
Final Agency Action

Issuance of Right-of-Way Grant

Eastern States Director's Recommendation

It is my decision to approve a 42-inch, steel-welded, underground natural gas pipeline Right-of-Way Grant and associated Temporary Use Permit (VAES-058143-04 and VAES-058143-05) 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
State Director, Bureau of Land Management, Eastern States

5/15/2023
Date

Secretarial Approval

I hereby approve the decision of the Eastern States Director. My approval 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.



Tommy Beaudreau
Deputy Secretary,
Department of the Interior

MAY 17 2023

Date

Appeal of this Decision

Section 313(b) of the Energy Policy Act of 2005 (EPAAct), 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 EPAAct, 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 (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. Department of Agriculture Forest Service (Forest Service or FS) in Virginia and West Virginia. The ROW grant is in connection with the 303.5-mile long natural gas pipeline, known as the Mountain Valley Pipeline (MVP) Project. On October 13, 2017, the Federal Energy Regulatory Commission (FERC) issued a Certificate of Public Convenience and Necessity for the entire MVP Project (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. 30 U.S.C. § 185(c)(2).

Consistent with 40 C.F.R. § 1506.3, the Department is adopting, and relying on, the environmental analyses and documentation in the FERC Mountain Valley Project and Equitrans Expansion Project Final Environmental Impact Statement (FEIS) (FERC FEIS; FERC 2017a) and the FERC Boring Environmental Assessment (EA) (FERC 2021), the 2020 Forest Service Final Supplemental Environmental Impact Statement (FSEIS) (2020 FSEIS; FS 2020) and the 2023 Forest Service FSEIS (2023 FSEIS; FS 2023a), pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.* The Department has conducted an independent review of the FERC FEIS, the 2020 FSEIS and the 2023 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 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 defers 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’s 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 3.5 miles (75.25 acres or 1.2 percent of the total MVP acreage) of the JNF in Monroe County, West Virginia, and Giles and Montgomery counties, Virginia. The MVP pipeline route crosses 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.

Mountain Valley's objective 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 Project is designed to transport about 2.0 million decatherms per day (Dth/d), equivalent to about 2.0 billion cubic feet per day (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- 8.³

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.

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:

- 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.

³ The Fourth Circuit's vacatur and remand of the FS ROD (FS 2021) and the BLM's MLA ROW decision (BLM 2021a) and the amended 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 issued a ROD (FS 2017) amending the Jefferson National Forest Revised Land and Resource Management Plan (Forest Plan) to modify certain Forest Plan standards that precluded the use of standard pipeline construction methods for the MVP Project. 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 its 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 land.⁴ 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 FS 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, the National Forest Management Act (NFMA), and the 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 sedimentation analysis as noted below (U.S. Court of Appeals 2018). 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 Forest Plan violated NFMA. On these bases, the Fourth Circuit vacated the FS's decision approving the JNF Forest Plan 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 2020) to the BLM seeking to construct and operate the natural gas pipeline across the JNF and 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 address the NEPA and NFMA deficiencies identified by the Fourth Circuit, the FS initiated the

⁴ 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 amended application considered in this Record of Decision.

process of supplementing the FERC FEIS.

With the BLM serving as a cooperating agency, the FS completed a FSEIS in December 2020 (2020 FSEIS, FS 2020) that considered the July 2018 Fourth Circuit opinion, 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 January 11, 2021, the Forest Service issued a ROD (FS 2021). On January 14, 2021, the BLM issued a ROD granting a 30-year pipeline ROW in the JNF (BLM 2021a). Several environmental organizations immediately challenged both the Forest Service's and BLM's RODs in the Fourth Circuit. On January 25, 2022, the Fourth Circuit again vacated and remanded both the Forest Service's and BLM's RODs (U.S. Court of Appeals 2022). The Fourth Circuit found that the Forest Service and BLM: 1) inadequately considered the actual sedimentation and erosion impacts of the pipeline; 2) prematurely authorized the use of the conventional bore method to construct stream crossings; and 3) the Forest Service failed to comply with the Forest Service's 2012 Planning Rule.

On March 28, 2022, Mountain Valley filed an amended MLA ROW application (DOI 2022) with the BLM. On August 5, 2022, the BLM deemed Mountain Valley's amended application complete. On December 23, 2022, the Environmental Protection Agency (EPA) published a notice of availability of the Draft SEIS in the Federal Register, starting a 45-day comment period, which was later extended 15 additional days. On April 14, 2023, the EPA published a notice of availability of the Final SEIS in the Federal Register. On May 11, 2023, the FS issued an Errata to the MVP FSEIS, which corrected typographical errors and clarified several statements in the FSEIS. On May 15, 2023, the FS issued their ROD approving the Forest Plan amendment (FS 2023b). The FS subsequently submitted terms and conditions for the BLM to include in a ROW grant/TUP in the FS's concurrence letter for the approval of a ROW grant and TUP to cross 3.5 miles of JNF (Attachment B).

In response to the Fourth Circuit's decision to vacate and remand the BLM's December 20, 2017 ROD and consistent with 30 U.S.C. § 185(p), the BLM analyzed whether co-locating Mountain Valley's proposed ROW with existing rights-of-way on federal lands was practical, which is reflected in the 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 (FS 2020, Appendix A). The 2018 Analysis set forth in detail the criteria the 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, the 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 USACE's definition of the term "practicable." The Fourth Circuit decision upheld the BLM's 2018 Practicality Analyses and the BLM's 2020 addendum to the 2018 Analysis (U.S. Court of Appeals 2022). The FS confirmed that no new opportunities for collocation within existing rights-of-way on federal lands have occurred since the Fourth Circuit's 2022 decision. Therefore, the BLM's previous practicality analysis remains valid.

1.2 BLM Purpose and Need

The BLM's purpose and need is to respond to Mountain Valley's amended MLA ROW application for the MVP project to construct and operate a natural gas pipeline across NFS lands consistent with the MLA, 30 U.S.C. § 185 and BLM's implementing regulations, 43 CFR Part 2880. Under the MLA, the BLM has responsibility for reviewing Mountain Valley's ROW application and issuing 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 analyses for NFS lands as well as the FERC FEIS and FERC Boring EA, consistent with the Fourth Circuit's decisions. The BLM participated as a cooperating agency with the FS to complete the necessary environmental analyses to address the issues identified by the Fourth Circuit's 2022 decision.

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, FS's 2020 FSEIS and FS's 2023 FSEIS. The BLM will grant ROW VA-ES-058143-04 and the associated TUP VA-ES-058143-05 for the construction, operation, maintenance, and termination of the Proposed Action alternative from the FERC FEIS, 2020 FSEIS, and 2023 FSEIS for the MVP Project across NFS lands. The BLM will incorporate the terms and conditions identified in the FS concurrence letter (Attachment B) 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.

The Grant will be for the route certified 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-foot wide (including the ground occupied by the pipeline) and 3.5 miles long and will encompass 21.62 acres 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 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 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 June 2022 (Attachment A, Exhibit 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 A, Exhibit 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 for West Virginia and Virginia
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 Usage 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, and Signage Plan
AA	Off-Highway Vehicle Management Plan

* Appendix V incorporates the 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, 2026 (FERC 2022). 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 certificating 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 (Attachment 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

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. The bonding amount for reclamation activities is \$3,909,838.
- Accommodating all cultural resources costs associated with implementing the

and waterbodies.

Additionally, while the Proposed Action will require additional disturbance of NFS lands as felled trees are removed from the site, the pipeline is installed, and crossings are constructed across four streams and under the ANST, the mitigation measures imposed as part of the proposed action will ensure the preservation of natural, historic, cultural, and other important aspects of our heritage, including the ANST. In balancing environmental consequences disclosed in the FERC EIS, 2020 FSEIS, and 2023 FSEIS with the benefits of supporting the nation's energy demand, the Proposed Action is the environmentally preferable alternative.

Based on FERC's Certificate (FERC 2017b), the record supporting FERC's decision, the USACE's concurrence, the FS's 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 has 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, including where 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, the 2020 FSEIS, and the 2023 FSEIS that included a review of FERC's 2021 Boring EA analysis for its applicability to the conventional bore crossing of streams on the JNF (FS 2023a, Appendix C). The Department also considered public comments submitted during the FERC EIS and both FS SEIS processes, the results of consultation efforts, the final POD dated June 2022, and FS's concurrence with the issuance of a ROW grant and TUP and decision to amend the JNF Forest Plan. 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 2023b) approved a Forest Plan amendment that allowed the MVP project to be consistent with standards in the JNF Forest Plan.

The FERC FEIS identified and addressed the impacts associated with Mountain Valley's proposed action across all land jurisdictions, including Federal lands. The 2020 FSEIS addressed the key issues identified by the Fourth Circuit's 2018 decision and any relevant new information and changed circumstances on NFS lands. The 2023 FSEIS addressed the key issues identified by the Fourth Circuit's 2022 decision and any relevant new information and changed circumstances on NFS lands. The 2023 FSEIS key issues including those identified by the Fourth Circuit, are: (1) consideration of sedimentation and erosion real-world data related to the

Project; (2) compliance with the 2012 Planning Rule (36 CFR Part 219); and (3) review of the conventional bore method to construct stream crossings. The 2023 FSEIS analyzed in detail the proposed action's impact on the following resources on NFS lands: water resources; threatened, endangered and sensitive species; and those related to amending the JNF Forest Plan under the NFMA (utility corridors, soil and riparian, old growth, the ANST, and scenic integrity). For other resources and the Practicality Analysis, the Fourth Circuit's 2018 and 2022 decisions and 2023 FSEIS provided a rationale to support why the analyses in the FERC FEIS and the 2020 FSEIS remain adequate.

The analysis in the 2023 FSEIS (FS 2023a, pp. 39-49) concluded the available relevant data, including the Forest Service's and BLM's consideration of monitoring information from U.S. Geological Survey (USGS) data, MVP, Virginia Department of Environmental Quality (VDEQ), and Transcon Environmental Inc. (Transcon), are all consistent with the conclusion that the ECDs as modeled in Revised Universal Soil Loss Equation 2 (RUSLE2) on the JNF continue to be effective in minimizing sediment runoff, and that observations of elevated sediment levels within the watershed likely result from multiple land uses. With continued implementation and monitoring of ECDs, short-term adverse effects on water resources would be minor to moderate. Over the long term, adverse effects are anticipated to be minor because the POD and Project Design requirements would minimize construction-related effects to soils, such as trench excavation, backfilling, contouring, and the movement of construction equipment.

This analysis also demonstrates the Forest Service's and BLM's consideration of USGS data and other relevant information related to the modeling used in the 2020 FSEIS and the actual impacts of the pipeline and its construction. Relevant data and information indicate that construction activities associated with the pipeline are potential contributors to turbidity and sediment in local streams along with other land uses in the watersheds that may produce sediment during rainfall events. Because RUSLE2 is not designed to be validated with in-stream water quality monitoring data, it is not possible to conclusively determine if the USGS data and other relevant information are consistent with the modeling. However, examination of both quantitative data (i.e., USGS and MVP monitoring data) and inspection and monitoring reports (i.e., VDEQ and Transcon) that visually examine the ROW (including in direct response to potential sediment-delivering events) do not suggest that actual data are inconsistent with the modeling used in the 2020 FSEIS.

As detailed in the FERC FEIS, the 2020 FSEIS, and 2023 FSEIS, construction and operation of the Proposed Action 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, 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.

4.1. Water Resources

The 2020 FSEIS (pp. 95 to 102) found that effects on water resources from implementation of

the Proposed Action would occur over the short and long term. Short-term impacts would be associated with construction and would be minor. Construction activities are not likely to significantly affect groundwater resources because the majority of construction would involve shallow excavations. The Project would 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 would be associated with post-construction restoration and operation and maintenance and would be minor because disturbed areas would be revegetated, reducing the potential for sedimentation in surface water features.

To determine potential impacts to water resources on NFS lands, the BLM conducted a site visit in October 2022 to review each stream crossing on NFS lands and the Roanoke River in Lafayette, Virginia. The BLM also independently reviewed the following information:

- 2020 *Hydrologic Analysis and Hydrologic Analysis for the JNF* (Geosyntec Consultants 2020a, 2020b)
- Draft 2015-2019 George Washington and Jefferson National Forests (GWJ) Monitoring Evaluation Report (Forest Service 2020b)
- Previously received public comments received regarding water resources
- MVP's Sediment Monitoring Analysis (Appendix L of the 2022 SBA)
- Approved erosion and sediment control plans (POD Appendices C-1 through C-3)
- USGS in-stream water quality monitoring data, 12 in-stream stations beginning in 2017
- MVP in-stream water quality monitoring data, responsive to USFWS 2020 BO Monitoring Plan
- VDEQ in-stream water quality monitoring data and inspection reports, since 2018
- Transcon ROW site inspection reports on the JNF, third-party compliance inspection contractor reporting to the FS, since 2018

The 2023 FSEIS (pp. 37 to 47) demonstrated the available, relevant data, including the Forest Service and BLM's consideration of monitoring information from USGS data, MVP, VDEQ, and Transcon, are all consistent with the conclusion that the ECDs as modeled in RUSLE2 on the JNF continue to be effective in minimizing sediment runoff, and that observations of elevated sediment levels within the watershed likely result from multiple land uses. With continued implementation and monitoring of ECDs, short-term adverse effects on water resources would be minor to moderate. Over the long term, adverse effects are anticipated to be minor because the POD and Project Design requirements would minimize construction-related effects to soils, such as trench excavation, backfilling, contouring, and the movement of construction equipment.

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. The 2023 FSEIS incorporated by reference the 2021 FERC Boring EA (FERC 2021) regarding the use of conventional boring methods for stream crossings. The 2023 FSEIS Attachment C is a review of the 2021 FERC Boring EA analysis for its applicability to stream crossings on the JNF. The review concluded that the FERC EA's analysis is consistent with the conclusions in the 2020 FSEIS and that, overall, conventional bore stream crossings would result in fewer adverse effects for stream crossings on NFS lands (2023 FSEIS, Appendix C, p. 202).

4.2 Threatened, Endangered and Sensitive Species

The 2023 FSEIS analyzed changed conditions occurring since the 2020 FSEIS that are related to potential impacts to aquatic and terrestrial threatened, endangered and sensitive species (pp. 50 to 61, pp. 117 to 118). The analysis included reviews of the following information: species surveys; the FERC FEIS; independent agency review in 2022 of the *Hydrologic Analysis for the JNF* (Geosyntec Consultants 2020b) and the *Hydrologic Analysis for Aquatic Species* (Geosyntec Consultants 2020a); the 2017 Biological Assessment (BA) and 2020 and 2022 SBAs (FERC 2017c, MVP 2020, MVP 2022); the 2017, 2020 and 2023 USFWS BOs (USFWS 2017, 2020, 2023a); the 2017, 2020, and 2022 Biological Evaluations (BEs) (MVP 2017; Copperhead 2020; Copperhead 2022); the POD and appendices (Appendix A, Exhibit B); and data and information described in public comments on the DSEIS.

4.2.1 Aquatic Species

Since the 2020 FSEIS, changed conditions for aquatic species include: issuance of the 2021 FERC Boring EA regarding conventional boring; MVP sediment monitoring per the 2020 USFWS BO; the Fourth Circuit's February 3, 2022 opinion on the 2020 USFWS BO; changes to the status of Federally listed species and designated critical habitat; and changes to the Draft Updated Region 8 list of Regional Forester's Sensitive Species. Specifically, Critical Habitat for the candy darter was designated on May 7, 2021 and includes a segment of Stony Creek downstream of NFS lands. The Atlantic pigtoe was listed as Threatened under the ESA and Critical Habitat was designated on December 16, 2021, including in Craig Creek, downstream of NFS lands. In addition, the longsolid and the round hickorynut mussels were listed as Threatened under the ESA and Critical Habitat was designated on March 9, 2023. These two species and their designated Critical Habitat do not occur within the aquatic species Action Area, defined in the 2023 FSEIS. One aquatic species, the Tennessee dace, is proposed to be added and two species are proposed to be removed (Sickle darter and Allegheny County cave amphipod) from the Draft Updated Region 8 list of RFSS. Aquatic species for which there are no changed conditions or effects determinations (i.e., clubshell mussel, snuffbox mussel, yellow lance, and James spineymussel) are addressed in the 2017 FERC FEIS and 2020 FSEIS and supplemental analysis was not needed (FS 2023a, p. 51).

In consideration of the entire 303.5-mile-long project, the 2023 FWS BO concurs with a determination of **May Affect, Likely to Adversely Affect** for the candy darter, but finds it is not

likely to jeopardize the continued existence of the candy darter (FWS 2023b). No direct effects are anticipated for the candy darter on NFS lands since the four streams (unnamed tributaries of Craig Creek) crossed by the MVP on Brush Mountain and Sinking Creek Mountain are not known to harbor the candy darter (FWS 2023a; MVP 2022b). The JNF MVP crossings are not in the candy darter watershed and the anticipated effects remain consistent with those disclosed in the 2017 FERC SEIS and 2020 SEIS. No candy darter Critical Habitat occurs in the JNF waterbodies crossed by the MVP. The 2023 FWS BO determined that impacts from the MVP pipeline crossings of Kimballton Branch and Stony Creek, which are outside NFS lands, are not likely to jeopardize the continued existence of the candy darter. A thorough independent review of the MVP data was performed by Forest Service biologists and hydrologists. The Forest Service anticipates no indirect or cumulative effects from the MVP ROW on NFS lands on the candy darter (FS 2023a, p. 54).

Roanoke logperch are known to occur downstream of the MVP waterbody crossings within the North Fork Roanoke River; however, the occurrences are outside of the Project area and are beyond the extent of increased sedimentation modeled for the waterbody crossings within the JNF. The 2023 FWS BO and 2023 FWS letter agree with the determination of **May Affect, Likely to Adversely Affect** the species for the MVP as a whole, but finds it is not likely to jeopardize the continued existence of the Roanoke logperch. No suitable habitat occurs in the JNF and no effects from Project activities on the JNF are expected. (2023 FSEIS, p.55).

For the Atlantic pigtoe, the 2022 SBA proposed retaining the 2020 determination of **No Effect** because the 2021 listing and Critical Habitat designation did not provide new information about the species or its occurrences near the project area (MVP 2022b). The USFWS concurs with this determination (USFWS 2023b). As described in the 2020 FSEIS (pp. 98 to 99), populations of this species were not identified at any of the Project stream crossings, and the closest known population (according to the Virginia Department of Wildlife Resources [VDWR] Wildlife Environmental Review Map Service database) occurs in Craig Creek downstream of the confluence with Johns Creek approximately 30.2 miles downstream of the project area. (2023 FSEIS, p. 56).

The Tennessee dace does not occur in watersheds affected by the project and therefore was not included in the 2022 SBE or the 2023 FSEIS for further analysis (2023 FSEIS, p. 56).

4.2.2 Terrestrial Species

Since the 2020 FSEIS, changed conditions for terrestrial threatened, endangered and sensitive species include: the Fourth Circuit's February 3, 2022 opinion on the 2020 USFWS BO; changes to the status of the northern long-eared bat from threatened to endangered on November 29, 2022 USFWS proposal to list the tricolored bat on September 13, 2022; delisting of running buffalo clover on August 6, 2021; and changes to the Draft Updated Region 8 list of Regional Forester's Sensitive Species that includes the addition of three species (American bumble bee, little brown bat and American ginseng) and removal of ten species (Sickle darter, Rafinesque's big-eared bat, Appalachia bellytooth, brown supercoil, highland slitmouth, crossed dome, delicate vertigo, cupped vertigo, Alleghany County cave amphipod and Avernus cave beetle). Terrestrial species for which there are no changed conditions or effects determinations (i.e., gray bat, Virginia big-eared bat, rusty patched bumble bee, smooth coneflower, small whorled pogonia, and shale barren rock cress) are addressed in the 2017 FERC FEIS and 2020 FSEIS and

supplemental analysis was not needed. Additionally, the USFWS concurred with the effects determinations of these six terrestrial species (USFWS 2023b).

The USFWS concurred with an effects determination of **May Affect, Likely to Adversely Affect** for the Indiana bat for the MVP as a whole (USFWS 2023b). However, no effects are anticipated on the JNF. Indiana bats were not captured during 2015 and 2016 mist-net surveys, but it is assumed the species occupies potentially suitable summer habitat, spring staging/fall swarming habitat, and winter hibernacula in the Action Area where presence/probable absence surveys were not conducted. The USFWS confirmed that the areas where trees were cleared for the Project continue to be unsuitable for bat species and will be for years to come (USFWS 2023a). Based on coordination with Virginia Department of Wildlife Resources, no new capture or roost records have been reported with the species Action Area (MVP 2022b). Some Indiana bat individuals would possibly be impacted during construction and operation and maintenance of the Project (2023 FSEIS, p. 57). As summarized in Section 2.2.2.2 of the 2023 FSEIS, the Project would require implementation of measures to avoid, minimize, and mitigate adverse effects on the Indiana bat.

The USFWS concurred with an effects determination of **May Affect, Likely to Adversely Affect** for the northern long-eared bat for the MVP as a whole (USFWS 2023b). Results of summer mist-net and harp trap surveys conducted in 2015 confirmed presence of northern long-eared bats within the limits of disturbance. Additional mist-net surveys have not been required by USFWS since trees were removed in 2018 and the limits of disturbance is no longer considered bat habitat. Individuals present during spring staging and autumn swarming may be impacted during project development (2023 FSEIS, p. 57). As summarized in Section 2.2.2.2 of the 2023 FSEIS, the Project would require implementation of measures to avoid, minimize, and mitigate adverse effects on the northern long-eared bat.

The USFWS concurred with the determination of **Is Not Likely to Jeopardize** the tricolored bat for the MVP as a whole (USFWS 2023b). Bat surveys were conducted in 2015 and 2016, but no tricolored bats were captured within the JNF ROW. Forested areas of the JNF outside of the ROW provide potential summer habitat for tricolored bats. Additional mist-net surveys are not be required by USFWS since trees were removed in 2018 and the limits of disturbance is no longer considered bat habitat. No suitable cave openings or portals were observed along the proposed alignment on the JNF. There are no known winter hibernacula within 0.25 mile along the proposed alignment. The closest known hibernaculum is approximately 3 miles from the ROW crossing JNF lands. Additionally, no blasting will occur on the JNF, therefore, no effects to hibernacula would occur that have not been covered by other best management practices and conservation measures (i.e., noise, hydrology, and karst features) (2023 FSEIS, p. 58).

A **no Impact** determination was made for the American bumble bee. This species has not been documented in the JNF; however, tree removal of the regrowth on Peters Mountain may create potential American bumble bee habitat and could be beneficial for the species. Revegetation of the ROW would follow a two-step process as recommended by the Forest Service: 1) stabilization of soils immediately following tree removal and construction activities with appropriate seed mixes and techniques, and 2) revegetation of the ROW corridor as needed with

native seed mixes recommended in consultation with the Forest Service (2023 FSEIS, p. 58).

A May Impact Individuals – Is Not Likely to Cause a Trend Toward Federal Listing or Loss of Viability determination was made for the little brown bat. Summer habitat for little brown bats is present within the JNF in the form of trees. However, the removal of trees from the limits of disturbance has already occurred. There are no known winter hibernacula within the Project area on the JNF; however, there are three known hibernacula in Giles County. The closest hibernaculum to the JNF sections of the MVP is approximately 3 miles northwest of the Project. Indirect effects from blasting are not expected to detrimentally impact little brown bats in the vicinity of the Project area. Additionally, no blasting will occur on the JNF, therefore, no effects to hibernacula would occur that have not been covered by other BMPs and conservation measures (i.e., noise, hydrology, and karst features) (2023 FSEIS, p. 59).

A May Impact Individuals – Is Not Likely to Cause a Trend Toward Federal Listing or Loss of Viability determination was made for American ginseng. This species was found at three locations during plant surveys on alternative pipeline routes on JNF land that are no longer part of the proposed route (MVP 2017). Although suitable habitat is present within the Project area, tree removal within the limits of disturbance has already occurred; therefore, there is no longer under a closed canopy of mature trees or shaded that would provide habitat for the species. Potential effects from the introduction of invasive species have been covered by other mitigation measures (2023 FSEIS, p. 60).

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.

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 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 Forest Plan.

5.2 FS 2020 SEIS

On July 30, 2020, FS and BLM published in the *Federal Register* a Notice of Intent (NOI) to prepare a supplemental EIS for Mountain Valley's revised application for a ROW to cross the JNF. The 2020 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 2020 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 2020 FSEIS. A NOA of the 2020 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.

5.3 FS 2023 SEIS

On November 17, 2022, FS and BLM published in the *Federal Register* a Notice of Intent (NOI) to prepare a supplemental EIS for Mountain Valley's revised application for a ROW to cross the JNF. The 2023 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 2023 SEIS NOI served as the public notification under 43 C.F.R. § 2884.20(a).

A Notice of Availability (NOA) was published by the EPA in the *Federal Register* on December 23, 2022, offering a 45-day comment period. In response to public comments, the FS extended the comment period two weeks until February 21, 2023 (88 FR 8843). Approximately 364 comment letters, 9,100 form letters, and 53,781 signatures submitted via petitions were received during the 60-day comment period. Timely comments were given full consideration and were analyzed for substantive content (40 CFR §§ 1503.3 and 1503.4). Literature and references submitted with public comments were reviewed for consideration. Where new information was found, it was assessed and, in some cases, resulted in changes to the 2023 FSEIS. Changes between the DSEIS and the FSEIS are disclosed in FSEIS, Section 1.7. Comments received outside a formal public comment period were also reviewed and are a part of the project record.

Content from analysis of comments yielded 225 statements which summarized the concerns expressed through public comment. These concern statements and agency responses are included in the 2023 FSEIS (Appendix F). 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. A NOA of the 2023 FSEIS was published in the *Federal Register* on April 14, 2023. Consultation and Coordination

5.4 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 2023 BO.

5.5 Consultation under Section 7 of the Endangered Species Act

Consistent with the Natural Gas Act, the FERC remains the lead agency for consultation with the USFWS on the entire pipeline. 15 U.S.C. § 717n. Mountain Valley will have to comply with applicable provisions of the reasonable and prudent measures and terms and conditions in the 2023 BO (USFWS 2023a). The 2023 BO noted at the end of its Opinion that the petitioners in the Fourth Circuit FWS litigation related to MVP submitted materials to the USFWS, including new materials that had not previously been submitted. Although the USFWS noted in the 2023 BO that these materials came too late to be considered during consultation and addressed in the BO, the USFWS requested FERC and the other action agencies, including the FS and BLM, to assess whether the materials contain any new information that might prevent them from relying on this BO and meet their obligations under Section 7 of the ESA. On March 29, 2023, FERC submitted a letter to USFWS, as requested, concluding that the new materials do not contain any new information that would change FERC's effects determinations regarding proposed and listed species and proposed and designated critical habitat. FERC also concluded that the information in the comments from outside parties does not affect the findings or methodologies supporting the Biological Assessment. Consequently, FERC concluded that reinitiation of Section 7 consultation is not warranted.⁶

The FS and BLM conducted their own independent review of the materials submitted to the USFWS and determined that they do not contain new information that might prevent the agencies from relying on the BO to inform their decisions. This review included consideration of the commenters' expert report, submitted both as a public comment on the 2022 DSEIS and separately to the USFWS regarding the BO. (2023 FSEIS, Section 3.3.2 and Appendix F). The outside report criticized the Hydrology Analysis and modeling, as well as the agencies' review of real-world data to corroborate the modeling, which the commenters argued would undermine the USFWS's findings and conclusions in the 2023 BO.

Additional correspondence was exchanged between USFWS, FERC, NGOs (e.g., among others, The Wilderness Society and the Sierra Club), and Mountain Valley regarding the materials referenced above, including the commenters' expert report, in March and April 2023. On May 9, 2023, The Wilderness Society also sent a letter to the FS with excerpts from the correspondence and a suggestion that the FS's response to their comments in the 2023 FSEIS and the expert reports was inadequate. The agencies' hydrology experts and the USDA Natural Resources Conservation Service (NRCS) expert on the model relied on by the agencies reviewed this material and the additional correspondence, including the May 9, 2023, letter to the FS. The agencies' experts and the USDA NRCS expert concluded that the material offers no pertinent or new information that would affect the sedimentation modeling or the conclusions in the 2023 FSEIS. Relying on the

⁶ Petitioners have challenged the USFWS's 2023 BO in the Fourth Circuit. On April 7, 2023, the Petitioners in the USFWS case also sent BLM and FS a Notice of Intent to file a citizen suit against the agencies for violation of Section 7 of the Endangered Species Act.

opinion of the agencies' experts, the FS and BLM conclude the materials submitted do not change the effects analysis in the 2023 FSEIS for threatened and endangered species. (2023 FSEIS, Section 1.11).

5.6 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.

Consistent with the Natural Gas Act, the FERC remains the lead agency for compliance with Section 106 of the National Historic Preservation Act (NHPA). 15 U.S.C. § 717n. FERC and the other cooperating Federal agencies, including the FS and the BLM, together with Tribal governments, executed a single Programmatic Agreement (PA) with the West Virginia and Virginia State Historical Preservation Offices, which reflects the obligations for compliance with the NHPA (FERC 2017b). 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. The FS and BLM will continue to fulfill their obligations as directed by the PA (Attachment D).

5.7 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 2017d) 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 the treatment plan for archaeological site 44GS241 and requested to monitor data recovery. Excavations at this site have not occurred to date. 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. The FS will require the use of Eastern Band of Cherokee Indians and Cherokee Nation of Oklahoma monitors on site 44GS0241.

On October 13, 2022, the FS sent letters notifying the affected tribes of an amended right-of-way application and the FS plans to publish the Notice of Intent for the SEIS. On December 14, 2022, the FS notified the affected tribes of the FS plans to publish the Notice of Availability for the Draft SEIS. These tribes included:

- Absentee-Shawnee Tribe of Indians of Oklahoma
- Cherokee Nation
- Cherokee Nation of Oklahoma
- Eastern Band of Cherokee Indians
- Eastern Shawnee Tribe of Oklahoma

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

6 Notification of ROD and Contact Person

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

1. Published the ROD on BLM's ePlanning website;
2. Provided a copy of the ROD to all who requested it.

Contact Person:

Robert Swithers
District Manager
Bureau of Land Management
Southeastern States District Office
273 Market Street
Flowood, MS 39232
601-919-4650

7 References

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