 1920, (30 U.S.C. § 185) and the regulations in 43 CFR Part 2880; provided, however, that access to such documents is not prohibited or limited by law or regulation, and provided further that any such data furnished shall be subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552.

In accordance with the provisions of Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. § 185), prior to the issuance of a Notice to Proceed, the Authorized Officer may, by written order, require the Holder to make such modification to plans, designs, specifications, or other documents as deemed necessary to protect or maintain stability of foundation and other earth materials; protect or maintain integrity of the Mountain Valley Pipeline; control or prevent significant damage to the environment (including but not limited to fish and wildlife populations or their habitats); or remove hazards to public health and safety.

The absence of any comment by the Authorized Officer or Agency Official on any plan, design, specification, or other document which may be filed by the Holder with the Authorized Officer or Agency Official, shall not be deemed to represent in any way whatsoever any assent to, approval of, or concurrence in such plan, design, specification, or other document, or of any action proposed therein. Nevertheless, on any matter necessary or related to the construction and Initial Operation of the Pipeline System which requires action by the Authorized Officer or Agency Official there is an obligation to act expeditiously. Any written approval or instruction by the Authorized Officer or Agency Official may be relied upon by the Holder unless and until rescinded in writing. The Authorized Office or Agency Official will act in writing upon each submission in accordance with the agreed-upon schedules developed pursuant to these Stipulations. Any disapproving action by the Authorized Officer or Agency Official, including any requests for additional information, shall state what additional action is necessary to gain approval.

The Authorized Officer and Agency Official shall have a continuing right of access to any part of the Federal Lands at any time for inspection or monitoring and for any other purpose or reason that is consistent with responsibilities under the Grant, Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. § 185), and the regulations in 43 CFR 2880. This right may be exercised by the Authorized Officer or Agency Official; or by contractors and subcontractors of the Authorized Officer or Agency Official performing work related to the Pipeline who are designated in writing. The Authorized Officer or Agency Official shall prepare procedures to implement this paragraph, including reasonable advance notification where practicable.

No order or notice given to the Holder on behalf of the Authorized Officer or Agency Official shall be effective as to the Holder unless prior written notice of the delegation of authority to issue such order or notice has been given to the Holder by the Authorized Officer or Agency Official.

In the implementation of these Stipulations, the Holder shall furnish all supervisory-level employees with copies of the Authorized Officer's and Agency Official's delegation(s) of authority and shall explain the limitations imposed therein.

3. **COMMUNICATIONS.** During the period of preconstruction, construction and Initial Operation of the Pipeline System, filing for and issuance of necessary permits and authorizations and requests for data related to such permits or authorization shall take place between the Holder and the Agency.

Communications from the Holder to the Agency shall be transmitted to the Authorized Officer or Agency Official together with any documents required by statute or regulations to be filed with the Agency.

Any written notice or communication, including any telegram, fax or e-mail, relating to any subject, addressed to the Authorized Officer or Agency Official from the Holder, shall be deemed to have been delivered to and received by the Authorized Officer or Agency Official when the notice or communication has been delivered either by messenger during normal business hours, or by means of registered or certified United States mail, postage prepaid, return receipt requested, or by other acceptable means of confirmation to the Authorized Officer or Agency Official.

Any written order, notice, or other written communication, including any telegram, fax or e-mail, relating to any subject that is addressed to the Holder from the Authorized Officer or Agency Official shall be deemed to have been delivered to and received by the Holder when the order, notice or other communication has been delivered either by messenger during normal business hours, or by means of registered or certified United States mail, postage prepaid, return receipt requested to the office of the representative designated by the Holder pursuant to these Stipulations.

All orders or approvals of the Authorized Officer or Agency Official shall be in writing, but in emergencies may be issued orally, with subsequent confirmation in writing as soon as possible thereafter, but not later than twenty (24) hours.

4. **Plan of Development.** During the life of the Grant, the Holder shall construct, operate, maintain, and terminate the facilities, improvements, and structures within the Federal Lands in strict conformity with the Plan of Development. Any relocation, additional construction, or use that is not in accordance with the approved Plan of Development shall not be initiated without the prior written approval of the Authorized Officer.

The stipulations, plans, maps, or designs set forth in the Plan of Development are incorporated into and made a part of this Grant as fully and effectively as if they were set forth herein in their entirety.

The Holder shall ensure that all supervisory personnel working for the Holder on Federal Lands carry a copy of the complete Grant, including all stipulations, approved Plan of Development, and Notice to Proceed, during construction, operation, and termination. The supervisory personnel shall present the documents upon request to the Authorized Officer or Agency Official. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.

5. The Authorized Officer or Agency Official may require and schedule a preconstruction conference with the Holder prior to the Holder's commencing construction and/or surface disturbing activities on the Federal Lands. The Holder and/or its representative shall attend this conference.

The Holder's contractor, or agents involved with construction and/or any surface disturbing activities associated with the Federal Lands, shall also attend this conference to review the stipulations of the Grant including the Plan(s) of Development.

6. The Holder shall designate a representative(s) who shall have the authority to act upon and to implement instructions from the Authorized Officer or Agency Official. The Holder's representative shall be available

for communication with the Authorized Officer or Agency Official within a reasonable time when construction or other surface disturbing activities are underway.

7. The Authorized Officer or Agency Official may suspend or terminate in whole, or in part, any Notice To Proceed which has been issued when, in their judgment, unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.
8. Any cultural and/or paleontological resource discovered by the Holder, or any person working on his behalf, on public or Federal Land shall be immediately reported to the Authorized Officer and Agency Official. The Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder shall be responsible for the cost of evaluation, and any decision as to proper mitigation measures will be made by the Authorized Officer after consulting with the Holder.
9. Pursuant to 43 CFR 10.4(g), all persons associated with operations under this Grant must be informed that any objects or sites of cultural, paleontological, or scientific value such as historic prehistoric resources, graves or grave markers, human remains, ruins, cabins, rock art, fossils, or artifacts shall not be damaged, destroyed, removed, moved, or disturbed. If in connection with operations under this Grant any of the above resources are encountered, the Holder shall immediately suspend all activities, pursuant to 43CFR 10.4(c) and (d), in the immediate vicinity of the discovery that might further disturb such material and notify the Authorized Officer of the findings. The discovery must be protected for 30 days until notified in writing by the Authorized Officer to proceed.
10. In the event that the Federal Lands, or a portion thereof, is conveyed out of Federal ownership and administration of the Federal Lands is not being reserved to the United States, and/or the Federal Lands are not located within a right-of-way corridor being reserved to the United States, the United States waives any right it has to administer the Grant within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800 or 2880, including any rights to have the Holder apply to the Authorized Officer for amendments, modifications, or assignments and for the Authorized Officer to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the Grant for all Federal Lands being conveyed and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the Grant shall be considered a civil matter between the patentee/grantee and the Holder.
11. The Holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and BLM Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the Holder shall immediately report the incident, in writing, to the Authorized Officer and the respective installing authority if known. Where General Land Office or BLM monuments or references are obliterated during operations, the Holder shall secure the services of a registered land surveyor or a BLM cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The Holder shall record such survey in the appropriate county and send a copy to the Authorized Officer. If the BLM cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the Holder shall be responsible for the survey cost.
12. Uses of pesticides shall comply with the applicable Federal laws, and with state laws when not in conflict

with Agency management authorities and objectives. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Agency. Prior to the use of pesticides, the Holder shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the Authorized Officer. The plan should be submitted no later than December 1 of any calendar year to cover the proposed activities for the next fiscal year. Emergency use of pesticides shall be approved in writing by the Authorized Officer prior to such use.

13. Holder shall provide a bond in the amount of \$8,665,838 for the following items prior to issuance of a Notice(s) to Proceed:
 - a. 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.
 - b. Accommodating all cultural resources costs associated with implementing the Programmatic Agreement and approved treatment plans or other mitigation activities, as negotiated by the Holder where they contract for services in support of the Programmatic Agreement. 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.
 - c. 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.
 - d. 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.
14. A performance bond, acceptable to the Authorized Officer, shall be furnished by the Holder in the amount of \$8,665,838. This bond may be periodically adjusted by the Authorized Officer or their designee when, in their sole determination, conditions warrant such a change. In addition, whenever requested by the Authorized Officer or their designee, the Holder shall furnish a report within 90 days estimating all costs for the Agencies to fulfill the terms and conditions of the grant in the event that the holder was not able to do so. This estimate report shall be prepared by an independent State certified engineer who is approved in advance by the Authorized Officer or their designee, and shall include such information including but not limited to administrative costs and Davis Bacon wages potentially incurred by the Agencies. The report shall detail the estimated costs and shall be accompanied by the engineer's seal. All costs of preparing and submitting this report shall be borne solely by the holder. This report along with inflationary estimates shall be the basis of the bond, and shall remain in effect until such time that the Authorized Officer or their designee determines that conditions warrant a review of the bond. Surface disturbing activities shall not commence until the Authorized Officer or their designee has accepted the bond and issued a notice to proceed.
15. The portion of the bond addressing cultural resources shall be forfeited if any tasks required in the Programmatic Agreement are not completed within the time period established by the treatment option selected; provided, however, that the Authorized Officer and the Holder may agree to extend any such time

periods. The Authorized Officer shall notify the Holder in writing that the surety (if one is used) is subject to forfeiture and shall allow the Holder 15 days to respond before action is taken to forfeit the surety.

16. A portion of the bond may be retained for the life of the grant to ensure compliance with the Holder's continuing responsibilities under the provisions of the Grant including, but not limited to the following:
 - a. Restoration and reclamation of disturbed areas
 - b. Erosion and sediment control
 - c. Noxious weed control
 - d. Fire prevention and control
 - e. Spill prevention and clean-up
 - f. Groundwater and wetland monitoring
 - g. Stormwater pollution prevention
 - h. Termination/abandonment

The bond shall be released, in whole or in part, as specific tasks are completed and accepted by the Authorized Officer. This bond must be maintained in effect until removal of improvements and restoration of the right-of-way has been accepted by the Authorized Officer and all products required by the Programmatic Agreement have been accepted by the FS.

17. The Holder agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the United States, or its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the Holder's use, occupancy, or operations of the Federal Lands. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the United States and its employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use of the Federal Lands which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws, and regulations that are now, or may in the future become, applicable to the real property; (2) judgments, claims, or demands of any kind incurred by the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous wastes and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into, or under land, property, and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used, or otherwise disposed on the Federal Lands, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; (6) or natural resource damages as defined by federal and state law. This covenant shall be construed as running with the Grant and may be enforced by the United States in a court of competent jurisdiction.
18. The Holder shall comply with all applicable federal, state, county, and municipal laws and regulations, existing or hereafter enacted or promulgated, with regard to any Hazardous Material that will be used, produced, transported, or stored on or within the Federal Lands, or used in the construction, operation, maintenance or termination of the Pipeline System or any of its facilities. The Holder is prohibited from discharging Oil or other pollutants on Federal Lands or into or upon waters on Federal Lands. The Holder shall give immediate notice of any such discharge to the Authorized Officer and such other federal and state officials as are required by law to be given such notice.

19. Within 60 days of completion, the Holder shall submit to the Authorized Officer as-built drawings and a certification of construction verifying that the Pipeline System has been constructed and tested in accordance with the design, plans, specifications, and applicable laws and regulations.
20. The following stipulations must be met as conditions of the Grant to allow construction of the Pipeline upon the lands under the GWJNF's jurisdiction and to ensure conformance with Agency standards:
- a. Holder shall comply with the Grant as approved by the BLM.
 - b. Holder must implement the construction procedures and mitigation measures applicable to the GWJNF contained in the Plan of Development.
 - c. Holder shall comply with applicable provisions of Appendix C – Environmental Conditions of the FERC Order Issuing Certificates and Granting Abandonment Authority; Docket Nos. CP16-10-000 and CP16-13-000 (issued October 13).
 - d. Holder shall not begin activities with the potential to adversely impact historic properties on the GWJNF until the conditions below are satisfied:
 - A Programmatic Agreement has been executed to satisfy consultation requirements of the National Historic Preservation Act, and
 - The archaeological excavations for site 44GS0241, as outlined in the cultural resource treatment plan with an agreement on the use of Eastern Band of Cherokee Indians and Cherokee Nation of Oklahoma monitors, have been completed.
 - e. Holder shall obtain Virginia's Clean Water Act Section 401 Certification (or waiver thereof) before beginning activity on National Forest System (NFS) land in Virginia that may impact waters of the U.S.
 - f. Holder shall obtain required approvals/certifications for an Erosion and Sediment Control Plan and a Stormwater Management Plan from the Virginia Department of Environmental Quality before beginning construction on GWJNF land.
 - g. Holder shall comply with the Stormwater Permit and associated Erosion and Sediment Control Plan as approved by the West Virginia Department of Environmental Protection before beginning construction on GWJNF land.
 - h. Holder shall comply with the applicable Reasonable and Prudent Measures and Terms and Conditions of the November 21, U.S. Fish and Wildlife Service (FWS) Biological Opinion.
 - i. Holder shall implement applicable mitigation measures for the candy darter and yellow lance found in the June, 2017 Biological Evaluation for Forest Service Sensitive Species. Holder shall also implement applicable mitigation measures recommended by FWS through any future Section 7(a)(4) Endangered Species Act (ESA) conferencing for these species that may occur. If either species is listed as threatened or endangered under the ESA, any Reasonable and Prudent Measures and Terms and Conditions identified in a Biological Opinion conducted under ESA 7(a)(2) must be implemented.
21. The following stipulations must be met as conditions of the authorization to allow construction of the Project upon the lands under USACE jurisdiction and to ensure conformance with Agency standards:

- a. The Holder shall follow the Plan of Development.
- b. The Holder shall notify USACE of any proposed route variations which may require additional compliance processes.
- c. The Holder shall post key Burnsville Dam elevation data (Top of Flood Control Pool: 825.00 feet; Probable Maximum Flood: 833.70 feet) on all design and as-built drawings and take these elevations into consideration when designing the pipeline installation.
- d. The proposed pipeline installation must not result in a net decrease in the flood control storage of Burnsville Dam.
- e. The Holder shall evaluate the proposed pipeline installation alignment for potential aggressive subsurface conditions with regard to designing/implementing corrosion protection measures on the pipeline.
- f. The Holder shall perform geotechnical subsurface explorations along the proposed pipeline installation alignment to better define subsurface conditions and design requirements, particularly regarding the feasibility of completing the proposed conventional bore beneath the Weston Gauley Bridge Turnpike Trail.
- g. Drill spoil and excess excavated material, soil and rock, from pipeline installation, maintenance, repairs, and/or abandonment shall be disposed of at an approved landfill site located outside the project operations defined flowage easement and fee land.
- h. Maintenance debris, cleanout, and purging fluids must be contained and disposed of offsite at an approved facility by the Holder.
- i. The Holder shall include Huntington District on the emergency notification/management list.
- j. The Holder shall bore under the property throughout the pipeline length on USACE-managed lands, and not disturb any USACE property on the surface.
- k. Adequate screening shall be left on each side of the bore to mask the appearance of the Pipeline to users of the Weston Gauley Bridge Turnpike Trail.
- l. The surface of the Weston Gauley Bridge Turnpike Trail shall not be crossed at any point with any motorized vehicles except by using County Route 46 near Mt. Hope Church. This applies during all phases of construction, operation, maintenance, and termination for the life of the Grant.
- m. Access shall not be obtained by using any part of the Weston Gauley Bridge Turnpike that is located on Government property.
- n. The right-of-way fence that delineates the Weston Gauley Bridge Turnpike Trail shall not be disturbed in any way.
- o. The area over which consent herein is granted is shown in Exhibit B of the Grant. This consent does not waive the necessity for the Holder to obtain appropriate rights from the owners of the fee title to the property.

22. NOTICE TO PROCEED FOR INITIAL PIPELINE OPERATIONS. Holder shall not commence operation of the Pipeline until receipt of a written determination by the Authorized Officer that rehabilitation and restoration

activities are proceeding satisfactorily. Prior to the In Service Date, the Holder shall submit to the Authorized Officer the following:

A copy of its written authorization from the FERC Director of Office of Energy Projects determining that the “pipeline and associated facilities have been constructed in accordance with Commission approval and applicable standards, can be expected to operate safely as designed, and the rehabilitation and restoration of areas disturbed by construction are proceeding satisfactorily.”

After review of the written authorization from FERC and issuance of the written determination described above, a Notice to Proceed for Initial Pipeline Operations shall be issued by the Authorized Officer. The date of this Notice shall constitute the In Service Date under this Grant. No Gas shall flow through the pipeline until this Notice is issued by the Authorized Officer. If the Notice to Proceed for Initial Pipeline Operations is issued prior to the expiration of the TUP, it shall apply to both the ROW Grant and the TUP.

Prior to the In-Service Date, the Holder must certify in writing to the Authorized Officer that the Pipeline System:

- a. Has been constructed and tested according to the terms of the Grant; and
- b. Is in compliance with all required plans, specifications, and Federal, state, and local laws and regulations.

23. OPERATIONS AND MAINTENANCE

a. Affirmative Statement:

Within 30 days of the In-Service Date, the Holder shall provide to the Authorized Officer a copy of the “Affirmative Statement” required to be filed with the Secretary of FERC in which a senior company official has:

- “Certified that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities shall be consistent with all applicable conditions; or
- Identified which of the conditions of the FERC Order the Holder has complied with or will comply with. This statement shall also identify any areas affected by the Pipeline System where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.”

b. Standards. Operation and maintenance activities in connection with the Pipeline shall be conducted in accordance with the Plan of Development, as applicable and to provide maximum protection to the public and the environment. The Holder shall follow all applicable standards, and requirements administered by the U.S. Department of Transportation detailed in 49 CFR Parts 191 and 192, and any additional regulations and rules required by the US Department of Transportation Pipeline and Hazardous Material Safety Administration.

c. Notifications:

1. FS Land: Prior to beginning authorized activities on Federal Lands managed by FS or accessing authorized FS roads, the Holder or its representative shall provide at least 14 days’ notice, unless otherwise approved by the Authorized Officer, to the Authorized Officer and Agency Official. Notice shall include the type of activity to be conducted, when and where the work will take place, how the work area(s) will be accessed, and what types of equipment will be used. Following review, approval for the work and a Notice to Proceed shall be provided by the

Authorized Officer. The Notice to Proceed shall include any pertinent restrictions or stipulations not found elsewhere within the Grant, including but not limited to current local wildfire hazard restrictions, road closures or damage, other on-going commercial use of facilities, local closures or limitations for wildlife, off-road vehicle use, permitted camp locations, and any other stipulations or limitations determined to be necessary by the Authorized Officer and Agency Official. Both the notice of the work from the Holder and the Notice to Proceed from the Authorized Officer may be written, electronic or verbal as best suited to the specific request and as agreed to by Holder and Authorized Officer. Notices by both Holder and Agency may bundle similar work activities over a specific period of time during which changes in the pertinent restrictions and stipulations are unlikely to change, as determined and approved by the Authorized Officer.

2. USACE Land: Prior to beginning of any authorized activities on Federal Lands managed by USACE or accessing authorized USACE roads, the Holder or its representative shall provide at least 14 days' notice to the Burnsville Lake Project Office, by calling (304) 853-2371.

24. QUALITY ASSURANCE AND CONTROL. The Holder shall ensure that the applicable requirements of 49 CFR Part 192 and environmental and technical stipulations included in the FERC Order, or as otherwise modified by a subsequent approved variance to the Order, are incorporated in the Final Design and shall be complied with throughout all phases of construction, operation, maintenance and termination of the Pipeline System. The Holder shall provide for inspection of Pipeline System construction on Federal Lands to ensure compliance with the approved design specifications.

The Holder shall submit reports to the to demonstrate that it is complying with the quality assurance and control requirements of 49 CFR Part 192 and the FERC Order and approved variances to the FERC Order. Such reports shall be submitted to the on a quarterly basis unless otherwise requested by the Authorized Officer.

25. CONDUCT OF OPERATIONS. The Holder shall perform Pipeline operations in a safe and workmanlike manner so as to ensure protection of the environment, the health and safety of the public, and to avoid injury or damage to any person or property. The Holder shall at all times employ qualified personnel and maintain equipment sufficient to ensure the safety and integrity of the Pipeline and Related Facilities. The Holder shall notify the Authorized Officer and Authorized Officer of any condition, problem, malfunction, or other occurrence which in any way threatens the safety or integrity of the Pipeline, or significant harm to the environment. All work shall be done in conformance with all Federal, State, and local health and safety regulations and laws.

No signs or advertising devices shall be placed on Federal Lands, except those posted or approved by the Authorized Officer.

26. PUBLIC AND PRIVATE IMPROVEMENTS. The Holder shall provide reasonable protection to existing public or private improvements or facilities on Federal Lands which may be adversely affected by its activities during operation, maintenance, and termination of the Pipeline. If it is determined that the Holder has caused damage to such public and private improvements or facilities, and if the owner of the improvement or facility so requires, then the Holder shall promptly repair, or reimburse the owner for reasonable costs in repairing the improvement or facility to a condition which is satisfactory to the owner but need not exceed its condition as it existed prior to said damage.

When the Holder's activity in connection with the operation, maintenance or termination of the Pipeline breaks or destroys a natural barrier for livestock control on Federal Lands, the gap thus opened shall be immediately fenced to prevent the drift of livestock. The subject natural barrier shall be identified by the Authorized Officer and fenced by the Holder as per instructions of the Authorized Officer.

27. FIRE PREVENTION AND SUPPRESSION. The Holder shall abide by applicable laws and regulations related to fire prevention and suppression. The Holder shall comply with the Fire Prevention and Suppression Plan (Exhibit C, Appendix X of the Grant) and any additional measures to be used by the Holder and its contractors to ensure that fire prevention and suppression techniques are carried out in accordance with federal, state and local regulations. The Holder shall comply with applicable Commonwealth of Virginia or State of West Virginia administrative rules regarding the location, type and amount of fire prevention and suppression equipment available for use by the Holder and its contractors during the closed fire season or periods of fire danger. The Authorized Officer may require the Holder by written order to provide additional fire prevention or suppression measures at any time during the life of the Grant when conditions for fire are hazardous and special precautions are necessary.

The Holder shall promptly notify the Authorized Officer of any fires on, or which may threaten any portion of, the Pipeline and shall take all measures necessary or appropriate for the prevention and suppression of fires in accordance with applicable law. The Holder shall comply with the instructions and directions of the Authorized Officer concerning the use, prevention and suppression of fires on Federal Lands.

Use of open fires in connection with construction, operation, maintenance and termination of the Pipeline is prohibited on Federal Lands. The Holder shall comply with the Fire Prevention and Suppression Plan (Exhibit C, Appendix X of the Grant) if burning of excess forest slash generated from clearing or maintenance operations is required.

28. ELECTRONICALLY OPERATED DEVICES

a. Transmitting Equipment

All transmitters shall have protective devices (shields, filters, isolation components), designed into or externally installed, to prevent interference with other users. All transmitters shall meet FCC licensing requirements. Two-way transmitters should have dual section isolators for a total of 60 dB of isolation.

The re-radiation of intercepted signals from any unprotected transmitter and its associated antenna system will be prevented by the use of appropriate filters (wide band and narrow band broadcast transmitters).

The direct radiation of out-of-band emissions (i.e., noise or spurious harmonics) shall be reduced to a level such that they may not be identified as a source of interference as defined in the FCC Rules and Regulations (e.g., Part 90.209(e) for non-broadcast uses). If site noise (electromagnetic noise) becomes an issue, noise threshold limits shall be established, and amended into the site plan, prior to authorizing any new uses.

Direct radiation of out-of-band emissions, (i.e., transmitter wide band noise, spurious emissions, harmonics, etc.) shall be reduced to a noninterference level by using bandpass, lowpass, and/or harmonic filtering. Where duplexing is used, use of a notch type device should be avoided.

Re-radiation of signals from a transmitter and its associated antenna system shall be prevented by installing appropriate devices (i.e., ferrite isolators), with minimum return loss of 25 dB.

All transmitters not in immediate use and not specifically designated as standby equipment shall be removed. Loads connected to circulators are to be capable of dissipating the total power output of the transmitter.

b. Receiving Equipment

All receivers shall comply with all applicable parts of the FCC rules, including Parts 2 and 15.

All receivers shall have sufficient “front end” pre-selection to prevent receiver spurious response. The use of bandpass, band-reject cavity or crystal filters may be required to prevent receiver-produced intermodulation or adjacent-channel interference.

Where duplexing is used, a bandpass cavity duplexer is required. Use of the notch-type device is not permitted. Where notch-type devices are currently in place and there are no interference problems, their use may continue until the equipment is replaced, at which time they must be replaced with bandpass devices.

29. **TERMINATION OF ABANDONMENT OF AUTHORIZATIONS.** The Holder shall submit a plan to the Authorized Officer not less than ninety (90) days in advance of termination or abandonment of the Pipeline which identifies a schedule and procedures, including restoration activities, for the removal or abandonment of Pipeline System from Federal Lands. Said plan shall include all Pipeline-related improvements and equipment unless otherwise directed in writing by the Authorized Officer. Procedures for abandonment of the Pipeline shall be in accordance with the requirements specified in 49 CFR 192.727, 18 CFR 157.18, and any additional instructions deemed necessary by the Authorized Officer to protect the environment and/or public health and safety.

Abandonment of the Pipeline or noncompliance with any provision of Section 28 of the Mineral Leasing Act, as amended, or the Grant may be grounds for suspension or termination of the Grant if after due notice to the Holder, a reasonable opportunity to comply, and an appropriate administrative proceeding pursuant to 5 U.S.C. § 554, the Authorized Officer determines that such grounds exist and that suspension or termination is justified.

If the Authorized Officer determines that an immediate temporary suspension of activities authorized under the Grant is necessary to protect public health or safety or the environment, such activities may be curtailed prior to an administrative proceeding.

Deliberate failure of the Holder to use the Federal Lands for the purpose for which the Grant was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment: Provided, that where the failure to use the Federal Lands is due to circumstances not within the Holder’s control the Authorized Officer is not required to commence proceedings to suspend or terminate the Grant.

30. **AGENCY REQUEST FOR MODIFICATION.** After the Initial Operation, the Authorized Officer may require the modification of conditions of the Grant and the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of any stipulations contained herein as well as the avoidance or mitigation of adverse environmental impact resulting from the operation, maintenance and termination of the Pipeline. The Authorized Officer, in consultation with the Agency Official as appropriate, shall determine what type of authorization or permit the Holder will be required to seek.
31. The Holder shall operate, maintain, and terminate the Pipeline in a manner that will avoid or minimize degradation of air, land, and water quality. The Holder shall comply with applicable air and water quality standards and laws and regulations relating to pollution control or prevention.
32. **ZONES OF RESTRICTED ACTIVITIES.** The Holder’s activities in connection with operation, maintenance, and termination of the Pipeline System on Federal Lands in key fish and wildlife areas and in specific areas where threatened or endangered species of plants or animals are found may be restricted by the Authorized

Officer during periods of fish and wildlife breeding, nesting, spawning, lambing and calving activity, over wintering, and during major migrations of fish and wildlife or when necessary to insure that such activity will not jeopardize the continued existence of an endangered or threatened species, or modify or destroy its critical habitat. The Authorized Officer shall provide the Holder written notice of such restrictive action. At least annually, and as far in advance of such restrictions as is possible, the Authorized Officer shall furnish the Holder an updated list of areas where such actions may be required together with anticipated dates of restriction. The Holder shall adhere to the Construction March Chart (Exhibit E of the Grant).

There shall be no surface disturbance between the bore pits on Peters Mountain and no vehicles or heavy equipment shall cross at grade between the bore pits. There shall be no physical disturbance of the Appalachian National Scenic Trail between the bore pits.

33. **REPORTING, PREVENTION, CONTROL, CLEANUP, AND DISPOSAL OF OIL AND HAZARDOUS SUBSTANCES DISCHARGES.** The Holder shall comply with all applicable federal laws and regulations existing or hereafter enacted or promulgated, as well as the provisions in the Plan of Development Spill, Prevention, Control, and Countermeasure Plans and Unanticipated Discovery of Contamination Plan (Grant Exhibit C, Appendix D). In any event, the Holder shall comply with the Toxic Substances Control Act of 1976 as amended, 15 U.S.C. § 2601 *et seq.*, with regards to any toxic substances that are used, generated by, or stored on the Federal Lands. (See 40 CFR Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR §§ 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR Part 117 shall be reported as required by CERCLA Section 102(b), 42 U.S.C. § 9602(b). A copy of any report required or requested by any Federal or State agency as a result of a reportable release or spill of any toxic substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved Federal or State agency.

The Holder agrees to indemnify the United States against any liability arising from the release of any Hazardous Material or Hazardous Waste unless the release or threatened release is wholly unrelated to the Holder's activity. This agreement applies without regard to whether a release is caused by the Holder, its agent, or unrelated third parties.

If, during any phase of the operation, maintenance, or termination of the Pipeline, any Oil or other pollutant should be discharged, impacting Federal Lands, the control and total removal, disposal, and cleaning up of such Oil or other pollutant, wherever found, shall be the responsibility of the Holder, regardless of fault. Upon failure of the Holder to control, dispose of, or clean up such discharge on or affecting Federal Lands, or to repair all damages to Federal Lands resulting there from, the Authorized Officer may take such measures as deemed necessary to control and cleanup the discharge and restore the area, including, where appropriate, the aquatic environment and fish and wildlife habitats, at the full expense of the Holder. Such action by the Authorized Officer shall not relieve the Holder of any liability or responsibility.

34. **TECHNICAL-GENERAL PIPELINE SYSTEM STANDARDS.** All operation, maintenance, and termination practices employed with respect to the Pipeline System shall be in accordance with sound engineering practice and, with regard to the Pipeline, shall meet or exceed the Department of Transportation regulations, 49 CFR Parts 191, "Reports of Leaks," and 192, "Transportation of Natural and Other Gas by Pipelines: Minimum Federal Safety Standards".
35. **SLOPE STABILITY.** The Holder shall design the Pipeline System to provide measures, based on such detailed field investigations and analysis as may be necessary, so as not to contribute to the occurrence of, and to protect the Pipeline System against the effects of mass movement (See Grant Exhibit C, Plan of Development, Appendices C, Erosion and Sedimentation Control Plan, and F, Landslide Mitigation Plan).

Should a landslide or other erosion event occur on Federal Lands as a result of the construction, operation, maintenance or termination of the Pipeline, the Holder shall take the following actions:

- a. The Holder shall immediately notify and consult with the Authorized Officer in accordance with the Emergency Response Plan (See Grant C, Appendices Q and R) as required under these stipulations.
- b. The Holder shall develop site-specific plans for remediation of any such event in consultation with, and for approval by, the Authorized Officer. The site-specific plans shall be based on pipeline safety issues and the need to return the pipeline to service while mitigating and mediating effects to Federal facilities, infrastructure and resources.
- c. Prior to initiating any ground- or habitat-disturbing activities for remediation of an event, the Holder shall conduct or fund an environmental analysis including, but not limited to, scoping, site-specific resource analyses, and cumulative effects analyses, sufficient to meet the criteria set forth by Agency regulations in existence at the time the remediation activities are initiated. The Holder may refer to or rely on any previous environmental analysis to the extent such analysis is approved by the Agency. Any contractors selected by the Holder to conduct the necessary environmental analysis shall be approved by the Authorized Officer.

The Holder shall be subject to payment of cost recovery fees for Agency expenses incurred in the consultation, planning, and design reviews associated with the landslide or erosion event.

36. **ALL ACTIVITIES CONDUCTED WITHIN AUTHORIZED ROW.** The Holder shall conduct all activities associated with the operation, maintenance, and termination of the Pipeline within the authorized limits of the Grant.
37. **EMERGENCY CONDITIONS.** When necessary to respond to an Emergency Condition, the Holder may, at any time and without prior authorization, enter onto the Federal Lands in order to take actions necessary to abate an Emergency Condition.

The Holder must use best efforts to immediately notify the Authorized Officer of an Emergency Condition, its location (e.g., GPS or pipeline milepost), any emergency repairs or response actions proposed or undertaken, and other relevant information. The Holder must contact the Authorized Officer identified in the Holder's Construction Emergency Preparedness and Response Plan (Grant Exhibit C, Appendix O of the Plan of Development) and Operations, Maintenance, and Emergency Response Plan (Grant Exhibit C, Appendix R). The Holder must annually request updated contact information from each Authorized Officer and update the contact tables in the Holder's Emergency Plan and Preparedness and Public Safety Response Manuals and the Emergency Response Plan, accordingly.

Consistent with Holder's Construction Emergency Preparedness and Response Plan (Appendix Q of the Plan of Development), as that Plan may be amended from time-to-time, the Holder shall conduct a root cause analysis of Emergency Conditions. Unless otherwise agreed to by the Authorized Officer in writing, the analysis must be completed within 10 business days of the end of the Emergency Condition. The root cause analysis must be provided to the Authorized Officer.

In consultation with the affected Agency, the Holder shall develop a site-specific plan (Remediation Plan) addressing remediation of both the conditions that led to the Emergency Condition and any damage resulting from the Emergency Condition. Where a damaged Agency resource cannot be remediated, the Remediation Plan shall include appropriate mitigation compensating the Agency for damages resulting from the emergency. The Remediation Plan shall be submitted to the Authorized Officer for review and written approval within 30 business days after abatement of the Emergency Condition, unless another completion date is agreed to in writing. The Remediation Plan will be evaluated by the Authorized Officer in compliance with applicable law and Government policies including, without limitation, the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Clean Water Act (CWA), and applicable Agency land

and resource management plans. The Remediation Plan may be accepted, rejected, or accepted with conditions by the Authorized Officer.

After consultation with the affected Agency, the Authorized Officer may authorize the Holder to implement all or a portion of the Remediation Plan. Where the Authorized Officer provides such approval, a Special Use Permit or other written approval that meets the needs of the affected Agency will be provided to the Holder. Alternatively, the Authorized Officer and the affected Agency may decide that the affected Agency will undertake, or will contract to undertake, all or a portion of the remediation work.

The Holder shall be solely responsible for all costs resulting directly or indirectly from any Emergency Condition. This obligation includes, without limitation, remediation and or compensatory mitigation, and the cost of environmental compliance (e.g., NEPA, ESA and CWA compliance). The Holder must promptly pay all costs in advance, unless otherwise agreed to in writing by the Authorized Officer.

As a condition of receiving the Grant, the Holder assumes liability for, and agrees to save, hold harmless, and indemnify the applicable United States of America, its agents, and employees from and against any and all liabilities, obligations, losses, damages, judgments (including without limitation penalties and fines), claims, actions, suits, costs, and expenses (including without limitation attorneys' fees and experts' fees) of any kind or nature whatsoever, and by whomsoever made, that in any way arise out of the Holder's acts or omissions, or the acts or omissions of its employees, or agents, or contractors, in association with any Emergency Condition including, without limitation, abatement and Remediation Plan implementation.

38. **COMPLIANCE WITH EXISTING LAWS.** During the life of this Grant, to the extent practicable, the Holder shall comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations, and state laws and regulations applicable to the authorized use. If requested, the Holder shall provide to the Agency copies of applicable permits from other agencies.
39. The Holder must obtain all Clean Water Act Section 401 water quality certifications or waivers that will be required for the Project prior to commencing any activity on Federal Lands that may result in any discharge into navigable waters. The Holder must strictly comply with any limitations and monitoring requirements set forth in any such certification, which shall become conditions on the Grant. In accordance with 43 C.F.R. §§ 2886.11 and 2886.17, the Grant shall terminate if any of the limitations and monitoring requirements set forth in the certification(s) is not met.