

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of the Application of:

Mountain Valley Pipeline, LLC

Docket No. CP16-10-000

COMMENT

Preserve Craig and Save Monroe hereby provide comments in response to the Notices of Availability of the Draft Environmental Impact Statement for the Proposed Mountain Valley Pipeline (“MVP”). In particular, these Interveners address the jurisdiction of the Forest Service on the Jefferson National Forest (“JNF”) and the Forest Service obligations to manage the National Forest System “to sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land.” 36 CFR § 219.1(a). The comments specific to the Forest Service jurisdiction follow the general comments below on the inadequacy of the DEIS.

**Overview of the Inadequacy of the FERC DEIS**

Like many other individuals and organizations, Preserve Craig and Save Monroe, and its members, have submitted numerous comments on the MVP that provide factual information about the impacts threatened by the MVP as well as professional expertise on the assessment of the impacts. Despite the public’s efforts to utilize the NEPA process as conducted by FERC, the information and analysis provided by the public is largely ignored in the DEIS. The DEIS has been developed in a vacuum, all in violation of the intent and purpose of NEPA. The only information that is included in the appendices is information fabricated by MVP. The DEIS lacks substantive qualitative and quantitative analysis. The recommendations are based entirely on unsupported conclusions.

The DEIS appears to be drafted around a skeletal framework that FERC has used over and over again to disguise a sham process. FERC’s canned DEIS formula avoids focusing on impacts and threats that are unique to the proposed routing, and presents information in a manner that detracts from the extraordinary impacts the proposed MVP would have across a 300 mile course of mostly mountainous terrain that supplies remarkable water resources. Finally, in terms of form, the DEIS is intentionally misleading in that it is unclear as to which parts are based on Forest Service jurisdiction and which parts are based on FERC jurisdiction. It appears that FERC has made assessments on impacts to the Jefferson National Forest resources for which it has no authority. On the face of the DEIS, it is unclear which agency is responsible for which drivel.

Regardless of which agency is responsible for the DEIS, it is inadequate. The appendices are nothing more than lists of data together with a handful of self-serving

photographs for the purported purpose of illustrating visual impacts in select locations across the 300 mile route. There is nothing analytic about the appendices, in violation of 40 CFR §1502.18(c). There are no photographs that represent the visual degradation of the Jefferson National Forest, its recreational resources, and the surrounding communities.

The DEIS presents conclusory statements without substantive analysis. There is no objective assessment of the beliefs that are represented in the DEIS. Moreover, FERC mistakenly believes that the public is not entitled objective assessment. For example, on page 1-9 of the DEIS, section 1.2.3, FERC asserts that it need not disclosed the basis for its conclusion that there is a lawfully supported need for the project until it issues its final Order granting the certificate.<sup>1</sup> A DEIS is not a placeholder. A DEIS must both inform and involve the public. The public has been shut out, and all the public knows is that FERC is going to grant a certificate regardless of the impacts. FERC says so on page 1-9: it will tell us why the MVP is needed when it grants the certificate.

The members of Preserve Craig and Save Monroe are familiar with manner in which the Forest Service ordinarily performs its duties. The MVP DEIS is not a representative work-product for the Forest Service. The Forest Service is quite skilled at drafting appeal-proof environmental analysis documents, and this one fails that test. On the other hand, FERC need not concern itself with appeal-proof analyses because FERC routinely grants certificates and issues construction orders while FERC suspends the appeal process with a procedural tool, called a tolling order, that is entirely unique to FERC's authority. FERC made it up, and many gas pipelines have been constructed before FERC ever gets around to completing its administrative appeal process, termed "rehearing", because FERC suspends the process.

A DEIS cannot suspend the public participation requirements of NEPA in the same manner that FERC uses the tolling orders to suspend its administrative process to deny interveners due process.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain

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<sup>1</sup> FERC has stripped the Forest Service and BLM of its authority to determine the need for the activity, as these agencies' purpose and need statements in the Notice of Availability are absurd. "The BLM's purpose and need for the proposed action is to respond to a Right-of-Way Grant application submitted by Mountain Valley on April 5, 2016....The FS's purpose and need for the proposed action is to consider issuing a concurrence to the BLM for the Right-of-Way Grant and to evaluate the amendments to the LRMP for the Jefferson National Forest that would make provision for the MVP pipeline if the FS decides to concur and BLM decides to issue a Right-of-Way Grant." 81 Fed. Reg. 66269 (2016).

comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

40 CFR § 1502.9(a.). Section 102(C) of NEPA requires:

a detailed statement by the responsible official on --

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

42 USC § 4332(C).

The record is loaded with comments and information that document the adverse environmental impacts (42 USC § 4332(C)(ii)), but because FERC either generally denies impacts or does not identify and describe the impacts, the impacts are not disclosed or assessed in the DEIS. Moreover, there is no analysis of the effects of waiving the Forest Service standards to legalize the proposed activity. The DEIS is so inadequate it precludes meaningful analysis and must be revised.

Where the applicant and FERC admits adverse impact, the impacts are discounted because it is claimed that mitigation will be employed to minimize the impacts. Without knowledge of the effectiveness of mitigation, the impacts cannot be assessed by either the decision maker or the public. 40 CFR § 1502.16(h). Furthermore, neither FERC, the Forest Service, or the BLM can rely on mitigation to discount impacts where the mitigation has not been demonstrated to be effective and the analysis of purported effectiveness been vetted in the public participation process.

NEPA requires agencies to "discuss potential mitigation measures in their EISs and decision documents." *Pacific Coast Fed. of Fisherman's Assocs. v. Blank*, 693

F.3d 1084, 1103 (9th Cir. 2012) (citing 40 C.F.R. §§ 1502.14(f), 1502.16(e)–(h), 1505.2(c), 1508.25(b)(3)). An EIS must discuss mitigation "in sufficient detail to ensure that environmental consequences have been fairly evaluated." *Id.* (citing *Methow Valley*, 490 U.S. at 353. The discussion "necessarily includes an assessment of whether the proposed mitigation measures can be effective." *Id.* (citing *S. Fork Band Council of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 588 F.3d 718, 727 (9th Cir. 2009)). Without a discussion of mitigation, "neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects." *Methow Valley*, 490 U.S. at 352.

An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective. Compare *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1381 (9th Cir. 1998) (disapproving an EIS that lacked such an assessment) with *Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 477 (9th Cir. 2000) (upholding an EIS where "[e]ach mitigating process was evaluated separately and given an effectiveness rating"). The Supreme Court has required a mitigation discussion precisely for the purpose of evaluating whether anticipated environmental impacts can be avoided. *Methow Valley*, 490 U.S. at 351-52 (citing 42 U.S.C. § 4332(2)(C)(ii)). A mitigation discussion without at least some evaluation of effectiveness is useless in making that determination.

*S. Fork Band Council of W. Shoshone v. United States DOI*, 588 F.3d 718, 727 (9th Cir. 2009). Most fundamentally, NEPA requires that the public be informed of, and participate in, the entire decision making process, including the analysis of mitigation. There is no evidence in the record for the MVP that any corrective mitigation measures that are routinely imposed by FERC or any other state or federal agency are effective in the construction of a 42 inch gas pipeline in the extreme soils, geologic, and slope conditions presented by the proposed route.

One example of the inadequate treatment of significant impacts with unproven mitigation is the discussion of soils and landslides. Based on MVP's assessment, landslide conditions span 63 miles of the route. DEIS, p. 4-68. There is no analysis of the impacts of landslides. The DEIS does not describe the harms caused by landslides. FERC then describes measures that will be used "to prevent hazards" in section 4.1.2.4, but there is no analysis or documentation that the measures used will be effective against impacts that have not been described. Nonetheless, without any analysis, FERC summarily concludes, "Based on our analysis of the Applicants proposed measures, we conclude that potential impacts on soils would be effectively minimized." DEIS, p 5-3.

The soils and landslide treatment is just one example of the DEIS missing the core of environmental analysis. The same is true for the coverage of karst geology and impacts to water resources. Karst-feature identification is limited to

within 0.25 miles of the proposed route, which limit is not only unsupported and arbitrary, MVP seems to fail to recognize the characteristics and qualities of karst geology by limiting identification of features within 0.25 miles, particularly since other information indicates that exceeding the construction width will be the rule rather than the exception. The DEIS lacks assessment of impact, the efficacy of mitigation, and the impact that remains even after mitigation is utilized.

Furthermore, soils conditions, karst geology, landslide hazard and impacts to water are all interrelated on the proposed pipeline route. The common denominator is impacts to water. The impacts are never disclosed and never analyzed, therefore, the impacts are never combined in proper assessments of direct, indirect and cumulative impacts to water resources. All while the riparian standards on the National Forest must be waived in order to legalize the proposed action.

There is no treatment of the following requirements in NEPA: “any adverse environmental effects which cannot be avoided should the proposal be implemented,” “the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity,” and “any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented”. 42 USC § 4332(C)(ii)(iv)(v); *see also*, 40 CFR § 1502.16 .

The DEIS also fails to address “possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.” 40 CFR 1502.16(c). The need to waive Forest Service riparian standards to make the project legal is an actual conflict, not a possible conflict, between the proposed action and the objectives of the Jefferson National Forest management plan, Forest Service regulations, and the Forest Service Strategic Plan. Furthermore, the fact that riparian standards on the National Forest must be waived to legalize this unbelievably destructive project translates to imposing no riparian standards across the entire route -- which violates countless state and federal laws and policies. There is no explanation or analysis of the regulatory intersection of allowing headwater streams to be obliterated and the jurisdiction of the US Army Corps of Engineers and the Virginia Department of Environmental Quality. Instead, the decision makers appear to pretend that the extraordinary impacts are not real and that there are no conflicts of law.

### **The Forest Service and The Jefferson National Forest**

The proposed MVP is inconsistent with the Revised Land and Resource Management Plan (“LRMP”) for the Jefferson National Forest (“JNF”). The

Forest Service proposes to amend the LRMP to established a 500 foot wide utility corridor and to undermine the function and purpose of the LRMP by “waiving” protections for watersheds and soil resources in the LRMP, as well as waiving and modifying standards to conserve old growth forests, protect the Appalachian Scenic Trail, Wilderness values, and an Inventoried Roadless Area. The DEIS does not contain adequate information to consider any of these decisions, which proposals are absurd on their face and represent the usurpation of public resources only for corporate profit. This is by far the most egregious assault on the Jefferson National Forest and the wide-ranging ecosystem services and public benefits for which it provides that has ever been proposed. Nevertheless, FERC says it’s okay, just because it says so.

### **The Extraordinary Duty of the Forest Service to Conserve Both Forest and Water Resources**

The lands of the Jefferson National Forest were acquired by an act of Congress that created the Eastern National Forests. The Weeks Law was enacted in 1911. The express purpose of the Weeks Act is to protect watersheds and conserve forests and water supplies. 36 Stat. 961. See, <http://www.fs.fed.us/land/staff/Documents/Weeks%20Law.pdf>. The reason that the Jefferson National Forest was established is straight forward: protect watersheds and conserve water supplies. The Weeks Act established a responsibility to the public for watershed and water supply protection that is paramount to other uses of the forest resources.

It is mind boggling that we have even come this far and countless resources have been expended, when the obvious response to a request to waive riparian standards on the Jefferson National Forest is, “No.” The answer to the question is obvious on the face of the question. No one at the FERC public meeting in Roanoke, Virginia in November 2016 told the Forest Supervisor that they supported the proposal; most people said, “You aren’t going to do that, right?” It’s a matter of common sense.

Information about the lands that would become the Eastern National Forests was gathered to support the acquisition of the lands. In the early 1900's, the lands were described as follows:

The entire region is characterized by extremely heavy rainfall in very short periods of time, and owing to the steep slopes and the absence of lakes, ponds, or marshes, which could act as reservoirs and hold back the storm waters, protracted heavy precipitation is followed by a rather rapid increase in the flow of the streams, the rise lasting generally for only a few hours, and the stream soon

assuming its normal stage of flow. This is more especially the case where there are forest clearings. Consequently these violent rains, under certain conditions i. e., where rains are excessive and clearings extensive, or where forest areas are burned over so as to destroy the humus and undergrowth-give rise to floods which are very destructive to property and which cause occasionally the loss of human life. To a certain extent the forest acts as a reservoir, for it keeps the soil porous, allows it to absorb and hold the water for a time, and gradually gives it forth in the form of springs and rivulets. Where the areas have been deforested, however, the rain water forms small but swift-flowing torrents down the sides of the mountains, and quickly reaches the streams below. Deep channels are cut in the mountain sides, and all of the top fertile soil is carried off, leaving only the underlying clays, which are of poor quality and do not yield to cultivation.

After a storm the streams rising in the deforested areas are extremely turbid with mud from the mountain sides, while those from the forest areas are comparatively clear. This erosion can be noted by the most casual observer, and it forms one of the greatest menaces to the region. The soil is deep and fertile, as is shown by the splendid growth of forest trees and by its yield under the first cultivation, but it is only a question of time, if the forests are wantonly cut, when all of the soil and vegetation will be washed from the mountain sides and nothing will remain but the bare rock.

These floods, due to protracted rains, are also destructive in strips of valley lands bordering the streams in the mountain region and in the wider valleys along their courses across the lowlands beyond. Bridges, mills, settlements, public roads, dams for developing water power, indeed, everything in the course of such a mountain stream is liable to be swept away by its rapidly increasing force.

Senate Document 84, Message from the President of the United States Transmitting A Report of the Secretary of Agriculture in Relation to the Forests, Rivers, and Mountains of the Southern Appalachian Region, THE HYDROGRAPHY OF THE SOUTHERN APPALACHIANS, PHYSIOGRAPHIC FEATURES OF THE REGION,  
[http://www.foresthistory.org/ASPNET/Publications/region/8/southern\\_app/appc1.htm](http://www.foresthistory.org/ASPNET/Publications/region/8/southern_app/appc1.htm).

The scientists who investigated the lands that would become the Eastern National Forests knew how to describe environmental impacts. This excerpt

from the Report of the Secretary of Agriculture in Relation to the Forests, Rivers, and Mountains of the Southern Appalachian Region is descriptive of impacts that will be caused by the MVP, and was the basis for conserving the Eastern National Forests.

The MVP would create a scar that would never heal, and cause permanent erosion conditions that the National Forest was established to prevent. Comments submitted by Preserve Craig under a separate filing include supporting documentation of the inability of gas pipeline right-of-ways to maintain vegetation or ever stop eroding. The record is full of references to the slope failure on a 10-inch gas pipeline that was constructed on the Jefferson National Forest in 2014. See, Reports/Analysis of the Columbia Gas Construction Project by the Dominion Pipeline Monitoring Coalition, <http://pipelineupdate.org/case-study-no-1/>. It is incredible that the Forest Service would ever contemplate waiving riparian standards and granting concurrence for a right-of-way for a 42-inch pipeline that will cause far greater impacts than the Columbia Gas pipeline.

The duty to protect watersheds and conserve water supplies has been adopted in the most recent Forest Service Strategic Plan which sets forth a Strategic Objective to provide abundant clean water as a component of delivering benefits to the public. The means and strategies to achieve the objective to provide abundant clean water are:

Conserve, maintain, and restore watersheds, ecosystems, and the services they provide to people.

Use the Forest Service's Watershed Condition Framework to classify watershed conditions, identify restoration priorities, and monitor program accomplishments.

Maintain water of sufficient quantity and quality to sustain aquatic life and support terrestrial habitats, domestic uses, recreation opportunities, and scenic character.

Deliver the knowledge, tools, and technologies to restore, sustain, and enhance watersheds in a changing future.

Facilitate partnerships that foster water conservation and citizen stewardship.

Illustrate the importance of the link between forests and faucets from both surface and groundwater sources through educational programs.

USDA Forest Service Strategic Plan 2015-2020,  
[https://www.fs.fed.us/sites/default/files/strategic-plan%5B2%5D-6\\_17\\_15\\_revised.pdf](https://www.fs.fed.us/sites/default/files/strategic-plan%5B2%5D-6_17_15_revised.pdf).

The Forest Service Manual requires Regional Foresters and Supervisors to ensure that (1.) Each land management plan or amendment complies with laws, regulations, and policy, including 36 CFR part 219, FSM 1920, and FSH 1909.12, and including requirements for threatened and endangered species, and (2) Each land management plan is aligned with the goals and objectives of the Forest Service Strategic Plan. FSM 1921.12.

Not only would the MVP impact water resources, authorizing the construction of the MVP will degrade partnerships that foster water conservation and citizen stewardship. Any good will that has been fostered between the Forest Service and the communities whose water supplies flow cleanly from the National Forest will be destroyed. The same is true of the values to recreational resources set forth in the Strategic Plan. The MVP makes a mockery of the tag line "Leave No Trace" and will erode good will between the public and the Forest Service.

The Forest Service has been using the term "stakeholders" to describe people who have voiced their concerns about the MVP. The term is extraordinarily offensive in the context of the proposal to construct a 42 inch gas pipeline in complex geologic systems that are critical to an undocumented number of people who rely on the water supplies stored in those systems. The people who rely on the water supplies are the public whose interests are paramount in the management of the National Forest. The Forest Service has a duty to the public as a whole to manage the National Forests to protect watersheds and conserve water resources. All of the people in the areas surrounding the JNF rely on the water, as well as those downstream. They are not stakeholders, they are the people for whom the National Forest exists.

### **MVP's Arbitrarily Selected Route Is Proposed As A 500 Ft Wide Utility Corridor By Default Rather Than By Design**

Prior to the release of the DEIS, FERC and the Forest Service were bombarded with requests to perform a Programmatic EIS which requests were rejected out-of-hand. Preserve Craig submitted a legal memorandum that explains why the conduct of Programmatic EIS is appropriate before determining where any gas pipeline should cross the Southern Appalachians. See, Accession Number 20161221-5359. Then, with the release of the DEIS, the Forest Service revealed the proposal to create a 500 feet wide utility corridor for the purpose of encouraging collocation -- all while at least two other major gas pipeline proposals are under proposal.

So instead of the resource agencies studying and determining whether and where any 42 inch gas pipeline should be routed through the George Washington and Jefferson National Forests, MVP's arbitrary line drawing on a map is the basis for determining the location of a utility corridor on the Jefferson National Forest. The industry selected the route for its convenience rather than the route being selected to

avoid sensitive areas and geographic features that make 42-inch gas pipeline construction threatening, harmful and hazardous. A properly performed PEIS would have identified the routes and specific geography that should be avoided, e.g., the karst topography that is common on the route selected by the applicant, as well as identified the preferred location for a 500 feet utility corridor through the National Forest.

Amending the LRMP for the MVP solely to allow a single project turns the model of decision making on its head. It is inconsistent with the goals and purpose of utility corridors, and it violates the 2012 Planning Rule. Suitability of utility corridors must be analyzed and determined pursuant to 36 CFR 219.15(d)(4). To designate a utility corridor in response to the applicant's choices about where the corridor should be located when there is no information supporting an additional public need for that location will serve only the corporate interests of the applicant and the public needs which have yet to be defined. Rather, an appropriate tool for identifying a corridor across federal lands is found in Section 36S(c) of the Energy Policy Act of 2005. This mechanism provides for appropriate environmental analysis and NEPA review.

Although the DEIS indicates that the proposed pipeline route through the JNF must be designated as a utility corridor, the DEIS does not address the environmental, resource, or cultural impacts of this Forest Service action. The DEIS specifies the acres and areas where this will require re-designation of lands from one prescription to another, but there is no analysis of these re-designations. MVP proposes to use buttress for stability on slopes, however, there is no description or analyses of the impacts and compatibility of the construction of buttresses on the National Forest. The DEIS is inadequate to support this Forest Service action.

Furthermore, the Forest Service authorized the collection of data only for a limited width, and not the 500 feet corridor proposed. The impact of the entire width of the proposed corridor and whether the corridor conflicts with any of the standards and conditions established in the LRMP must be fully evaluated before a change to the LRMP is considered or proposed.

The scope of the draft EIS does not support a Forest Service decision regarding utility corridors. The level of analysis, the area of analysis and the resulting lack of public input are all inadequate. FERC relies on data collected by the applicant and the analysis of these data, which understandably focus on the impacts of a single project, not multiple uses of the entire corridor. And FERC has frequently stated that its analysis of "cumulative impacts" under NEPA does not include future projects that are not before it -- whether or not its policy encourages multiple uses of existing rights-of way. The scope and methods used in the FERC process for review of a project proposal differ significantly from those which would be used by the Forest Service to identify, document, analyze, and designate a utility corridor.

## **There is No Authority to Waive LRMP Standards**

The geology and hydrology in this region are complex. The impacts of the construction of a 42 inch gas pipeline cannot be discounted or minimized when the hydrologic systems themselves are not even known or understood. There is no authority in the law for the Forest Service to waive riparian and soils standards, and certainly not without first characterizing the hydrology and full disclosing and analyzing the impacts and all potential threats and hazards. Preserve Craig and Save Monroe adopt and incorporate the comments of the Indian Creek Watershed Association that documents the prevalence of springs near MVP corridors in Monroe County, West Virginia and confirms the need for hydrogeological studies. Accession # 20160902-5165. In addition, the comments of Dana Olson, MD, filed on December 22, 2016 are adopted and incorporated by reference.

## **The DEIS Fails to Analyze Impacts of the Proposed Forest Plan Amendments Pursuant to the 2012 Planning Rule Which Prohibits Amendments Contrary to the Requirements of the Rule.**

As argued above, proposing to waive riparian standards for the construction of a for-profit gas pipeline is absurd on its face. None of the waivers or proposed amendments to the LRMP for the NF have been analyzed pursuant to the 2012 Planning Rule (36 CFR Part 219), and the Forest Service Handbook 1901.12. Nor does the DEIS include an analysis of achieving the goals and objectives of the LRMP.

The Planning Rule requires every forest plan to contain riparian standards to maintain or restore the ecological integrity of riparian areas. 36 CFR 219.8(3). The Rule also requires standards to maintain or restore soils and soil productivity, water quality, and water resources. 36 CFR 219.8(2). Each of these requirements is related to the social, economic, and ecological sustainability in the plan area. These are required elements of all forest management plans. The purpose of the assuring sustainability is in part to provide people and communities with ecosystem services. The FS obligation does not stop at the boundary of the National Forest.

The purpose of this part is to guide the collaborative and science-based development, amendment, and revision of land management plans that promote the ecological integrity of national forests and grasslands and other administrative units of the NFS. Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability; consist of ecosystems and watersheds with ecological integrity and diverse plant and animal communities; and have the capacity to provide people and communities with ecosystem services and multiple uses that provide a range of social, economic, and ecological benefits for the present and into the future. These benefits

include clean air and water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural benefits.

36 CFR 219.1(c). The duties of the Forest Service are broad and encompassing, and includes not only the requirement to assure that the National Forests provide the public with clean air, water, and healthy ecosystems, but also spiritual benefits. There is nothing science-based or collaborative about the proposal to waive riparian and soils standards to allow the JNF to be used as a pipeline corridor for corporate profit and against the public interest.

There is no legal mechanism to waive the required components of the LRMP, rather all projects are subject to the standards. A final rulemaking for a clarifying amendment to the Planning Rule was published on December 15, 2016. The clarification does not change the substantive plan requirements, instead it clarifies that the deciding officer does not have the discretion to eliminate required components.

At the same time, the responsible official's discretion to tailor the scope and scale of an amendment is not unbounded; the 2012 rule does not give a responsible official the discretion to amend a plan in a manner contrary to the 2012 rule by selectively applying, or avoiding altogether, substantive requirements within §§ 219.8 through 219.11 that are directly related to the changes being proposed. Nor does the 2012 rule give responsible officials discretion to propose amendments "under the requirements" of the 2012 rule that actually are contrary to those requirements, or to use the amendment process to avoid both 1982 and 2012 rule requirements (§ 219.17(b)(2)).

81 Fed. Reg. 90723, 90726. Waiving riparian and soils standards when it is known that the soils, geology, and steep terrain all put water resources at certain risk of harm is illegal.

The Forest Service Manual sets forth the policy in regard to plan amendments:

See FSM 1903 and FSM 1920.03 for general policy for planning activities.

1. Responsible Officials shall follow policy direction stated in FSH 1909.12 for all phases of land management planning: assessments, plan development, plan revisions, plan amendments, and monitoring.
2. Responsible Officials shall ensure that new or revised plans provide for ecological sustainability and contribute to social and economic sustainability, and must:
  - a. Use available information pertaining to ecosystem composition, structure, function, and connectivity when developing plan components to

contribute to ecological sustainability (36 CFR 219.8 (a), FSM 1921.5, and FSH 1909.12, ch.10 and 20).

b. Use available information pertaining to social and economic systems when developing plan components to contribute to social and economic sustainability (36 CFR 219.8 (b), and FSH 1909.12, ch. 10 and 20).

c. Use the Scenery Management System (SMS) in all plan revisions to address scenic character and develop scenery-related plan direction unless the Responsible Official provides written justification and obtains concurrence from the Regional Forester.

3. Responsible Officials shall conduct all aspects of land management planning (assessment; development, amendment or revision; monitoring) in a timely and efficient manner.

4. The Forest Service's goal is to complete plan revisions within 4 years from initiation of assessment to plan approval.

5. Responsible Officials shall use a continual assessment, planning, and monitoring process that provides a feedback loop that allows the Forest Service to adapt to changing conditions and to improve plans based on new information and monitoring (36 CFR 219.5(a)).

FSM 1921.03. None of these requirements have been documented in the DEIS.

It is unbelievable to the communities in and around the JNF that the Forest Service would consider destroying the good will that it has with the people who live in and around the JNF to accommodate a gas pipeline. Regardless of the incredulity on the public's part, the Forest Service is required to follow the 2012 Planning Rule and the applicable components of the Forest Service Handbook and Manual. The DEIS lacks the required analysis under the applicable Planning Rule.

### **The DEIS Fails to Address the Forest Service Obligations to Implement and Enforce the *Federally Listed Threatened and Endangered Fish and Mussel Conservation Plan***

In cooperation with the US Fish and Wildlife Service, the FS developed, adopted and agreed to implement the *Federally Listed Threatened and Endangered Fish and Mussel Conservation Plan* (March 2004). The plan establishes more protective riparian standards than the standards in the LRMP. There are two streams that are subject to the *Conservation Plan*, that are identified by stream code numbers 0208020108119 and 0301010101L02, that are impacted by the proposed pipeline route.

The *Conservation Plan* demonstrates that “all the factors contributing to the jeopardized status of Southeastern native freshwater fishes, non-point source pollution (primarily siltation) and alteration of flow regimes (primarily impoundment) are the largest contributors to fish imperilment.” *Conservation Plan*, p 6.

Fish are directly affected by sedimentation through abrasion on the gills and body surface. They are indirectly affected through reduced visibility for feeding, reduced oxygen in sediment-laden water, substrate alteration for spawning sites, and increased egg mortality (Jenkins and Burkhead 1994). McDougal et al. (2001) state that:

“Sediment is probably the most pervasive nonpoint pollution that affects streams on national forests. Sedimentation is caused by soil erosion from ground-disturbing activities such as roads, poorly designed or nonbuffered land use activities, mining, and construction. Many historic roads on national forest were built in poor locations (i.e. along streams): many of which are still in use today. Sedimentation can negatively affect aquatic ecosystems by reducing habitat complexity and diversity.”

*Conservation Plan*, p 8. The *Plan* goes on to describe the negative impacts from compaction from vehicles and cattle, which level of compaction is nothing compared to the compaction that will occur from pipeline construction. *Id.*

The Conservation Plan succinctly describes the conservation values of a riparian area. The impacts to these values are not assessed in the DEIS.

Forests within the Conservation Zone are important because they provide aquatic coarse woody debris recruitment, aquatic particulate and dissolved organic matter input, water temperature and light regulation, bank stability, regulation of sediment, nutrient, and organic matter movement or uptake, and terrestrial habitat for riparian species. They also provide conditions for natural floodplain function. The Conservation Zone will serve as a 1) filter strip to impede surface runoff, trap sediment, and filter and adsorb pollutants, 2) vehicle exclusion zone to prevent major ground disturbance adjacent to stream channels, and 3) shade strip to help maintain ambient stream water temperatures, moist habitats, and sources for large woody debris.

*Conservation Plan*, p 10. The DEIS fails to acknowledge the Forest Service obligations it made in partnership with the US FWS. The record on the *Conservation Plan* will show that the US FWS wanted the *Conservation Plan* to be even more protective than it is. The FS must obtain authorization from the US FWS to violate the *Plan*.

### **Failure to Assess Direct, Indirect, and Cumulative Impacts to Water Resources**

Springs, seeps, and streams run down the mountains to stream courses between and below each ridge. All of the streams on each side of each mountain then flow

either to the New, James or Roanoke River basins. The direct, indirect, and cumulative impact analyses must consider effect of concurrent sediment loads from every drainage through which the MVP would be constructed into each of these major Rivers. If mud is flowing on the east side of the mountain, it is likely flowing on the west side of the mountain and the DEIS fails to consider the impacts in each and all of the various combinations to the water resources that are born in the region that will be devastated by the MVP.

In accordance with the Weeks Act, the Strategic Plan, and the 2012 Planning Rule, the Forest Service obligations to manage the JNF in the public interest does not stop at the National Forest boundary.

### **The DEIS Fails to Recognize the Wholesale Downgrade of the JNF**

But for the proposal to unlawfully waive the riparian and soils standards, no other impacts would not occur. The DEIS fails analyze the impacts on a cumulative level of waiving standards that protect soils and water quality, and diminishing standards to protect scenic quality from the valleys and the ridgetops. It's a wholesale downgrade of the Jefferson National Forest. The manner in which the DEIS carves up the issues detracts from the impact to an extraordinary public resource as a whole unit. As such, the MVP would not impact only 3.4 linear miles, it impacts the acreage of the National Forests from which the pipeline can be seen, private property from which the pipeline can be seen, the surrounding communities, the residents qualities of life, water resources and all of the lives that depend on the water supplies. Quite a legacy for career FS employees who have dedicated their careers to serving the public to now sacrifice the extraordinary values of the JNF for private financial profit.

### **The DEIS Fails to Analyze Impacts to the Peters Mountain Wilderness Area**

The DEIS fails to address impacts to Peters Mountain Wilderness from the construction of an enormous gas pipeline immediately adjacent to the Wilderness area. Preserve Craig and Save Monroe adopt and incorporate by reference the comments of Discover Monroe, dated August 26, 2016, at Accession number 20160829-5096.

In regard to the impacts to the Wilderness Area, the Appalachian Trail, and the Inventoried Roadless Area, Preserve Craig and Save Monroe also adopt and incorporate by reference the comments by the Pacific Northwest Trail Association, Accession number 20161212-5211, and by the Appalachian Trail Conservancy, Accession Number 20161208-5043.

### **The DEIS Fails to Analyze Impacts to the Inventoried Roadless Area**

MVP proposes to route a 42-inch gas pipeline through an Inventoried Roadless

Area. The discussion omits analysis of the prohibitions in the Roadless Rule, 36 CFR Part 294 (69 Fed Reg 3244 (2001)).

The scant case law interpreting the Roadless Area Conservation Rule make clear that the agency has discretion to interpret and apply the Rule. Most importantly, the courts have stressed that each case is fact specific, resource specific, and that the overlaps between uses and management prescriptions are important in applying the facts to the regulation, including the interpretation of what constitutes a road under the Rule.

*Wilderness Workshop v. United States BLM*, 531 F.3d 1220 (10th Cir. 2008) involved a decision to grant a right-of-way for a pipeline through an IRA, Bull Mountain. The definition of a road is at issue in the case of the MVP just as it was in the Bull Mountain decision. In this case, however, the Forest Service has both the facts and the discretion to interpret the rule to determine that the construction of the MVP in the IRA would create an unclassified road.

Road. A motor vehicle travelway over 50 inches wide, unless designated and managed as a trail. A road may be classified, unclassified, or temporary.

(2) Unclassified road. A road on National Forest System lands that is not managed as part of the forest transportation system, such as unplanned roads, abandoned travelways, and off-road vehicle tracks that have not been designated and managed as a trail; and those roads that were once under permit or other authorization and were not decommissioned upon the termination of the authorization.

(3) Temporary road. A road authorized by contract, permit, lease, other written authorization, or emergency operation, not intended to be part of the forest transportation system and not necessary for long-term resource management.

36 CFR 294.11.

The relevant facts are that the Jefferson National Forest is plagued by illegal off-road-vehicle and ATV use. Our understanding is that there are more miles of unclassified roads than classified roads on the GW&Jeff. Videos of illegal ATV use on new pipeline corridors in West Virginia are easily found on the internet. The UPS driver who delivered a package to this author on December 22, 2016, called the proposed pipeline corridor a "red-neck highway" and admitted that he would use it for ATV use. Such users can't wait for the corridors to be left unattended. The IRA proposed to be crossed by the MVP is in a populated area, and the access roads built on adjacent

private lands will make the pipeline corridor even more inviting and accessible.

Even the DEIS admits that the pipeline corridor will provide access similar to that on power line rights-of-way, though deceptively stopping short at calling the access illegal. DEIS, p 4-251. The DEIS admits it will create illegal access, but does not analyze the impacts and the socio-economic impacts of burdens of the increased need for law enforcement.

The other relevant, however ignored, component of the Roadless Rule is the prohibition against timber cutting. *Hogback Basin Preservation Ass'n v. United States Forest Serv.*, 577 F. Supp. 2d 1139, (W.D. Wash. 2008) the logging prohibition in the context of a ski area. This case, too, makes it clear that the agency has discretion to interpret the Rule together with the relevant facts surrounding the issue.

Removal of timber is prohibited by the Roadless Rule with certain exceptions. The only potentially applicable exception is "(2) The cutting, sale, or removal of timber is incidental to the implementation of a management activity not otherwise prohibited by this subpart;..." 36 CFR 294.13(b)(2).

First, and obviously, construction of a pipeline is not a management activity. The judge in the *Hogback* aptly noted the comments in the preamble that is a less-than-clear list of examples of what incidental logging might be:

Paragraph (b)(2) allows timber cutting, sale, or removal in inventoried roadless areas when incidental to implementation of a management activity not otherwise prohibited by this rule. Examples of these activities include, but are not limited to trail construction or maintenance; removal of hazard trees adjacent to classified roads for public health and safety reasons; fire line construction for wildland fire suppression or control of prescribed fire; survey and maintenance of property boundaries; other authorized activities such as ski runs and utility corridors; or for road construction and reconstruction where allowed by this rule.

66 Fed. Reg. at 3258.

A reasonable interpretation is that this is again a list of activities that are management in nature, not construction in nature. Removal of incidental trees, but not for full on construction. The district court ultimately ruled that the Forest Service had the discretion to interpret the timber cutting as incidental to the ski development project because the IRA at issue must also be managed for developed recreation, in combination with the efforts the FS had made to minimize the timber losses in reaching its dual management purposes.

In the case of the MVP, there is nothing in the Roadless Rule that gives a brand new utility corridor a free pass to violate the Roadless Rule. The rulemaking discussion instead makes it clear that the rights under existing grants of utility corridors are preserved. In the case of the MVP, the timber removal is not incidental -- the timber will be removed not only for the permanent right-of-way but also for the construction easement. There is no other aspect of the management prescription, 4J, that is compatible with timber removal for a utility corridor, nor is a utility corridor compatible with the management prescription.

Again, fundamentally, the Forest Service has both the duty and the authority to interpret the Roadless Rule in the case of the MVP in the manner that is true to the implementation of both the Rule and the Revised LRMP in the fact specific context of the MVP.

The Bull Mountain case is only precedential in the context that it gives the agency discretion. The case is not precedential for allowing gas pipelines in any IRA, any time, any where. The proposal to construct the MVP violates the Roadless Rule in a manner that has not been addressed in the DEIS.

Rather than granting a pipeline right-of-way, the Brush Mountain IRA should be designated as a Wilderness Study Area with the plan amendment underway, and if not, the DEIS must address the irretrievable commitment of resources of establishing a “red-neck highway” on an IRA.

### **The DEIS Fails to Analyze Impacts to Cultural Attachment**

Preserve Craig raised the issue of Cultural Attachment early in the MVP proposal process. The following documents submitted by Preserve Craig in the pre-application process have been resubmitted to the current docket, number CP16-10-000, by letter with accession number 201612215446 which includes hyperlinks to the original documents.

On May 5, 2016, Preserve Craig, Save Monroe, and others submitted a letter requesting the complete study of Cultural Attachment in the vicinity of Peters Mountain. Accession number 20160505-5090. Preserve Craig and Save Monroe also adopt and incorporate by reference the comments of Richard Ettelson, Accession number 20161121-0301.

The Cultural Attachment analysis in the DEIS is wholly unprofessional. The analysis completely disregards the report submitted by Preserve Craig at Accession number 201612215346 as well as the adulterated study performed by MVPs cultural anthropologist, ACE. The DEIS baldly states that Cultural Attachment is not specific to the project area and can occur anywhere in the world: this turns the issue on its head.

Attachment to the landscape is specific to the project area by definition. The Peters Mountain community is not going to be culturally attached to Poor Mountain in Roanoke County, Virginia. There may be other communities who identify with, and whose values and lifestyles are intertwined with, their surroundings, but the community at Peters Mountain is attached to that mountain's landscape and the manner in which that mountain defines their characters and lifestyles. Of course other communities experience Cultural Attachment, but the community that has previously been identified and for which there is already precedent is the community of Peters Mountain.

On page 4-367 of the DEIS, FERC states that in the ROD for the APCO power line project, "the FS used cultural attachment as a reason to reject certain route alternatives." The statement is intentionally misleading, and the tone is disrespectful of both the Forest Service and the communities whose Cultural Attachment to the land was found to be not capable of being mitigated. FERC cannot undo the precedent set in the APCO power line project, especially since the independent contractor hired by MVP confirmed what the Forest Service found in the past.

The unsupported assertion that the impacts of this unprecedented intrusion on the landscape, and into the community, can be mitigated reflects complete disregard for cultural attachment. The decision makers obviously have no understanding of Cultural Attachment, therefore they are unqualified to consider discounting impacts with mitigation.

The DEIS describes mitigation in a condescending manner. The outsiders, the carpetbaggers, telling the locals what's good for them. Whom ever drafted the mitigation section knows nothing about people who are culturally attached to the dirt upon which they trod. The only thing MVP knows about the culturally attached is that those people are an impediment to its profit making. Once violated, once tainted, the spirit is killed, and it can't be mitigated. That's always been the objective, though, hasn't it. Resource exploitation always involves genocide. In this case, however, the Forest Service is required to provide, sustain, and account for spiritual values. 36 CFR 219.1(c).

Peters Mountain is eligible for consideration as a Rural Historic Landscape. The DEIS lacks analysis of the impacts to this status. The DEIS also fails to address the irretrievable commitment of resources, required by 40 CFR § 1502.16, that the eligibility represents should the MVP be granted a right-of-way.

The DEIS fails to treat Cultural Attachment as a genuinely significant issue, and MVP has not completed the study recommended by its own expert. The assessment of Cultural Attachment is therefore inadequate.

**Federal Law Prohibits the Grant of a Right-of-Way Across the JNF.**

Section 185 of Title 30 of the United States Code authorizes the grant of rights-of-way for pipelines through Federal lands:

Rights-of-way for pipelines through Federal lands

(a) Grant of authority

*Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.*

30 U.S.C § 185 (emphasis added). Section 181 of Title 30 excludes lands acquired under the Weeks Act.

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas, and lands containing such deposits owned by the United States, including those in national forests, *but excluding lands acquired under the Appalachian Forest Act, approved March 1, 1911 (36 Stat. 961)*, and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this chapter.

30 U.S.C § 185 (emphasis added). The law is straight-forward. Rights-of-way cannot be granted for pipeline construction across the Jefferson National Forest.

**The proposed MVP violates other aspects of rights-of-way laws and regulations that the DEIS fails to address.**

The DEIS fails to address the following components of 30 U.S. Code § 185:

(d) Width limitations

The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way. . . .

(i) Disclosure

If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate. . . .

(j) Technical and financial capability

The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way or permit is requested in accordance with the requirements of this section.

30 U.S. Code § 185; see also, FSM 2726.31c (limiting right-of-way width to 50 feet). In regard to the technical capability, Preserve Craig submitted to the record the documentation of the applicant's criminal environmental record in the Commonwealth of Pennsylvania. See, Letter (incorporating by reference and hyperlink text previously filed documents), Accession number 201612215446. The Forest Service and the BLM have a duty to fully and openly assess whether MVP can be considered capable based on its history of committing environmental crimes.

## Conclusion

The Federal Energy Regulatory Commission has offered a DEIS that is not only inadequate, it demeans the public process and undermines the collaborative approach established by the 2012 National Forest System Land Management Planning Rule. The DEIS is a sham. Fundamentally, there is a dearth of information upon which any conclusions or recommendations can be made. Without the information necessary to perform an environmental analysis, it is impossible for any decision maker to conclude anything from the DEIS.

Even the Forest Service asserts that the DEIS is inadequate to assess the effects on the National Forest. See, Forest Service letter, December 21, 2016, Accession number 20161221-5281 (identifying information necessary for the analysis of the project effects on the National Forest). FERC is pressing forward with a pipeline construction certification process, on a pre-set timetable, with the grant of the certification in the end while there are still Forest Service analyses, US Army Corps of Engineers analyses, and US Fish and Wildlife Service Endangered Species consultation processes all underway.

There is an interagency agreement between USDA Forest Service, FERC and other Federal agencies (May 2002) to rely on a single EIS for which FERC has primary responsibility. The FERC DEIS not only lacks sufficient information and analysis for the Forest Service to take the proposed actions under its jurisdiction, FERC flouts the duty to rely on a single EIS and taunts the Forest Service in regard to its duties:

The federal cooperating agencies may adopt the EIS per 40 CFR 1506.3 if, after an independent review of the document, they conclude that their permitting requirements and/or regulatory responsibilities have been satisfied. However, these agencies would present their own conclusions and recommendations in their respective and applicable records of decision. Otherwise, they may elect to conduct their own supplemental environmental analysis, if necessary.

DEIS, p 5-1 (FERC's disregard of the MOU and its sole reliance on CEQ regulation). FERC is avoiding its responsibility as the lead agency to produce a DEIS that complies with all legal requirements to avoid preparation of either a revised or draft DEIS. As the lead agency responsible for the production of the DEIS the whole document must be revised due to its inadequacies. Instead, however, FERC is deflecting its duty and imposing the burden on the Forest Service to revise the document. A supplemental EIS is not what is called for in this circumstance. We are not faced with new information after this comment period, we are demanding that the information that should have been provided in the first instance be analyzed in a revised DEIS.

Additional information and analysis is required for the Forest Service to make a lawful decision, which should include a public meeting or hearing proceeding. However, there is no time in the pre-set timetable to perform a supplemental analysis before

FERC grants the certificate. It appears evident that the Corps of Engineers will have the same timing issue because the US FWS must complete the consultation process for the Roanoke Logperch before the Corps of Engineers can assert its permitting authority. The DIES does not include a time line or schedule for the consultation process.

The cooperating agencies should be insisting that FERC not issue construction orders until all of the ancillary analyses and permitting processes are complete, through the respective appeals processes. A proper and complete analysis is likely to change the outcome. Furthermore, the Forest Service and the US Army Corps of Engineers have obligations to address climate change impacts that have not been addressed, including the sustainability and resiliency of forest and water resources in the face of climate change. There should be no rush to authorize the extraction, release, and use of a carbon fuel that no longer has an economic rationale in the market place, and instead puts forest and water resources at further threat of harm.

Preserve Craig and Save Monroe request that the Forest Service invoke 40 CFR Part 1504 and issue a predecision referral to the Council on Environmental Quality of proposed federal actions determined to be environmentally unsatisfactory.

Notwithstanding the inadequacies of the DEIS, the BLM has all the information it needs to deny the grant of a right-of-way pursuant to 43 CFR § 2884.23. The proposed use is inconsistent with the purpose for which Forest Service manages the JNF. The proposed is not in the public interest. MVP has not demonstrated that it is qualified to hold a grant. Issuing the grant would be inconsistent with the laws, regulations, and the Strategic Plan. MVP cannot demonstrate the technical or financial capability to construct the pipeline or operate facilities within the right-of-way without destroying public resources.

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