

FILED

DEC - 6 2017

U.S. Court of Appeals
Fourth CircuitCase No. 17-2399

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

SIERRA CLUB, APPALACHIAN VOICES, and WILD VIRGINIA,

Petitioners,

v.

UNITED STATES FOREST SERVICE,

Respondent.

PETITION FOR REVIEW

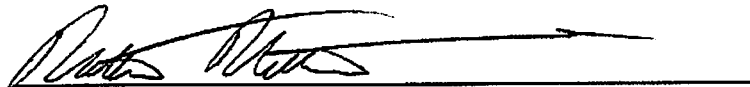
Pursuant to the Administrative Procedure Act, 5 U.S.C. § 702, the Natural Gas Act, 15 U.S.C. §717r(d)(1), and Federal Rule of Appellate Procedure 15(a), Sierra Club, Appalachian Voices, and Wild Virginia hereby petition the Court for review of the United States Forest Service's Mountain Valley Project Land and Resource Management Plan Amendment for the Jefferson National Forest, finalized in the December 1, 2017 Record of Decision: "Record of Decision, Mountain Valley Project Land and Resource Management Plan Amendment for

the Jefferson National Forest, Monroe County, West Virginia, Giles and Montgomery Counties, Virginia.”¹

In accordance with Local Rule 15(b), a copy of the Record of Decision is attached.

Respectfully submitted on December 6, 2017.

By:



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¹ https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd565459.pdf



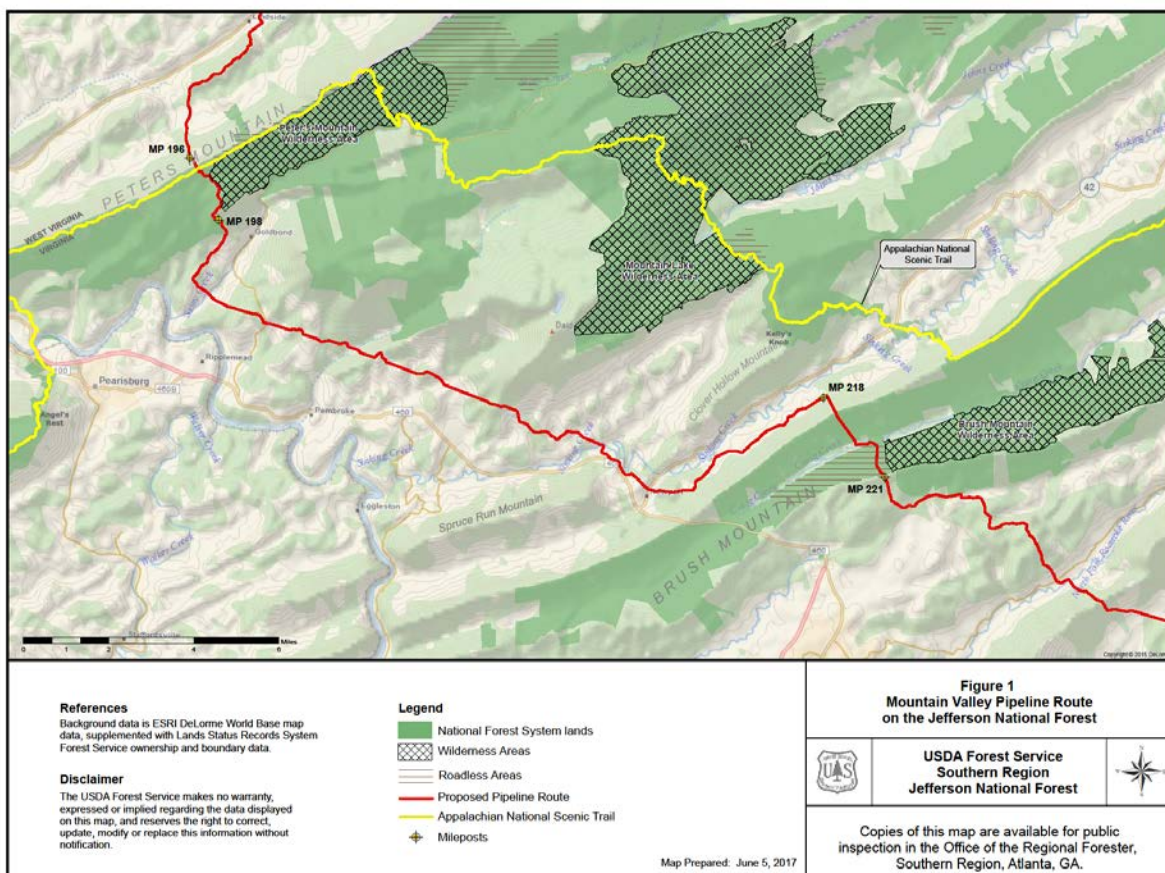
United States Department of Agriculture

Record of Decision

Mountain Valley Project Land and Resource Management Plan Amendment for the Jefferson National Forest

Monroe County, West Virginia

Giles and Montgomery Counties, Virginia



Forest Service

Jefferson National Forest

December 2017

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Mountain Valley Project Land and Resource Management Plan Amendment for the Jefferson National Forest, Record of Decision

Record of Decision
for the
Mountain Valley Project Land and Resource Management Plan
Amendment for the Jefferson National Forest

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

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Federal Energy Regulatory Commission

Cooperating Agency:

U.S. Forest Service

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Mountain Valley Project Land and Resource Management Plan Amendment for the Jefferson National Forest, Record of Decision

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List of Acronyms

ANST	Appalachian National Scenic Trail
ATWS	Additional Temporary Workspace
BA	Biological Assessment
BE	Biological Evaluation
BASI	Best Available Scientific Information
BLM	Bureau of Land Management
BO	Biological Opinion
DEIS	Draft Environmental Impact Statement
Draft ROD	Draft Record of Decision
EPA	Environmental Protection Agency
FEIS	Final Environmental Impact Statement
FERC	Federal Energy Regulatory Commission
FS	Forest Service
FWS	United States Fish and Wildlife Service
JNF	Jefferson National Forest
KOP	Key Observation Points
LRMP	Land and Resource Management Plan
MVP	Mountain Valley Pipeline
NEPA	National Environmental Policy Act
NF	National Forest
NFMA	National Forest Management Act
NOA	Notice of Availability
NOI	Notice of Intent
POD	Plan of Development
RACR	Roadless Area Conservation Rule
RFSS	Regional Forester Sensitive Species

Mountain Valley Project Land and Resource Management Plan Amendment for the Jefferson National
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ROD	Record of Decision
ROW	Rights of Way
Rx	Management Prescription
SIO	Scenic Integrity Objectives
SSURGO	Soil Survey Geographic Database
SLIDE	Slope Stability model
USACE	United States Army Corps of Engineers
VADGIF	Virginia Department of Game and Inland Fisheries
VADEQ	Virginia Department of Environmental Quality
VDHR	Virginia Department of Historic Resources
VIA	Visual Impact Analysis
WVDNR	West Virginia Department of Natural Resources

Mountain Valley Project Land and Resource Management Plan Amendment for the Jefferson National Forest, Record of Decision

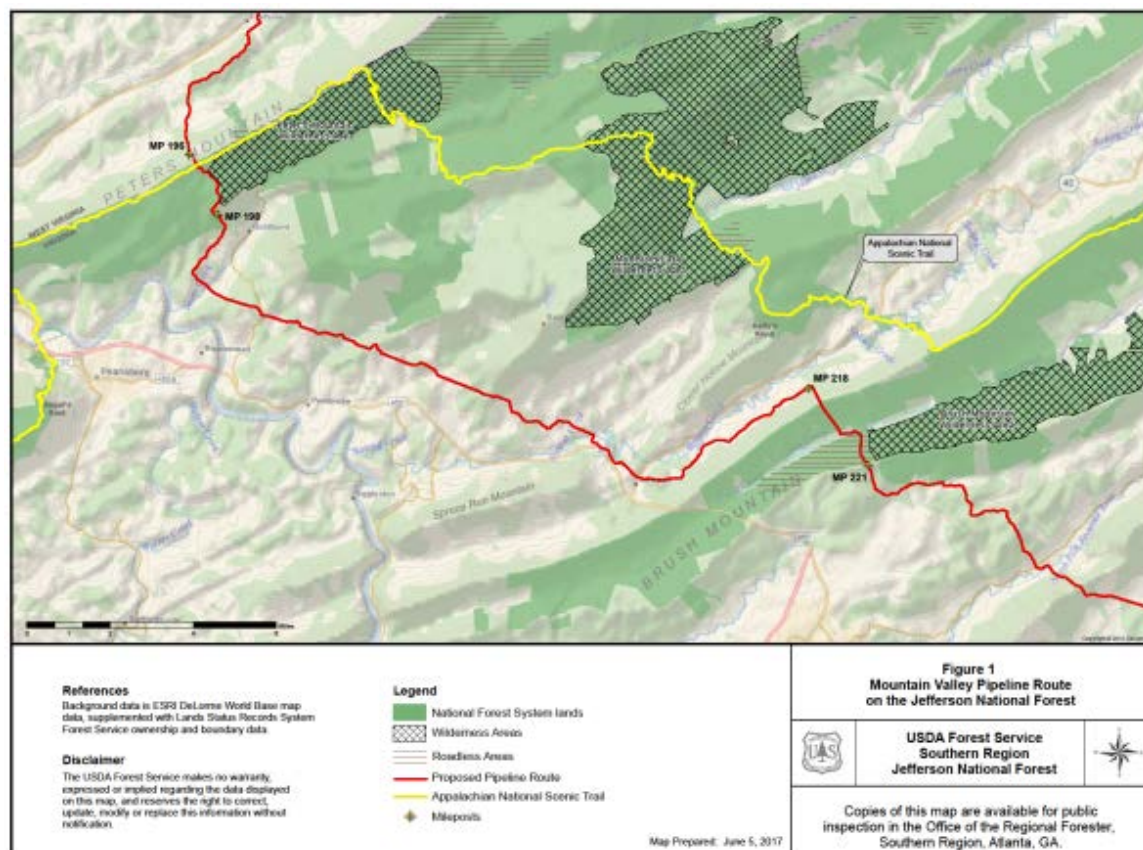
Introduction

This record of decision (ROD) documents my decision and rationale which is based on the Final Environmental Impact Statement (FEIS) prepared by the Federal Energy Regulatory Commission (FERC) for the Mountain Valley Pipeline Project and Equitrans Expansion Project. I have adopted the environmental analysis prepared by FERC (in accordance with 40 CFR 1506 (a) and (c)) to support my decision.

My decision is based on the preferred alternative as described in the FEIS (FEIS, Section 2). This ROD documents my approval (with rationale) of a five-part, project-specific Forest Plan amendment to the Jefferson National Forest's Revised Land and Resource Management Plan (USDA Forest Service 2004), hereafter referred to as the "LRMP", "Forest Plan," or "Plan". See the "Changes from DEIS to FEIS" section of this ROD for details on the modifications made to the Forest Plan amendment since the DEIS was made available for comment in September 2016. Also, see the "Updates since Draft ROD Release" for a summary of developments and their effect on this ROD since the Draft ROD was released on June 23, 2017.

Figure 1, included for context, displays the portion of 303-miles of the Mountain Valley Pipeline (MVP) route on the Jefferson National Forest (JNF). The areas affected by this decision include approximately 83 acres of lands associated with the proposed 3.6-mile pipeline corridor (including access roads) for the MVP Project that would cross the JNF in Monroe County, West Virginia and Giles and Montgomery Counties, Virginia. Table 1.3-1 in the FEIS provides additional information on the land requirements for the Mountain Valley project on the JNF.

Figure 1. Mountain Valley Pipeline Route on the Jefferson National Forest



Background

In accordance with the Natural Gas Act (NGA, Title 15 United States Code (U.S.C.) § 717), the FERC is the lead Federal agency for the environmental analysis of the construction and operation of Mountain Valley Pipeline, LLC's (Mountain Valley) proposed 303-mile MVP Project, a 42-inch diameter interstate natural gas pipeline. We (the Forest Service or FS) participated as a cooperating agency with the FERC and the Bureau of Land Management (BLM) in the preparation of the FEIS. See the "Federal Agency Jurisdiction and Other Related Decisions" section for additional information on decisions that will be made by other Federal agencies with jurisdiction for the MVP Project.

The construction phase of the MVP will require use of about 83 acres of the Forest, consisting of 51.4 acres of pipeline corridor, 0.9 acres of additional temporary workspace, and 30.9 acres of access roads. MVP will use existing access roads on the Forest. Some road reconstruction will be necessary, but no new roads will be constructed on the Forest. The pipeline route crosses the Appalachian National Scenic Trail (ANST) and the Brush Mountain Inventoried Roadless Area. The operational phase of the MVP will occupy about 42 acres of the Forest, consisting of 21.7 acres of the pipeline corridor and 20 acres of existing access roads. The construction corridor for the pipeline in most instances will be 125-foot wide, but will generally be 75-foot wide when crossing wetlands. The construction corridor will be reclaimed to a final operational corridor width of 50 feet. The pipeline will be buried so that there would be 3 feet of cover over the pipe within the JNF in most areas; 24 inches of cover in consolidated rock. When underground boring is used to avoid impacts to sensitive surface resources, the pipeline is up to 90 feet below the surface. There will be no above ground facilities located on the Forest. If all approvals are in place, construction is expected to begin immediately and continue for a period of about 2.5 years or until all 303 miles are constructed. Construction on the JNF is projected to be completed in 2018. Operation and maintenance within the right of way (ROW) will begin shortly thereafter and continue as long as the pipeline is in service.

Purpose and Need and Proposed Action

The purpose of the project is to transport natural gas produced in the Appalachian Basin to markets in the Northeast, Mid-Atlantic, and Southeastern United States (FEIS, Section 1.2). The MVP Project includes the construction, operation, and maintenance of a buried 42-inch diameter interstate natural gas pipeline that will cross about 3.6 miles of lands managed by the Forest Service in the JNF as disclosed in the Mountain Valley Project and Equitrans Expansion Project FEIS. The Equitrans Expansion portion of the project does not impact National Forest System lands. See Section 2.0 of the FEIS for the description of the MVP proposal and Section 4.8.2.6 for the Forest project-specific Plan amendment description.

The proposed action by the Forest Service is to amend 11 standards in the Forest Plan. Our consideration of this Plan amendment is triggered by our statutory obligations as a cooperating agency in processing applications for natural gas pipelines involving Federal land under provisions Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. § 181) and Section 313 of the Energy Policy Act of 2005. The Forest Plan requires amending if the MVP Project is to be consistent with several Forest Plan standards that are worded in a manner that precludes alternate means to protect soil, water, riparian, old growth, recreational and visual resources. Forest Plan standards are mandatory constraints on project and activity decision-making, established to help achieve or maintain desired conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements (36 CFR 219.7(e)(1)(iii)).

The National Forest Management Act (NFMA) requires proposed projects, including third-party proposals subject to permits or ROW grants, be consistent with the LRMP of the administrative unit where the project would occur. When a project is not consistent with the Forest Plan where the project would occur, the FS has the following options: (1) modify the proposed project to make it consistent with the Forest Plan; (2) reject the proposal; (3) amend the Forest Plan so that the project would be consistent with the plan as amended; or (4) amend the Forest Plan simultaneously with the approval of the project so the project would be consistent with the plan as amended. The fourth option may be limited to apply only to the project (36 CFR 219.15(c)). The amendment would have to be approved before the FS can issue a letter of concurrence to the BLM.

Federal Agency Jurisdiction and Other Related Decisions

The FERC is responsible for authorizing interstate natural gas transmission facilities; and, by law is responsible for coordinating all applicable Federal authorizations and for preparing an analysis that complies with the National Environmental Policy Act (NEPA). The FERC was the lead Federal agency preparing the environmental impact statement for the construction and operation of the proposed MVP and Equitrans Expansion Project. Federal agencies with a role in authorizing an application for a natural gas pipeline are required by law to cooperate in processing the application and to comply with the processing schedule established by FERC (Section 313 of Energy Policy Act of 2005). On October 13, 2017, FERC issued a Certificate of Convenience and Public Necessity (Certificate) to Mountain Valley, authorizing it to construct and operate the MVP, subject to the conditions outlined in the Certificate. In addition to the FERC Certificate, Mountain Valley must also obtain authorization from the BLM to construct and operate the MVP on federal lands crossed by the project.

Under the Mineral Leasing Act (30 U.S.C. 185 et seq.) the BLM is the Federal agency responsible for issuing ROW grants for natural gas pipelines across Federal lands under the jurisdiction of two or more Federal agencies.

The FERC's FEIS for the MVP Project included the consideration of a BLM ROW grant to Mountain Valley for pipeline construction and operation across Federal lands under the jurisdiction of the FS and the United States Army Corps of Engineers (USACE). However, before issuing the ROW grant, the BLM must acquire the written concurrence of the FS and the USACE. Through this concurrence process, the FS may submit to the BLM any terms and conditions for inclusion in the ROW grant that are deemed necessary to protect Federal property and otherwise protect the public interest.

The Nature of this Decision

As noted above, the FERC's FEIS for the MVP Project included the consideration of a BLM ROW grant across Federal lands, along with the associated Forest Plan amendment (FEIS, Section 4.8.2.6).

The decision by the Forest Service amends the Jefferson National Forest's Forest Plan specifically for this project. I determined that the scope of the FEIS analysis and this decision is limited to considering the project-specific plan amendment related to construction and operation of MVP. "Project-specific plan amendment" means the amendment is applicable to just MVP and not to any other future projects. My decision to amend the Forest Plan has been prepared according to Forest Service NEPA procedures (36 CFR 219.14(a)).

My decision includes a determination of whether the proposed amendment is directly related to the substantive requirements (36 CFR 219.8 through 219.11) of the Forest Service's planning regulation. The substantive requirements address sustainability, diversity of plant and animal communities, multiple use, and timber requirements. A forest plan amendment is "directly related" to a substantive requirement if it has one or more of the following relationships to a substantive requirement: the purpose for the amendment, there would be a beneficial effect of the amendment, there would be a substantial adverse effect of the amendment, or there would be a substantial lessening of plan protections by the amendment. Recent changes to the planning rule provides that if a proposed amendment is determined to be "directly related" to a substantive rule requirement, the responsible official must apply that requirement within the scope and scale of the proposed amendment and, if necessary, make adjustments to the proposed amendment to meet the requirement (36 CFR 219.13 (b)(5) and (6); 81 FR 90738 (Dec. 15, 2016.)).

Changes from DEIS (Proposed Amendment) to FEIS (Final Amendment)

In the DEIS, the proposed Forest Plan amendment consisted of modifying four parts (management prescription reallocation, soil and water corridors, old growth, and the Appalachian National Scenic Trail). The amendment proposal was based on the knowledge and anticipated effects of the proposed project at that time. Since the DEIS, we reviewed new information, analyses, and comments from the public on the DEIS. We reviewed analyses from MVP and worked with MVP to develop additional project design features and mitigation measures to protect resources including soil, riparian, old growth management areas, scenery, and the Appalachian National Scenic Trail. The additional mitigation measures or project design features relating to the proposed amended standards are discussed in the FEIS in section 4.8.2.6 and in Mountain Valley's Plan of Development (POD).

Public comments submitted to the DEIS resulted in us modifying the proposed project-specific plan amendment. In Part 1, Utility Corridors, we determined that an amendment to change forest-wide standard 247 (FW-247) was not needed as it allows for consideration of new utility corridors. Also, we dropped the proposal for a land allocation change to designate the MVP corridor as a Management Prescription (Rx) 5C-Designated Utility Corridor. Instead we proposed amending FW 248 to exempt the MVP project from this requirement. Not changing the management prescriptions of lands that would have been in the corridor necessitated amendment of two standards associated with Old Growth Management Areas, which became a new part of the project-specific plan amendment. With the application of additional restoration measures we were able to limit the timeframe for modifying the standard related to Scenery Integrity Objectives. In the FEIS, proposed modifications to FW-77 (old growth) and 11-017 (tree removal in riparian corridors) were removed.

For the Appalachian National Scenic Trail Corridor, the plan has the standard 4A-020 that states: "All management activities will meet or exceed a Scenic Integrity Objective of High." The Draft EIS and the October 14, 2016 Federal Register Notice of Availability stated this standard may need to be amended. However, a further review of this standard has determined that the proposed pipeline project can be made consistent with this standard and modification of this standard will not be needed.

The public was notified of the change to the proposed Forest Plan amendment through a "Notice of Updated Information concerning the Mountain Valley Pipeline Project and Equitrans Expansion Project and the Associated Forest Service Land and Resource Management Plan

Amendments” that was published in the *Federal Register* on June 5, 2017 (82 FR 25761). The notice also informed the public that a change to the administrative review procedures was applicable (also see the “Administrative Review/Objections” section). The amendment that was part of the draft decision consisted of five parts amending 11 standards as displayed in Table 1.

Updates since Draft ROD Release

This ROD reflects a number of updates since the Draft ROD was published on June 23, 2017. There have been a number of general edits to correct errors, address omissions, and improve clarity. In addition, the completion of additional biological and cultural resource surveys; updates to supporting documents, reports, and plans; completion of our pre-decision administrative review; and actions by other federal agencies are now reflected in this ROD. Discussed in more detail throughout this document, the major items influencing this ROD are summarized here:

- Mountain Valley submitted an updated Biological Evaluation (BE) report on June 14, 2017. The BE assesses impacts and identifies conservation measures for avoiding or minimizing impacts on Regional Forester Sensitive Species (RFSS). The updated report incorporated the results of additional field surveys and FS comments.
- Mountain Valley completed a Phase II cultural resource survey of sites on the JNF. The FS reviewed the survey report and notified the Virginia Department of Historic Resources (VDHR) that one of the tested sites was determined to be eligible for listing on the National Register of Historic Places (NRHP). Mountain Valley prepared a treatment plan to mitigate the adverse impact of the project on this site. VDHR concurred on the treatment plan on October 23, 2017.
- On October 13, 2017, FERC issued a Certificate to Mountain Valley¹ for authorization to construct and operate the MVP, subject to a number of environmental conditions designed to mitigate the environmental impacts associated with construction and operation of the MVP Project.
- On October 19, 2017, the FS completed its pre-decision administrative review of public objections that were filed after the Draft ROD was released. Objectors received a collective response letter that addressed issues raised in their objections.
- The US Fish and Wildlife Service (FWS) provided a biological opinion (BO) to FERC on November 21, 2017, which contained the FWS review of five federally listed threatened and endangered species that will likely be adversely affected by the MVP Project. The BO provides reasonable and prudent measures which Mountain Valley must implement to minimize harm as required by the Endangered Species Act (ESA).
- FERC has developed a Programmatic Agreement (PA), under 36 CFR Part 800.14.b, to resolve adverse effects of the MVP to NRHP-eligible historic properties. The PA contains stipulations that would be implemented in order to take into account the effect of the undertaking on historic properties, and would satisfy all responsibilities under Section 106 of the National Historic Preservation Act (NHPA) for the involved regulatory agencies. The Forest Service will be a signatory to the PA.

¹ Hereafter referred to as the “FERC’s Certificate”

Mountain Valley Project Land and Resource Management Plan Amendment for the Jefferson National Forest, Record of Decision

- Mountain Valley submitted an updated POD in November 2017, which incorporated clarifications and additional information, and addressed FS comments.
- MVP Project-related documents referenced throughout this ROD, as well as any updates as the Project is implemented, will be available on the George Washington & Jefferson National Forests webpage for the MVP Project at:
<https://www.fs.usda.gov/detail/gwj/landmanagement/projects/?cid=stelprd3827827>

Decision and Rationale for the Decision

Decision

I have reviewed the environmental analysis disclosed in the FEIS, the project record, Mountain Valley's POD, comments from the public, partners, and other agencies, the requirements for plan amendments at 36 CFR Part 219, the objections received on the draft decision, and the Reviewing Officer's response to those objections. I have decided to amend the JNF LRMP as displayed in Table 1. As the Table shows, the plan amendment modifies plan standards for the following five areas: Utility Corridors, Soil and Riparian, Old Growth Management Area, Appalachian National Scenic Trail Area, and Scenic Integrity Objectives. New or modified plan amendment language is in "**bold**" text in column 2 of the table. All design features and mitigation measures described in the FEIS that are applicable to NFS land are incorporated by reference into my decision. The areas affected by this decision include approximately 83 acres of lands (including access roads) associated with the 3.6-mile pipeline corridor for the MVP Project that would cross the Jefferson National Forest in Monroe County, West Virginia and Giles and Montgomery Counties, Virginia.

Table 1. Jefferson National Forest Revised Land and Resource Management Plan Amendment Specific to the MVP Project

Jefferson NF Forest Plan Standards prior to modification for the MVP Project	Standards as Modified for the MVP Project
Part 1 – Utility Corridors	
Standard FW-248: Following evaluation of the above criteria, decisions for new authorizations outside of existing corridors and designated communication sites will include an amendment to the Forest Plan designating them as Prescription Area 5B or 5C (Jefferson NF LRMP, p. 2-60).	Standard FW 248: Following evaluation of the above criteria, decisions for new authorizations outside of existing corridors and designated communication sites will include an amendment to the Forest Plan designating them as Prescription Area 5B or 5C. However, this requirement does not apply to the operational right-of-way for the MVP Project.
Part 2 – Soil and Riparian	
Standard FW-5: On all soils dedicated to growing vegetation, the organic layers, topsoil and root mat will be left in place over at least 85% of the activity area and revegetation is accomplished within 5 years (Jefferson NF LRMP, p. 2-7).	Standard FW-5: On all soils dedicated to growing vegetation, the organic layers, topsoil and root mat will be left in place over at least 85% of the activity area and revegetation is accomplished within 5 years, with the exception of the operational right-of-way and the construction zone for the Mountain Valley Pipeline, for which the applicable mitigation measures identified in the approved POD and MVP Project design requirements must be implemented.
Standard FW-8: To limit soil compaction, no heavy equipment is used on plastic soils when the water table is within 12 inches of the surface, or when	Standard FW-8: To limit soil compaction, no heavy equipment is used on plastic soils when the water table is within 12 inches of the surface, or when

Mountain Valley Project Land and Resource Management Plan Amendment for the Jefferson National Forest, Record of Decision

Jefferson NF Forest Plan Standards prior to modification for the MVP Project	Standards as Modified for the MVP Project
soil moisture exceeds the plastic limit. Soil moisture exceeds the plastic limit when soil can be rolled to pencil size without breaking or crumbling (Jefferson NF LRMP, p. 2-7).	soil moisture exceeds the plastic limit, with the exception of the operational right-of-way and the construction zone for the Mountain Valley Pipeline, for which applicable mitigation measures identified in the approved POD and MVP Project design requirements must be implemented. Soil moisture exceeds the plastic limit when soil can be rolled to pencil size without breaking or crumbling.
Standard FW-9: Heavy equipment is operated so that soil indentations, ruts, or furrows are aligned on the contour and the slope of such indentations is 5 percent or less (Jefferson NF LRMP, p. 2-7).	Standard FW-9: Heavy equipment is operated so that soil indentations, ruts, or furrows are aligned on the contour and the slope of such indentations is 5 percent or less, with the exception of the operational rights-of-way and the construction zone for the Mountain Valley Pipeline, for which applicable mitigation measures identified in the approved POD and MVP Project design requirements must be implemented.
Standard FW-13: Management activities expose no more than 10% mineral soil in the channeled ephemeral zone (Jefferson NF LRMP, p. 2-8).	Standard FW-13: Management activities expose no more than 10% mineral soil in the channeled ephemeral zone, with the exception of the operational right-of-way and the construction zone for the Mountain Valley Pipeline, for which the responsible official must ensure applicable mitigation measures identified in the approved POD and MVP Project design requirements must be implemented.
Standard FW-14: In channeled ephemeral zones, up to 50% of the basal area may be removed down to a minimum basal area of 50 square feet per acre. Removal of additional basal area is allowed on a case-by-case basis when needed to benefit riparian dependent resources (Jefferson NF LRMP, p. 2-8).	Standard FW-14: In channeled ephemeral zones, up to 50% of the basal area may be removed down to a minimum basal area of 50 square feet per acre. Removal of additional basal area is allowed on a case-by-case basis when needed to benefit riparian-dependent resources, with the exception of the operational right-of-way and the construction zone for the Mountain Valley Pipeline, for which applicable mitigation measures identified in the approved POD and MVP Project design requirements must be implemented.
Standard 11-003: Management activities expose no more than 10 percent mineral soil within the project area riparian corridor (Jefferson NF LRMP, p. 3-182).	Standard 11-003: Management activities expose no more than 10 percent mineral soil within the project area riparian corridor, with the exception of the operational right-of-way and the construction zone for the Mountain Valley Pipeline for which applicable mitigation measures identified in the approved POD and MVP Project design requirements must be implemented.
Part 3 – Old Growth Management Area	
Standard 6C-007: Allow vegetation management activities to: maintain and restore dry-mesic oak forest, dry and xeric oak forest, dry and dry-mesic oak-pine old growth forest communities; restore, enhance, or mimic historic fire regimes; reduce fuel buildups; maintain rare communities and species dependent on disturbance; provide for public health	Standard 6C-007: Allow vegetation management activities to: maintain and restore dry-mesic oak forest, dry and xeric oak forest, dry and dry-mesic oak-pine old growth forest communities; restore, enhance, or mimic historic fire regimes; reduce fuel buildups; maintain rare communities and species dependent on disturbance; provide for

Mountain Valley Project Land and Resource Management Plan Amendment for the Jefferson National Forest, Record of Decision

Jefferson NF Forest Plan Standards prior to modification for the MVP Project	Standards as Modified for the MVP Project
and safety; improve threatened, endangered, sensitive, and locally rare species habitat; control non-native invasive vegetation(Jefferson NF LRMP, pp. 3-82 to 3-83).	public health and safety; improve threatened, endangered, sensitive, and locally rare species habitat; control non-native invasive vegetation, and clear the trees within the construction zone associated with the Mountain Valley Pipeline.
Standard 6C-026: These areas are unsuitable for designation of new utility corridors, utility rights-of-way, or communication sites. Existing uses are allowed to continue (Jefferson NF LRMP, p. 3-84).	Standard 6C-026: These areas are unsuitable for designation of new utility corridors, utility rights-of-way, or communication sites, with the exception of the Mountain Valley Pipeline right-of-way. Existing uses are allowed to continue.
Part 4 – Appalachian National Scenic Trail	
Standard 4A-028: Locate new public utilities and rights-of-way in areas of this management prescription area where major impacts already exist. Limit linear utilities and rights-of-way to a single crossing of the prescription area, per project (Jefferson NF LRMP, p. 3-23).	Standard 4A-028: Locate new public utilities and rights-of-way in areas of this management prescription area where major impacts already exist, with the exception of the Mountain Valley Pipeline right-of-way. Limit linear utilities and rights-of-way to a single crossing of the prescription area, per project.
Part 5 – Scenery Integrity Objectives	
Standard FW-184: The Forest Scenic Integrity Objectives (SIOs) Maps govern all new projects (including special uses). Assigned SIOS are consistent with Recreation Opportunity Spectrum management direction. Existing conditions may not currently meet the assigned SIO (Jefferson NF LRMP, p. 2-48).	Standard FW-184: The Forest Scenic Integrity Objectives (SIOs) Maps govern all new projects (including special uses), with the exception of the Mountain Valley Pipeline right-of-way. MVP shall attain the existing SIOs within five years after completion of the construction phase of the project, to allow for vegetation growth. Assigned SIOs are consistent with Recreation Opportunity Spectrum management direction. Existing conditions may not currently meet the assigned SIO.

Terms and Conditions

This decision will require compliance with the following measures to ensure consistency with the JNF LRMP:

1. Mountain Valley must implement the construction procedures and mitigation measures applicable to the Jefferson National Forest contained in the November 2017 version of the Plan of Development.
2. Mountain Valley shall comply with applicable provisions of Appendix C – Environmental Conditions of FERC’s Order Issuing Certificates and Granting Abandonment Authority; Docket Nos CP16-10-000 and CP16-13-000 (Issued October 13, 2017)
3. Mountain Valley cannot begin activities associated with the MVP project with the potential to adversely impact historic properties on the Jefferson National Forest until a Programmatic Agreement has been executed to satisfy consultation requirements of the National Historic Preservation Act for the Mountain Valley Project; and the archaeological excavations for site 44GS0241, as outlined in the cultural resource

- treatment plan with an agreement on the use of Cherokee Tribal monitors, have been completed.
4. Mountain Valley shall obtain Virginia's Clean Water Act Section 401 Certification (or waiver thereof) before beginning activity on NFS land in Virginia that may impact waters of the U.S.
 5. Mountain Valley shall obtain required approvals/certifications for an Erosion and Sediment Control Plan and a Stormwater Management Plan from the Virginia Department of Environmental Quality before beginning construction on NFS land.
 6. Mountain Valley shall comply with the Stormwater Permit and associated Erosion and Sediment Control Plan as approved by the West Virginia Department of Environmental Protection before beginning construction on NFS land.
 7. Mountain Valley shall obtain and comply with the ROW Grant and Temporary Use Permits as approved by the Bureau of Land Management.
 8. Mountain Valley shall comply with the applicable Reasonable and Prudent Measures and Terms and Conditions of the November 21, 2017 FWS Biological Opinion MVP Project.
 9. Mountain Valley shall implement applicable mitigation measures for the candy darter and yellow lance found in the June 2017 *Biological Evaluation for Forest Service Sensitive Species*. Mountain Valley shall also implement applicable mitigation measures recommended by FWS through any future Section 7(a)(4) Endangered Species Act (ESA) conferencing for these species that may occur. If either species is listed as threatened or endangered under the ESA, any Reasonable and Prudent Measures and Terms and Conditions identified in a Biological Opinion conducted under ESA 7(a)(2), must be implemented.

Decision Rationale

Based on the analysis provided by FERC in the FEIS I have decided to amend the Jefferson National Forest LRMP because the decision:

- Can be implemented without impairing the long-term productivity of National Forest System lands.
- Meets the requirements of the Forest Service planning regulations (36 CFR Part 219).
- Meets the purpose and need of the project to transport natural gas produced in the Appalachian basin to markets in the northeast, mid-Atlantic, and southeast United States.
- Has been developed based upon the best available scientific information.
- Has been developed through an extensive public involvement and collaboration effort with our publics, partners, adjacent landowners, and other agencies.
- Is consistent with other Federal Policy.

Rationale by Topic Area

Long-term productivity of NFS lands

The FERC analysis supports my determination that the project can be implemented without impairing the long-term productivity of National Forest System lands (FEIS, Sections 4.0, 5.0). The ROW grant to be issued by BLM will be required to include design requirements and mitigation contained in the POD and other terms and conditions of this ROD in order to meet the requirement to be consistent with the Forest Plan. Measures to avoid or minimize environmental harm that are incorporated in this decision include forest-wide standards and guidelines, which at a minimum, meet all requirements of applicable laws, regulations, State standards, and additional standards and guidelines for the affected NFS lands.

Adverse effects of the proposed pipeline will be mitigated through measures required by FERC or other agencies. The complete listing of Construction and Restoration Plans that are applicable to the MVP Project are displayed in the FEIS, Table 2.4-2. Singularly and collectively they avoid, rectify, reduce, or eliminate potential adverse environmental impacts to the Forest. Also see the “Compliance with the Rule’s Applicable Substantive Provisions” section in this ROD which provides specific details on how impacts to soil, water, riparian, old growth management areas, the Appalachian National Scenic Trail and scenic integrity objectives have been mitigated to the extent practicable.

Compliance with Forest Service Planning Regulations 36 CFR 219 and Consistency with the Jefferson National Forest LRMP, as amended

FS land management planning requirements were established by the National Forest Management Act and regulations at 36 CFR 219 which require a Forest-specific, multi-year LRMP. The Forest Service’s planning regulations allow for amending a plan at any time to help units adapt to new information or changing conditions. A plan amendment is required to add, modify, or remove plan components.

The five-part LRMP amendment approved by my decision is needed to allow the MVP Project to be consistent with the LRMP. Specifically, the amendment modifies standards that are intended to protect soil, water, riparian, visual, old growth and recreational resources. Standards are mandatory constraints on project and activity decision-making, established to help achieve or maintain desired conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements (36 CFR 219.7(e)(1)(iii)). Mountain Valley modified its proposal with several route adjustments, additional design features, and mitigation measures (where feasible to minimize environmental effects) to achieve consistency with many of the Plan standards, however the amendment described in this decision is necessary to make the MVP a conforming use with the LRMP. Section 4.8.2.6, “Amendment to the LRMP for the Jefferson National Forest” of the FEIS, details how this amendment complies with the planning regulations.

The plan amendment in this decision applies only to the MVP and will not change the existing Forest Plan standards for any other existing or future projects. The approved project-specific plan amendment consists of modifying 11 forest plan standards exempting the operational ROW and the construction zone for the MVP from those standards. Six of the modified forest plan standards require the Forest Service to ensure the MVP design requirements and mitigation measures identified in the POD are implemented. These 6 standards are associated with soil productivity and riparian habitat. By requiring the MVP’s project design requirements and the mitigation measures contained in its POD as a part of these 6 amended standards, this decision will be

consistent with the planning rule. The ROW grant that BLM issues, if the project is approved, would also require compliance with the project design requirements and mitigation measures in order to be consistent with the JNF LRMP as amended.

Analysis Based on Best Available Scientific Information (BASI)

I considered whether the best available scientific information was used to support environmental impact conclusions and found the analysis was developed with the BASI. Only a summary of BASI is provided here. A discussion of how the BASI was considered is located below in the “Compliance with the Rule’s Procedural provisions” section of this ROD.

The analysis to assess soil and resources was informed by FS-accepted data sources, methods, and models including soil mapping aerial imagery and the Natural Resources Conservation Service’s (NRCS) Soil Survey Geographic Database (USDA 2015). A hydrologic sedimentation analysis, based on the revised universal soil loss equation model, was used to analyze effects to a wide range of forest resources, including water and aquatic species. Forest Service hydrology and aquatic biology specialists reviewed the MVP’s sedimentation analysis and we enlisted expertise from local, certified consultants to validate results. Steep slope hazards were analyzed using the peer-reviewed slope stability program SLIDE (RocScience Inc.) to determine slope failure risk. Our specialists worked with MVP to identify and develop industry-standard construction plans (site-specific designs) for high hazard construction areas in order to reduce the possibility of damaging soils located on steep slopes in the vicinity of streams located below and on these areas (FEIS, Section 4.0).

For the old growth analysis, extensive surveys were conducted to determine dominant tree species, the estimated number of trees per acre, and the height and basal area of measured trees. FS-recommended desktop and field assessment methods, including the “Guidance for Conserving and Restoring Old-Growth Forest Communities on National Forests in the Southern Region” (USDA 1997) and “Site Index Curves for Forest Tree Species in the Eastern United States” (USDA 1989) were used.

To address potential impacts to the ANST, FS specialists (landscape architects) utilized the Forest Service Scenery Management System (USDA FS 1995) to review the inventory and classification of scenic classes in areas of the Jefferson National Forest affected by the MVP Project. Mountain Valley prepared a landscape-scale Visual Impact Analysis (VIA) to assess the foreground, middleground, and a portion of the background distance zones. Our specialists worked with the MVP contractor to identify key observation points and the analysis utilized several software tools to create accurate visual simulations. In assessing the visual impacts, Mountain Valley (at the direction of FS and BLM specialists) utilized the BLM’s 1986 “Manual H-8410-1- Visual Resources Inventory” and the BLM’s “Manual H-8431- Visual Resource Contrast Rating” (BLM 1986).

Public Involvement

The MVP Project has been developed through an extensive public involvement and collaboration effort with our publics, partners, adjacent landowners, and other agencies. Also see the section in this decision with the caption of “Providing opportunities for public participation (§ 219.4) and providing public notice (§ 219.16).” The FERC and BLM took the lead in addressing public comments. However, as it specifically relates to the Forest Service’s project-specific plan amendment, we made every effort to review comments on the DEIS and develop mitigation that will further reduce impacts to resources. Comments on the DEIS that voiced concerns related to the scenery impacts to the Appalachian National Scenic Trail resulted in the development of

several additional visual simulations from new key observation points and additional visual simulations, including leaf off simulations, which reduced the screening provided by vegetation (FEIS, Sections 4.8.2.4, 4.8.2.5, and Appendix S). We also responded to resource impact concerns by developing additional design features and mitigation and removing some of the proposed modifications to forest plan standards (see Table 1, “Changes from DEIS to FEIS” and the sections of this decision with the following captions: “Providing opportunities for public participation (§ 219.4) and providing public notice (§ 219.16)”). For more information on the MVP Project go to the FERC website at:

<https://www.permits.performance.gov/projects/mountain-valley-and-equitrans-expansion-project-n>.

Other Federal Policy Considerations

In making this decision, I have considered other federal policy that has underscored the development of energy infrastructure as a priority need of the nation. Executive Order 13212, directed federal agencies to expedite reviews of authorizations for energy-related projects and to take other action necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. Executive Order 13604, “Improving Performance of Federal Permitting and Review of Infrastructure Projects” (EO 2012), emphasized the United States must have a reliable and environmentally sound means of moving energy and that investments in infrastructure provide immediate and long-term economic benefits to the Nation. More recently, Executive Order 13766, “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects” (EO 2017) states the policy of the executive branch to “expedite, in a manner consistent with law, environmental reviews and approvals for all infrastructure projects, especially projects that are a high priority for the Nation, such as...pipelines....”.

Additional federal policy focuses on encouraging jobs and economic growth. Construction of the MVP would have a beneficial impact on employment, local goods and service providers, and state governments in the form of sales tax revenues. Mountain Valley’s economic consultants estimate that peak construction for the project in West Virginia and Virginia would support a total of about 8,900 direct and indirect jobs; and generate an aggregate total of \$81 million in state and local taxes, including income tax, sales tax, property tax, other personal tax, severance tax, and other tax. During operations of the MVP, a total of about 88 jobs would be supported in the two States, with Mountain Valley paying up to \$24.4 million annually in property and ad valorem taxes (See Section 4.9.2.7 of FEIS).

My decision is consistent with the aforementioned federal policies by accommodating the MVP project through a five-part project-specific plan amendment that provides for social, economic, and ecological sustainability; maintains the diversity of plant and animal communities; and supports integrated resource management for multiple use.

Purpose of the Amendment

The purpose of the amendment is to meet the requirement of FS regulations that projects and activities authorized on National Forest System lands must be consistent with the LRMP. The amendment is needed because the MVP Project cannot achieve several Forest Plan standards that are intended to protect soil, water, riparian, visual, old growth and recreational resources.

Compliance with the Rule's Procedural provisions

The amendment complies with the procedural provisions of 36 CFR Part 219.13(b) as follows:

Using the best available scientific information to inform the planning process (§ 219.3):

The decision to amend the LRMP is informed by the FEIS analysis which used the best available scientific information. Data that informed the analysis is discussed below:

Soil and Riparian

The Natural Resources Conservation Service's (NRCS) soil mapping aerial imagery and the soil survey geographic database (SSURGO) was used to determine which soil types would be affected on the Jefferson National Forest. In the April 2016 report, MVP completed the Soil Profile Descriptions Report which field verified selected NRCS soil map units on the Forest. MVP utilized the USDA soil classification terminology – the National Soil Information System (NASIS) and the NRCS "Field Book for Describing and Sampling Soils, Version 3.0" (NRCS 2012) to complete this report.

A hydrologic sedimentation analysis was prepared to analyze effects to a wide range of forest resources, including water and aquatic species. The analysis provides a real-world representation of sedimentation hazards to forest resources. The best available data used for the analysis included the revised universal soil loss equation model (RUSLE) to estimate effects of the proposed activities. Inputs to the RUSLE model included SSURGO and the US Geological Survey (USGS) water boundary dataset to determine appropriate soil erodibility factors and watershed designations, respectively. In addition, FS hydrology and aquatic biology specialists reviewed the sedimentation analysis and we retained expertise from local, certified consultants.

We worked with MVP to identify and develop industry-standard construction plans (site-specific designs) for high hazard construction areas in order to reduce the possibility of damaging soils located on steep slopes and impacting adjacent waterbodies (see POD, Appendix G). Steep slope hazards were identified by utilizing the peer-reviewed slope stability program SLIDE (RocScience Inc.) to determine slope failure risk. Slope stability (at sites determined by FS specialists to be "high hazard") was determined using a combination of resource specialist experience, probabilistic analysis, and field observations. Environmental consequences to soils, water, and riparian resources are discussed in the FEIS in sections 4.2 and 4.3.

Old Growth Management Areas

Extensive surveys were conducted to determine dominant tree species, the estimated number of trees per acre, and the height and basal area of measured trees. Old growth and vegetation survey results are detailed in the FEIS in section 4.4.1.5 and the POD Appendix I "Timber Removal Plan". Mountain Valley's April 6, 2016 tree survey report (which formed the basis of the MVP Project's Timber Removal Plan) utilized Forest Service-recommended desktop and field assessment methods, including the "Guidance for Conserving and Restoring Old-Growth Forest Communities on National Forests in the Southern Region" (USDA 1997) and "Site Index Curves for Forest Tree Species in the Eastern United States" (USDA 1989). Additional information on the old growth management area as it relates to the forest plan amendment is discussed in FEIS in section 4.4.2.6.

Appalachian National Scenic Trail (ANST)

Section 3.5.1.6 of the FEIS describes alternatives for crossing the ANST. Each of these alternatives and variations were evaluated based on comments received from the FS and other stakeholders, indicating concerns for disruption for hikers using the trail, as well as potential visual impacts from the MVP Project both at the ANST crossing location and from more distant viewpoints. See the visual resources discussion (below) for the best available scientific information that was used to assess potential visual impacts to the Trail.

Visual Resources and Scenic Integrity Objectives

Forest Service specialists (landscape architects) utilized the Forest Service Scenery Management System (USDA FS 1995) to review the inventory and classification of scenic classes in areas of the Jefferson National Forest affected by the MVP Project. See Table 4.8.1-10 in the FEIS for results. A landscape-scale visual impact analysis (VIA) was prepared to assess the foreground, middleground, and a portion of the background distance zones. A digital elevation model that uses USGS terrain data (and the visibility function within the computer model “Viewshed Analysis for ArcGIS Spatial Analyst”) was developed. Specialists identified key observation points (KOPs). The VIA utilized several software tools to create accurate visual simulations using the KOPs including ArcMap, Promote Systems GPS, 3D Studio Max, PTGui, and Adobe Photoshop CS4. In assessing the visual impacts, specialists utilized the BLM’s 1986 “Manual H-8410-1- Visual Resources Inventory” and the BLM’s “Manual H-8431- Visual Resource Contrast Rating” (BLM 1986).

The VIA also considered other factors such as seen areas, scenic class, distance viewed, duration of view, angle of view, and aspect of the project in relation to the KOPs to determine the project will ultimately achieve the Forest Plan SIOs at project locations on NFS lands.

Providing opportunities for public participation (§ 219.4) and providing public notice (§ 219.16):

On October 27, 2014, Mountain Valley filed a request with the FERC to initiate the Commission’s pre-filing environmental review process for the MVP. During the pre-filing process, Mountain Valley sponsored 16 public open house meetings held at various locations throughout the project areas between December 2014 and April 2015. Representatives of the FERC staff also attended those open house meetings to answer questions from the public. FERC reported that about 1000 people attended those public meetings. During the pre-filing process, FERC also received 597 comments from the public about the MVP.

FERC’s Notice of Intent (NOI) to prepare an EIS was published in the Federal Register on April 28, 2015, and mailed to more than 2,800 interested parties (80 FR 23535). The NOI initiated a 60-day formal public comment period and announced the timing and location of six public scoping meetings. The scoping period ended June 16, 2015. The scoping meetings were held during May 2015 in Pine Grove, Weston, Summersville, and Lindside, West Virginia; and Ellison and Chatham, Virginia. Approximately 650 people attended the public scoping meetings, with 169 of those attendees providing oral comments. FERC received a total of 964 comments during the formal public scoping period.

The FS, serving as a cooperating agency in the development of the EIS, assisted FERC in using comments from the public, other agencies, elected officials, interested Native American and Indian tribes, affected landowners, and non-governmental organizations, to identify several issues regarding the effects of the proposed action. Main issues of concern included potential impacts to

biological resources, cultural resources, karst topography, water quality, slope stability, and visual resources, including visual effects to the ANST (see FEIS Table 1.4-1). To address these concerns, FERC, in consultation with cooperating agencies, created the alternatives described in the FEIS (FEIS, Section 3).

FERC issued a Notice of Availability (NOA) for the DEIS on September 27, 2016, that listed the dates, times, and locations of seven public sessions to take verbal comments on the DEIS, and established a 90-day public comment period on the DEIS, ending December 22, 2016 (81 FR, 66268). The sessions were held during November 2016 in Chatham, Rocky Mount, and Roanoke, Virginia; Peterstown, Summersville, and Weston, West Virginia; and Coal Center, Pennsylvania. In total, 261 people presented verbal comments at the sessions. FERC sent the DEIS to about 4,400 parties on their environmental mailing list. During the formal public comment period, FERC received 1,237 written individual letters or electronic filings commenting on the DEIS or about the project, not including repeats and petitions. Comments received during the formal comment period are reprinted in Appendix AA of the FEIS. FERC continued to accept public comments after December 22, 2016, up until the staff completed writing the FEIS. Comments received after the close of the public comment period are not included in Appendix AA, but to the extent possible, FERC addressed these comments in the narrative text of the FEIS.

The FS also issued a Notice of Availability for the MVP DEIS, which was published in the *Federal Register* on October 14, 2016 (81 FR 71041). This notice included additional information on the Forest Service LRMP amendment that would be needed to make the proposed pipeline construction and operation consistent with the Jefferson National Forest LRMP (36 CFR 219.15).

The Forest Service published a “Notice of Updated Information Concerning the Mountain Valley Pipeline Project and Equitrans Expansion Project and the Associated Forest Service Land and Resource Management Plan Amendments” in the *Federal Register* on June 5, 2017 (82 FR 25761). The notice also informed the public that a change to the administrative review procedures was applicable (see the “Administrative Review/Objections” section).

Copies of the FEIS were mailed to FERC’s MVP mailing list, including elected officials, government agencies, interested Native American and Indian tribes, regional environmental groups and non-governmental organizations, affected landowners, intervenors, local newspapers and libraries, and individuals who attended FERC-sponsored public meetings or sessions, or who submitted comments on the project or on the FERC’s DEIS.

As mentioned above, as part of FERC’s government-to-government consultation program, Native American and Indian tribes were included in all project notifications. To date, only the Stockbridge-Munsee Band of the Mohican Nation responded on May 4, 2015 to FERC’s letter, indicating that the MVP is not located within their area of tribal interest (FEIS, Section 4.10.5).

Applying the planning rule’s format requirements for plan components (§ 219.13 (b)(4)):

The five-part, project-specific forest plan amendment modifies 11 forest-wide standards. Those standards conform to the formatting requirements for plan amendments, and the amendment’s modifications of them maintained the correct format. See §§219.13 (b)(4) and 219.7 (e).

The plan amendment process (§ 219.13):

See the “Purpose and Need” section, the “Changes from DEIS to FEIS” section, Table 1 in the “Decision” section and the response provided above in “Providing opportunities for public participation and providing public notice” for details related to the amendment process.

Compliance with the Rule’s Applicable Substantive Provisions

Section 219.13 (b)(5) of the planning rule requires that, when amending a plan, the Responsible Official must apply the rule’s substantive requirements that are directly related to the amendment, within the scope and scale of the amendment. The substantive requirements of the rule are in 36 CFR §§ 219.8 through 219.11 and concern sustainability, diversity of plant and animal communities, multiple use, and timber management. The rule establishes criteria for determining whether any of its substantive requirements are directly related to an amendment. See §219.13 (b)(5)(i), which provides that whether a rule requirement is directly related to an amendment is based upon the amendment’s purpose or its effect (beneficial or adverse). The rule further provides that an adverse effect finding can be made if scoping or the NEPA effects analysis reveals the amendment would have a substantial adverse effect or would substantially lessen protections for a specific resource or use (§219.13 (b)(5)(ii)(A)). Application of a substantive rule requirement that is directly related to the amendment may demonstrate that the amendment is in compliance with it, and need not be changed, or may necessitate modification of the amendment to meet the requirement (§219.13 (b)(5)).

In the discussions that follow I first explain that the scale of the amendment is quite small, and its scope narrow. Then, I determine how each of the five parts of the amendment relates to the rule. For two parts, (soil and riparian, old growth management), I show the analysis that led to my conclusion that substantive rule provisions are not directly related to the amendment. For the other three parts, however, (utility corridors, Appalachian National Scenic Trail, scenic integrity objectives) I show that there is no need to analyze whether or not there are substantive rule provisions directly related to the amendment. Rather, I have found that, regardless of whether or not substantive rule provisions are directly related to the amendment, the amendment meets the substantive rule requirements relevant to these parts of the amendment.

Scope and scale of the amendment

I determined the scope and scale of the amendment based on the purpose for the amendment. (§ 219.13(b)(5)(i)). Overall, the purpose of the five-part amendment is to ensure consistency between provisions of the Forest Plan and the proposal to construct, operate, and maintain a buried 42-inch diameter interstate natural gas pipeline on National Forest System land (FEIS, Introduction Section). The scale of the amendment is the MVP project area that includes a temporary construction zone through the Jefferson National Forest that is 3.6 miles long and 125 feet wide (approximately 83 acres, including access road use), and a permanent operational ROW that will be 3.6 miles long and 50-feet wide (approximately 42 acres, including access road use). The scope of the amendment is modification of 11 Forest Plan standards. These standards are intended to protect soil, water, riparian, visual, old growth and recreational resources. The amendment will modify these standards only for this project and, because of its protective mitigation measures, to a limited extent.

Description of the Plan Amendment and the Planning Rule requirements associated with the amendment.

The following five sections discuss the modified standards and whether they are directly related to the substantive requirements of 36 CFR 219:

Utility Corridors

Existing plan standard FW-248 directed that, if a route is created outside of an existing corridor, the new route would be reallocated as Management Prescription 5C, a designated utility corridor. The existing standard is intended to reduce fragmentation and minimize visual impacts by encouraging collocation of any future utility corridors. The DEIS included the proposed designation of a 500-foot wide utility corridor management area to accommodate MVP as well as future utility facility proposals. Many public comments on the DEIS expressed concern that a utility corridor designation could adversely impact private landowners that are interspersed and/or adjacent to the National Forest. Other comments pointed out the analysis didn't address the impacts of prospective utilities that may be constructed in a 500-foot management area. We acknowledge the mixed ownership of the area and the potential impacts to adjacent land uses. We also recognize that it would be too speculative and complex to attempt to address in the FEIS the impact of prospective utilities that may be constructed within a 500-foot wide management area in the future. Lastly, the resource impacts disclosed in the FEIS for MVP suggest that collocation of linear utilities in mountainous terrain may not always be logistically feasible, or environmentally preferable. For these reasons, we revised the proposed approach in the FEIS and decided not to designate a new utility management area and decided to consider the MVP pipeline corridor on a project-level basis.

My decision modifies the FW-248 plan standard to exclude the MVP from being designated as a Management Prescription 5C Utility Corridor. Although my decision does not preclude future collocation of utility facilities, a future linear utility proposal to parallel the MVP route will be subject to environmental review and public involvement to assess logistic, safety, and resource impacts. Such a proposal would also require an amendment of this plan standard.

The Forest Service planning rule requirement that is relevant to this amendment is 36 CFR 219.10(a)(3), which requires that a forest plan must include plan components which consider the appropriate placement and sustainable management of utility corridors. I have determined the FEIS evaluated a variety of options to transport natural gas and adequately analyzed the appropriate placement and sustainable management of the MVP. Consequently, this amendment meets the 36 CFR 219.10(a)(3) planning rule requirement. Since the amendment meets the rule requirement, a further determination as to whether the rule requirement is directly related to it is not needed. (Note: While it could be argued that 36 CFR 219.10(a)(3) is relevant to all the other parts of this amendment, I have determined that this description about how the FEIS analysis meets the 36 CFR 219.10(a)(3) requirement applies to each part of the amendment and does not need to be repeated in each of the sections that follow.)

Soil and Riparian

My decision modifies six Forest Plan standards associated with soil productivity and riparian habitat (FW-5, FW-8, FW-9, FW-13, FW-14 and 11-003) as described in Table 1. The standards are designed to protect soil and riparian resources on the Forest which also serve to protect surface water quality. These six standards in the Forest Plan preclude standard industry pipeline construction methods like those being proposed by MVP. It was not possible to modify the MVP

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to use construction methods to achieve project consistency with these six standards. The modified standards will allow the MVP to vary from the standards. However, with the requirement to apply the best management practices and other appropriate mitigation, these modified standards will provide the protection for these resources that Standards FW-5, FW-8, FW-9, FW-13, FW-14 and 11-003 provide.

Learning from experiences with previous pipeline construction projects on the Forest, we have worked extensively with Mountain Valley to inventory, analyze and evaluate the geologic, soil, and hydrologic resources that could be affected by this project. We also utilized a third-party consultant for technical support in reviewing the information gathered for the project. The POD is a document developed between the FS, BLM and Mountain Valley that contains the design features, mitigation measures, roles and responsibilities, monitoring, and procedures for the construction and operation of the pipeline on NFS lands. The design requirements and mitigation measures of the POD will be required by the modified standards and incorporated into BLM's ROW grant if the project is authorized.

The mitigation measures incorporated into this amendment, are designed to minimize the potential for soil movement and to ensure adequate restoration and revegetation are identified in the Erosion and Sediment Control Plan (POD, Appendix C), Landslide Mitigation Plan (POD, Appendix F), the Site-Specific Design of Stabilization Measures in High Hazard Portions of the Route (POD, Appendix G), the Restoration Plan (POD, Appendix H), and the Winter Construction Plan (POD, Appendix M). Mountain Valley will also follow the FERC Upland Erosion Control, Revegetation, and Maintenance Plan and the Best Management Practices for the states of West Virginia and Virginia. FERC is also recommending additional industry best management practices and measures be incorporated into Mountain Valley's Landslide Mitigation Plan to further reduce the potential for landslides on steep slopes.

The required mitigation measures in the POD to protect wetlands and minimize compaction include: limiting the construction right-of-way width to 75 feet through wetlands; placing equipment on mats; using low-pressure ground equipment; limiting equipment operation and construction traffic along the right-of-way; locating additional temporary workspace (ATWS) more than 50 feet away from wetland boundaries (unless approved by the FS); cutting vegetation at ground level; limiting stump removal to the trench; segregating the top 12 inches of soil, or to the depth of the topsoil horizon; using "push-pull" techniques in saturated wetlands; limiting the amount of time that the trench is open by not trenching until the pipe is assembled and ready for installation; not using imported rock and soils for backfill; and not using fertilizer, lime, or mulch during restoration in wetlands. Mountain Valley must also follow the FERC Waterbody and Wetland Construction and Mitigation Procedures.

Mountain Valley adopted a minor route variation (FS 71) that modified the crossing of Craig Creek, reducing the number of crossings from three to one, and later incorporated another variation to minimize impacts to a 100-foot riparian area where the pipeline parallels Craig Creek. In addition, Mountain Valley has committed to limit construction (including waterbody crossings) in the Craig Creek area to times of dry weather or low water flow. Mountain Valley will implement the FS and Virginia Department of Environmental Quality (VADEQ) high quality and multiple tiered erosion control measures at the proposed Craig Creek crossing to minimize potential erosion and subsequent water quality impacts.

Following the issuance of the FEIS, Mountain Valley proposed a slight relocation of the pipeline on Peters Mountain that will eliminate the need to cross a wetland on NFS lands.

Additionally, oversight responsibilities for Mountain Valley, FERC, FS and BLM are described in the POD (Environmental Compliance Management Plan, Appendix N) that would apply to the construction, operation, and maintenance of the project on NFS lands. The FS Authorized Officer will coordinate with the BLM in administering and enforcing ROW grant provisions and would have stop-work authority. The FS Authorized Officer's designated representatives will ensure stipulations and mitigation measures included in the POD are adhered to during project construction, operation, and maintenance. The BLM Authorized Officer will coordinate with the FS to ensure the work is being conducted in accordance with the ROW grant and agreed upon conditions. BLM and the FS will have stop-work authority. Field variance requests will be coordinated with the Authorized Officers.

The Forest Service planning requirements that are relevant to this amendment are those that require the plan to contain plan components to maintain or restore:

- soils and soil productivity, including guidance to reduce soil erosion and sedimentation (36 CFR §219.8(a)(2)(ii));
- water resources in the plan area, including lakes, streams, and wetlands; ground water; public water supplies; sole source aquifers; source water protection areas; and other sources of drinking water (including guidance to prevent or mitigate detrimental changes in quantity, quality, and availability) (36 CFR 219.8(a)(2)(iv)); and,
- the ecological integrity of riparian areas, including their structure, function, composition, and connectivity (219.8(a)(3)(i)).

Having considered the BASI and the FEIS effects analysis for this amendment, I have concluded that modification of these six soil and riparian plan standards along with the applicable mitigation measures identified in the approved POD and MVP Project design requirements will minimize adverse environmental impacts to soils and water resources and riparian areas; and will not cause substantial adverse effects, nor a substantial lessening of protections, to the soils and water resources and riparian areas. Therefore, I find that the requirements of 36 CFR §219.8(a)(2)(ii), §219.8(a)(2)(iv), and §219.8(a)(3)(i) are not "directly related" to the LRMP amendment, and that these rule provisions need not be applied.

Old Growth Management Area

My decision modifies two Plan standards applicable to management of old growth timber within Management Prescription (Rx) 6C: Old-Growth Forest Communities Associated with Disturbance. This management prescription is allocated to patches of old growth totaling approximately 30,200 acres dispersed across the Jefferson National Forest, and is applied to such patches when they are discovered (Forest Plan, p. 3-82 standard 6C-001). One of the standards (6C-007) would not have allowed clearing of trees within the portion of the MVP pipeline corridor that lies within the Rx 6C, and the other standard (6C-026) stated that Rx 6C was not suitable for designation of a new utility corridor (see Table 1.)

Although lands within Rx 6C are classified as unsuitable for timber production (see Standard 6C-009, p. 3-83 of the Jefferson NF LRMP), old growth timber can be harvested for certain activities. Standard 6C-007 identifies the conditions under which vegetation management activities can occur, and the modification to 6C-007 is to add to this list of conditions, the clearance of trees within the MVP construction zone. The relevant planning rule requirement to this change is

§219.11(c), which states that “except as provided in paragraph (d) of this section the plan may include plan components “to allow for timber harvest for purposes other than timber production throughout the plan area, or portions of the plan area, as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan in order to protect other multiple-use values” (36 CFR §219.11(c)). This planning rule requirement allows for timber to be harvested to meet other plan-desired conditions or objectives, or to meet other multiple use values (which would include providing for utility corridors (36 CFR 219.10(a)(3)). The §219.11(c) requirement also refers to meeting the requirements in §219.11(d), where the subsections that are applicable to this amendment include provisions that any “timber harvest would occur only where soil, slope, or other watershed conditions would not be irreversibly damaged” (§219.11(d)(2)); and that any “timber harvest would be carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources” (§219.11(d)(3)). As is documented in the other sections of this ROD, the applicable mitigation measures identified in the approved POD and MVP Project design requirements will minimize any adverse effects to the soil, watershed, fish, wildlife, recreation, and aesthetic resources within the area affected by the construction, operation and maintenance of the MVP Pipeline. Therefore, this amendment to standard 6C-007 meets the planning rule requirement of §219.11(c) (and related §219.11(d) provisions). Since the amendment meets the rule requirement for standard 6C-007, a further determination as to whether the rule requirement is directly related to it is not needed.

Standard 6C-026 states that Rx 6C is unsuitable for the designation of new utility rights-of-way. This standard would be modified to allow for the MVP ROW to go through the Rx 6C. The relevant planning rule requirement to this change is §219.8(a)(1), which requires plan components “to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area” (36 CFR §219.8(a)(1)). The FEIS documents how various alternatives were considered and how the proposed route minimizes the totality of impacts across federal and non-federal lands (also see the “Alternatives” section in this decision). The FEIS on page 4-299 documents that a total of 7.5 acres in Rx 6C will be impacted, with 2.3 of those acres being impacts on existing access roads, 0.6 acres in temporary workspace, and 4.6 acres of old growth trees within Rx 6C will be affected by constructing the pipeline within the construction right-of-way. Having considered the best available scientific information and the FEIS effects analysis, I have concluded there will not be substantial adverse effects, nor a substantial lessening of protections, to the terrestrial and aquatic ecosystems within Rx 6C. Therefore, I find that the planning rule requirement of §219.8(a)(1) is not “directly related” to this LRMP amendment for standard 6C-026, and need not be applied to it.

Appalachian National Scenic Trail (ANST)

My decision to modify a Forest Plan standard (4A-028, refer to Table 1 of this decision) associated with Management Prescription 4A – Appalachian National Scenic Trail Corridor, will allow MVP to cross the ANST at a location where no other major impacts already exist. Forest Plan standard 4A-028 is intended to minimize impacts to the ANST by collocating proposed infrastructure projects into designated utility corridors. This standard is an acknowledgement of the importance of the ANST for its recreational value (the nation’s first National Scenic Trail) and its cultural value (eligible for nomination to the National Register of Historic Places). My decision to allow a crossing at this location is based on FERC’s consideration of two route variations which crossed the ANST at points with existing impacts and their conclusion that neither of the route variations offered significant environmental advantage when compared to the corresponding proposed route.

In Section 3.5.1.6 of the FEIS, the State Route (SR) 635-ANST Variation and AEP-ANST Variation were evaluated for crossing the ANST along existing rights-of-way to minimize impacts on users of the ANST. The SR 635-ANST Variation crosses the ANST at an existing road crossing and would have some human environment and resource advantages over the proposed route. However, the SR 635-ANST Variation would result in three more miles of disturbance on the National Forest, including additional impacts to old growth forest, inventoried roadless areas, and FS-designated trails; would cross more wetlands and perennial waterbodies; and would cross more landslide prone areas. The AEP-ANST Variation would cross the ANST at an existing utility corridor and reduce impacts to FS roadless areas and semi-primitive areas. However, the AEP-ANST Variation would result in more overall construction disturbance; more impacts to private landowner parcels, forested land, and perennial waterbodies; and would cross more landslide prone areas.

Sections 3.4.2.1 of the FEIS evaluated four major route alternatives, each requiring an ANST crossing. Section 3.5.1.4 evaluated Variations 110, 110R, and 110J for crossing ANST on the Jefferson National Forest. The Alternative 110J route was determined to have greater impacts on scenery viewed from the ANST on Sinking Creek Mountain, Brush Mountain, and Cove Mountain, including in the near middle ground viewed from Dragon's Tooth. Alternative 110J would also be in close proximity to Pickle Branch Shelter. Section 3.5.1.5 evaluated an option that would cross the Forest and ANST (on non-federal land) along existing right-of-way for Columbia Gas of Virginia pipelines. Each of these alternatives and variations were compared to the proposed route in terms of general statistics, impacts to federal lands and federally managed areas, impacts to the human environment, and impacts to resources. The alternatives and variations considered were either not technically feasible or did not result in significant environmental advantage over the corresponding proposed route.

MVP will cross the ANST by boring under the trail so that there would be an approximate 300-foot buffer on each side of the ANST footpath and include supplemental plantings (if needed) so that bore entry and exit points should not be visible within the Rx 4A. MVP's boring would place the pipeline 90 feet below the surface of the ANST footpath. MVP has also proposed additional trenchless contingency plans to supplement its proposal in the event of problems with conventional boring under the ANST. By incorporating MVP's proposed POD and other appropriate mitigation into a ROW grant that may be issued by the BLM, the MVP will be consistent with the Rx 4A standard 4A-20 which requires all management activities to meet or exceed a Scenic Integrity Objective of High. Mitigating the visual impacts at this point not only ensures consistency with this standard, but also avoids long-term adverse impacts to the cultural resource values of the ANST (a historic district eligible for listing on the National Register of Historic Places) on NFS lands, meeting requirements of Section 106 of the National Historic Preservation Act and the National Trails System Act.

The FEIS analysis of MVP's ANST crossing supports my decision to modify Plan Standard 4A-028 to provide an exception for the MVP ROW to cross Rx 4A area at a location where major impacts do not already exist. The modified standard 4A-028 will allow MVP to be consistent with the Jefferson National Forest LRMP as amended.

The planning rule requirement that is relevant to this modified LRMP standard is 36 CFR 219.10(b)(1)(vi) which requires plan components to provide for appropriate management of other designated areas of the plan area. FERC's determination that alternate routes for MVP, including routes with existing major impacts, did not offer significant environmental advantages over the proposed crossing at this location supports appropriate management of utility corridors (FEIS,

Executive Summary). Mitigation for crossing the ANST specifies that the pipeline will use a conventional auger bore machine underneath the ANST. Should the conventional bore under the ANST fail, MVP will utilize the methods described in the Contingency Plan for the Proposed Crossing of the Appalachian National Scenic Trail (POD, Appendix E) that does not include an open trench crossing of the ANST. The contingency methods include reattempting the bore, using a microtunnel boring machine, or using the direct pipe method (trenchless). These methods will avoid impacts to the scenic integrity and cultural resource values of the ANST. This demonstrates appropriate management of the designated ANST corridor as required by 36 CFR 219.10(b)(1)(vi). Since the amendment meets the rule requirement, a further determination as to whether the rule requirement is directly related to it is not needed.

Scenic Integrity Objectives (SIOs)

My decision to modify Forest plan standard FW-184 (refer to Table 1 of this decision) will allow the Forest Service a short-term variance from meeting the Jefferson National Forest SIO's for the management prescriptions crossed by the MVP project Rights of Way (ROW). The modified standard will also include wording that requires the Forest Service to ensure the MVP Project meets the existing SIO's within 5 years after completion of the construction phase of the project. A Visual Impact Analysis (VIA), that produced visual simulations for KOPs, was used to assess the degree to which construction of the pipeline corridor is expected to create visible deviations by introducing contrasts in form, line, color, texture, pattern or scale that do not currently exist in the landscape character. The results of the VIA showed that, without mitigation, the proposed pipeline corridor would not repeat or mimic the natural attributes currently found in the landscape character of the Jefferson National Forest. Also see the Visual Impact Analysis in Appendix S of the FEIS.

The FS and Mountain Valley have developed mitigation measures, such as reducing the long-term operational ROW that shall be converted to herbaceous cover from 50' wide to 10' wide for its length on the Jefferson NF. Application of these measures in the approved ROW grant will significantly reduce the visibility of the pipeline on NFS lands, especially when viewed in the far middle-ground and background distance zones, and it will reduce or eliminate its visibility when viewed on an angle. Along the edge of this linear corridor a variety of FS-approved shrubs, small trees and shallow rooted trees will be planted and maintained along a slightly undulating line to break up the straight edge and offer a variety of plant heights to reduce a hard shadow line. Reducing the herbaceous right-of-way width and allowing more of a vegetative transition within the operational corridor (that is, grasses over the pipeline then shrubs between the grasses and treeline) will help mitigate the effects of the change to the scenic character of the area. This will also lessen the visual impacts of the project as seen from the ANST and from other viewing locations, including KOPs that were identified in public comments. By requiring these measures in the ROW grant issued by the BLM, the MVP Project will be consistent with the modified Forest plan standard FW-184 within five years of completing construction. The standard states that the Forest SIO's govern all new projects.

Section 4.8.1.10 and Appendix S of the FEIS discloses the visual impacts associated with the project. The analysis supports my decision to modify Plan Standard FW-184 to exempt the MVP ROW from meeting the assigned Forest SIO for this area and provides a five-year period following completion of MVP construction for the scenic integrity of the project area on the Forest to be restored.

The planning regulation requirement that is relevant to this amendment is 36 CFR 219.10(b)(1)(i) which requires the LRMP to include plan components for sustainable recreation and scenic

character. With respect to meeting the planning rule requirement at § 219.10(b)(1)(i), the FS and Mountain Valley have developed additional mitigation measures that will be required to be included in BLM's ROW grant. The mitigation measures are described above in this section. These mitigation measures will help mitigate the effects of the change to the scenic character of the area. (See also the mitigation measures for addressing the effects of the pipeline on the visual resources that are described in the POD). With the implementation of these mitigation measures, the planning rule requirement to provide for scenic character will be met. Since the amendment meets the rule requirement, a further determination as to whether the rule requirement is directly related to it is not needed.

Project and activity consistency with the plan

All future projects and activities must be consistent with the amended plan (16 U.S.C. 1604(i)). The 2012 Planning Rule consistency provisions at 36 CFR 219.15(d) apply only to the plan component(s) added or modified under the 2012 Planning Rule. With respect to determinations of project consistency with other plan provisions, the FS's prior interpretation of consistency (that the consistency requirement is applicable only to plan standards and guidelines) applies. (FSH 1909.12, Ch. 20, sec. 21.33). Through compliance with the terms and conditions contained in this decision and the applicable mitigation measures identified in the Plan of Development (POD), I find the MVP is consistent with the amended plan.

Project-Specific Plan Amendment Alternatives Considered in Detail

With respect to this Forest Plan amendment decision, since the amendment is specific to modifying LRMP management requirements to allow for the proposed pipeline's construction and operation, the range of alternatives was limited to the amending the plan and no action.

Proposed Action -Plan Amendment – The proposed action is amending the Jefferson National Forest Land and Resource Management Plan to allow MVP to construct a pipeline on approximately 83 acres of lands associated with the proposed 3.6 mile pipeline corridor for the Mountain Valley Project (MVP) that would cross the Jefferson National Forest.

No Action Alternative - In the no action alternative, the plan would not be amended and the proposed MVP Pipeline would not be constructed on the Forest.

Environmentally Preferable Alternative

NEPA regulations require agencies to specify the alternative or alternatives which were considered to be environmentally preferable (40 CFR 1505.2(b)). Forest Service NEPA regulations define an environmentally preferable alternative as: “the alternative that best promote the national environmental policy as expressed in NEPA's section 101. Ordinarily, the environmentally preferable alternative that causes the least harm to the biological and physical environment; it is also the alternative which best protects and preserves historic, cultural, and natural resources” (36 CFR §220.3).

The scope of this decision was limited to considering the project-specific plan amendment related to construction and operation of MVP. The effects analysis in the FEIS for this project shows that the project can be implemented without impairing the long-term productivity of National Forest

System lands (FEIS, Section 4.0 and 5.0). BLM's ROW grant (if approved) will be subject to required design requirements and mitigation measures contained in the POD and the other terms and conditions of this decision. The decision includes measures to avoid or minimize environmental harm including standards and guidelines, which at a minimum, meet all requirements of applicable laws, regulations, State standards, and additional standards and guidelines for the affected NFS lands. Adverse effects of the proposed pipeline will be mitigated through measures proposed by the Applicant and through measures required by FERC or other federal and state agencies.

Compared to the proposed action, the no action alternative would offer a significant environmental advantage. However, if the MVP is not authorized or not constructed, proponents may seek other means of transporting the proposed volumes of natural gas from production areas in the Appalachian Basin to markets in the Mid-Atlantic and Southeast United States. Transport by other means may result in the expansion of existing natural gas transportation systems or the construction of new infrastructure, both of which may result in equal or greater environmental impacts in comparison to the MVP. Given consideration of these factors, I concur with FERC's conclusion (FEIS, Section 3.1.1) that the no action alternative does not meet the stated purpose of the MVP and likely would not offer a significant environmental advantage if another, similar project took its place.

Therefore, I find the plan amendment, complete with required design features and mitigation outlined in the POD, is preferable. When compared to the no action alternative, it best supports the purpose and need of transporting natural gas produced in the Appalachian Basin to markets in the Northeast, Mid-Atlantic, and Southeastern United States (FEIS, Introduction Section).

Findings Required by Other Laws and Regulations

National Forest Management Act (NFMA)

The NFMA requires regulations to guide Forest Service land use planning, which includes the amendment of plans. The National Forest System land management planning rule (the 2012 Rule, as amended) sets out requirements for the amendment of plans. See 36 CFR Part 219; specifically, §219.13 (81 FR 90738 (December 15, 2016)). The discussion in this record of decision in the section, "Compliance with the Rule's Procedural provisions," explains how the following procedural rule requirements for this amendment were met; specifically, consideration of the best available scientific information, (§219.3), providing opportunities for public participation and public notice (§§219.4, 219.13 (b)(2), and 219.16), using the correct format for standards (§219.7 (e) and 219.13 (b)(4)). The discussion in this record of decision in this section, Findings Required by Other Laws and Regulations, under the "NEPA," heading, explains that the FEIS is consistent with Forest Service NEPA procedures (§219.13 (b)(3)). The discussion in the section, "Compliance with the Rule's Applicable Substantive Provisions" in this record of decision, explains how the substantive requirements for this amendment were met. Specifically, I concluded that the modifications to Standards FW-184, FW-248, 4A-028, and 6C-007, respecting utility corridors, the ANST, scenic integrity objectives, and old growth management, meet the relevant requirements of the rule. I also concluded that substantive rule provisions were not directly related, and therefore need be applied, to the modifications to Standards FW-5, FW-8, FW-9, FW-13, FW-14, 6C-026 and 11-003, respecting soil and riparian and old growth management.

The discussion under the sections “Rationale,” “Compliance with the Rule’s Procedural Provisions,” “Compliance with the Rule’s Applicable Substantive Provisions,” and “Use of Best Available Scientific Information” in this record of decision explain how my decision meets the applicable requirements of the 36 CFR 219 planning rule and is consistent with NFMA.

National Environmental Policy Act (NEPA)

I adopted the FEIS developed by FERC pursuant to 40 CFR 1506.3(c) to support my decision to amend the LRMP as outlined in this ROD. Our independent review of the FERC FEIS finds it meets the requirements of NEPA, CEQ (40 CFR 1500-1508) and Forest Service regulations (36 CFR Part 220). Forest Service direction pertaining to implementation of NEPA and CEQ regulations is contained in chapter 10 and 20 of Forest Service Handbook 1909.15 (Environmental Policy and Procedures). FERC provided opportunities for public involvement and comments received were used to develop a range of reasonable alternatives that addressed issues (FEIS, Sections 1.0 to 3.0). Using the best available scientific information, the FEIS provides an adequate analysis and discloses the environmental effects related to modifying Forest Plan standards in order for the MVP to be consistent with the LRMP. The analysis adequately addresses agency comments and design features and mitigation measures designed to reduce environmental impacts to soil, water, riparian, old growth management areas, the Appalachian National Scenic Trail and to visuals. All practicable means to avoid or minimize environmental harm from the alternative selected have been identified in the POD and the monitoring and enforcement requirements in the Environmental Compliance Management Plan (POD, Appendix N) will be implemented.

Endangered Species Act (ESA)

The Endangered Species Act of 1973 (ESA) requires federal agencies to ensure that any agency action does not jeopardize the continued existence of federally threatened or endangered species or adversely modify their designated critical habitat. FERC, as lead federal agency, consulted with the US Fish and Wildlife Service (FWS) to determine whether any federally listed (or proposed for listing) species, or their designated critical habitats would be affected by the MVP.

The FERC staff prepared a Biological Assessment (BA) to identify the nature and extent of adverse impacts, and to recommend measures that would avoid, reduce, or mitigate impacts on habitats and/or species that are federally listed and those that are proposed for listing. FERC provided the BA to FWS to initiate formal consultation on July 10, 2017. Based on FERC’s review of existing records and informal consultations with FWS, the following species include federally threatened or endangered, other potential candidates for listing (species currently under FWS review), special status species (including species of concern), as well as the BA’s determination of effect. The species are known to occur or could occur within the area. There is no designated critical habitat associated with these species in the MVP area (FEIS, Section 4.7). The following is a list of species organized by common and scientific name, status, and determination of effect.

Mammals:

- Gray bat (*Myotis grisescens*) – Endangered – Not Likely to Adversely Affect
- Indiana bat (*Myotis soldalis*) – Endangered - Likely to Adversely Affect

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- Northern long-eared bat (*Myotis septentrionalis*) – Threatened - Likely to Adversely Affect
- Virginia big-eared bat (*Corynorhinus townsendii virginianus*) – Endangered - Not Likely to Adversely Affect

Fish:

- Candy darter (*Etheostoma osburni*) – Proposed Threatened - Not Likely to Contribute to a Trend Toward Federal Listing [Addressed in Biological Evaluation; See discussion later in this section]
- Orangefin madtom (*Noturus gilberti*) – Potential Candidate - Not Likely to Contribute to a Trend Toward Federal Listing [Addressed in Biological Evaluation]
- Roanoke logperch (*Percina rex*) - Likely to Adversely Affect

Invertebrates:

- Ellett Valley millipede (*Pseudotremia cavernarum*) – Species Of Concern - No Adverse Impacts Anticipated [Addressed in Biological Evaluation]
- Mitchell satyr butterfly (*Neonympha mitchellii*)- Endangered - No Effect
- Rusty patched bumble bee (*Bombus affinis*) - Endangered - Not Likely to Adversely Affect

Mussels:

- Atlantic pigtoe (*Fusconaia masoni*) – Species of Concern - Not Likely to Contribute to a Trend Toward Federal Listing [Addressed in Biological Evaluation]
- Clubshell (*Pleurobema clava*) – Endangered - Not Likely to Adversely Affect
- Green floater (*Lasmigona subviridis*) – Potential Candidate - Not Likely to Contribute to a Trend Toward Federal Listing [Addressed in Biological Evaluation]
- James spiny mussel (*Pleurobema collina*) – Endangered - Not Likely to Adversely Affect
- Snuffbox mussel (*Epioblasma triquetra*) – Endangered -Not Likely to Adversely Affect
- Yellow lampmussel (*Lampsilis cariosa*) – Proposed Threatened - Not Likely to Adversely Affect [Addressed in FEIS]
- Yellow lance (*Elliptio lanceolate*) – Proposed Threatened – Not Likely to Jeopardize

Plants

- Northeastern bulrush (*Scirpus ancistrochaetus*) – Endangered - No Effect
- Running buffalo clover (*Trifolium stoloniferum*) - Endangered - Likely to Adversely Affect
- Shale barren rock cress (*Arabis serotina* - Endangered - Likely to Adversely Affect

- Small whorled pogonia (*Isotria medeoloides*) Endangered - Likely to Adversely Affect
- Smooth coneflower (*Echinacea laevigata*) - Endangered - Not Likely to Adversely Affect
- Virginia spiraea (*Spiraea virginiana*) - Endangered - Likely to Adversely Affect

The FEIS (section 4.7) describes the surveys conducted and the measures that would be implemented to avoid impacts to the bat species from the construction and operation of the MVP. To minimize impacts to fish, the FEIS indicates timing restrictions and relocation to minimize take, in accordance with the Biological Assessment. The FEIS indicates crossing procedures would be used to reduce impacts to mussel species. For invertebrates, the FEIS indicates additional surveys may be conducted as needed prior to construction. The FEIS indicates plant surveys were conducted in 2015 and 2016. Surveys of the MVP corridor have not documented the occurrence of any endangered plants on the Forest (FEIS Section 4.7.1.2).

FERC requested the FWS concurrence on the determination of effects described in the BA and for its Biological Opinion (BO) on whether any federally listed species or habitats would be placed in jeopardy because of the MVP. Additional information regarding the BA can be found in Section 4.7 of the FEIS. FERC received a non-jeopardy BO with incidental take authorization from the FWS on November 21, 2017. The FWS BO addresses five federally-listed species for which certain activities associated with the MVP are likely to have an adverse effect: small whorled pogonia; Virginia spiraea; Roanoke logperch; Indiana bat; and northern long-eared bat. The effects analysis of the BO is for the project in its entirety, including the portion on NFS lands. Of the five species addressed in the BO, four potentially have habitat on the JNF and would be crossed by the project; Virginia spiraea is not known to exist on the JNF. Of these four species addressed in the BO, field surveys conducted by Mountain Valley in 2015 and 2016 revealed either the species were not documented during the surveys or suitable habitat was not present within the survey corridor on NFS lands.

The BO divided the proposed action into discrete subactivities to standardize the effects analysis and focused its discussion on subactivities of the project that are likely to adversely affect the listed species. The new construction subactivity will impact suitable habitat and/or individuals. Incorporation of avoidance and minimization measures would lessen adverse effects. The FWS concludes that the proposed action is not anticipated to result in reductions in the overall reproduction, numbers, and distribution of each of the species considered; and in their opinion, authorization of the project is not likely to jeopardize their continued existence.

The BO contains several Reasonable and Prudent Measures and associated Terms and Conditions. These are mandatory nondiscretionary items that must be implemented. It should be noted that the FWS does not provide these nondiscretionary items for plant species; therefore, no Reasonable and Prudent Measures or Terms and Conditions are provided for the small whorled pogonia. With the project as proposed, the FWS does not anticipate any impact to the range, numbers, or distribution of these plant species, and therefore, no additional measures are necessary to ensure their continued existence.

On October 4, 2017, the FWS published a notice in the Federal Register proposing the candy darter (*Etheostoma osburni*) be listed as a threatened species under the ESA, citing hybridization with the variegate darter (*Etheostoma variatum*) as the primary threat to the species. The Biological Evaluation stated that mitigation measures to control sedimentation would result in a "Not Likely to Cause a Trend toward Federal Listing or Loss of Viability" determination for the candy darter.

The candy darter may occur in three waterbodies (Gauley River, the Greenbrier River, and Indian Creek) that the MVP pipeline route would cross in West Virginia, and one stream (Stony Creek) in Virginia. There is no suitable candy darter habitat on NFS land, but stream crossings on the JNF may have an indirect impact on candy darter habitat located downstream. In West Virginia, Mountain Valley would cross each of the waterbodies using the dry open-cut method and would abide by the time-of-year restriction for construction in warm waters (i.e., no construction between April 1 and June 30). Within Virginia, Mountain Valley has agreed, at the request of the VADGIF, to assume the presence of the candy darter within Stony Creek. The VADGIF requested that construction only occur in Stony Creek between July 31 and August 15 as a result of successive time-of-year restrictions of other special status species or fisheries of concern (such as coldwater fisheries, wild trout, stocked trout, and mussels). Based on the measures Mountain Valley would implement to avoid or minimize impacts on fisheries (as discussed in section 4.6.2), including using the dry open-cut crossing method, adhering to time-of-year restrictions for construction in West Virginia and Virginia, and relocating fishes from the construction areas in Virginia following guidance from the VADGIF and under supervision of qualified, professional biologists in possession of pertinent federal and/or state permits, FERC concludes that the MVP is not likely to contribute to a trend toward federal listing for the candy darter.

The Forest Service will require the mandatory measures from the BO applicable to species and habitat on NFS land be implemented as a condition of approving the Plan amendment. In addition, we will require Mountain Valley to implement mitigation measures contained in the Biological Evaluation for yellow lance and candy darter (proposed listing as threatened); as well as any recommended FWS measures that may result from any future Section 7(4)(a) conferencing on these species. Accordingly, I find this decision compliant with the ESA.

Special Status Species

Bald and Golden Eagle Protection Act

Bald and golden eagles are not listed species under the ESA; however, they are protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Federal protection of bald and golden eagles and their presence in the vicinity of the MVP are discussed in the FEIS in sections 4.5.1.1 and 4.5.2.6. Although impacts to bald eagle nests or overwintering golden eagles and non-breeding adult or juvenile bald eagles are not expected, measures that have been developed with FWS will be followed (FEIS, Section 4.5) through implementation of the POD. Mountain Valley must implement protective measures in the POD (Appendix V – Plant and Wildlife Conservation Measures Plan) to be consistent with modified standards of this Plan amendment. For these reasons this decision is compliant with the Act.

Migratory Bird Treaty Act (MBTA) of 1918 and Executive Order 13186

The FEIS discloses that the MVP construction schedule would overlap with the migratory bird nesting seasons (generally between April 15 and August 1). Increased human presence and noise from construction activities could disturb actively nesting birds. Potential impacts to migratory birds and migratory bird habitat would be reduced by implementing “The Migratory Bird Conservation Plan” that was developed with FWS (FEIS, Section 4.5). Because impacts would be reduced to the extent practicable, this decision is compliant with the MBTA and Executive Order 13186.

Regional Forester Sensitive Species (RFSS)

Federal law and direction applicable to RFSS are included in the NFMA and the Forest Service Manual (2670). Under FSM 2670.44 the Regional Forester is responsible for designating sensitive species for which population viability is a concern. The most recent list of RFSS for the JNF is dated April, 2001.

Mountain Valley submitted a draft biological evaluation (BE) on March 1, 2017. An updated BE was submitted on June 14, 2017 which incorporated field habitat survey information completed since the draft BE and addressed Forest Service comments. The BE identified 27 sensitive species that could potentially occur in the vicinity of the MVP project area on the Jefferson National Forest (see FEIS Appendix O-1). Eleven of the 27 sensitive species were eliminated from further consideration in the BE because they were not found during field surveys. Based on field surveys, 16 of the 27 sensitive species were determined to possibly be within the project area, have habitat within the construction ROW (but were not observed during surveys), or be located downstream of the project area, within a distance that could be potentially affected by project activities. As identified in the FEIS, Table 4.7.3-1, the following determinations were made: **Species with a determination of May Impact Individuals/Not Likely to Cause a Trend toward Federal Listing or Loss of Viability:**

- **Mammals:** Eastern small-footed bat (*Myotis leibii*). The species occurs outside of the activity area, but individual bats could fly into the project area and be affected by the pipeline, or use roost sites and foraging areas that could be affected by the project.
- **Fish:** Candy darter (*Etheostoma osburni*), Kanawha minnow (*Phenacobius teretulus*), orangefin madtom (*Noturus gilberti*), roughhead shiner (*Notropis ariommus*). Aquatic species with either individuals or their habitat, that are either known or suspected downstream of the project area, and within a geographic range where individuals or habitat could be affected by project activities. (Note: The candy darter was proposed for listing as a threatened species by the FWS in an October 4, 2017 Federal Register notice. See ESA section of this ROD.)
- **Freshwater Mussels:** Atlantic pigtoe (*Fusconaia masoni*), green floater (*Lasmigona subviridis*), and yellow lance (*Elliptio lanceolata*). Aquatic species with either individuals or their habitat, that are either known or suspected downstream of the project area, and within a geographic range where individuals or habitat could be affected by project activities.
- **Invertebrates:** Allegheny snaketail (*Ophiogomphus incurvatus alleganiensis*) and green-faced clubtail (*Gomphus viridifrons*). Aquatic species with either individuals or their habitat, that are either known or suspected downstream of the project area, and within a geographic range where individuals or habitat could be affected by project activities.

Maureen's Shale Stream Beetle (*Hydraena maureenae*). The species occurs in the project area, but outside the activity area.

- **Plants:** Rock skullcap (*Scutellaria saxatili*). Individual stems located by field survey in the activity area.

Sweet pinesap (*Monotropis odorata*). Suitable habitat located by field survey in the activity area, but individual stems were not located during the surveys.

Species with a determination of Beneficial Impacts. Species that would benefit from woodland clearings and open conditions created by the pipeline.

- Diana fritillary (*Speyeria diana*) and regal fritillary (*Speyeria idalia*). Suitable habitat located by field survey in the activity area, but individuals not located during the surveys.

Species with a determination of No Impacts.

- American barberry (*Berberis canadensis*). Individual stems located by field surveys in the project area, but outside of the activity area.

To minimize or avoid adverse effects on aquatic and wildlife habitat that support RFSS, Mountain Valley would adhere to measures established in the POD (Appendix V – Plant and Wildlife Conservation Measures Plan), in the BE Section 6.0 – Recommendations for Avoiding, Minimizing, and Mitigating for Adverse Effects and Impacts and in the BE Appendix G – Project-wide Mitigation Measures. Other measures that will contribute to minimizing impacts to RFSS are included in the FERC Plan and Procedures, the Erosion and Sediment Control Plan, the SPCC Plan, and the Migratory Bird Conservation Plan (see FEIS, Sections 4.5 and 4.6). The BE determined that MVP would not cause a trend toward federal listing or loss of viability for any of these 16 species. I find this decision meets the direction in FSM 2670.12 regarding sensitive species, as described above.

National Historic Preservation Act (NHPA)

Section 106 of the National Historic Preservation Act 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 prehistoric or historic sites, districts, buildings, structures, objects, or properties of traditional religious or cultural importance that are listed or eligible for listing on the National Register of Historic Places.

FERC, as the lead federal agency for NEPA compliance, is required to consult with the appropriate State Historic Preservation Offices, interested Indian tribes, and other consulting parties; identify historic properties in the area of potential effect; assess project effects on historic properties; and resolve adverse effects. FERC has consulted with the West Virginia and Virginia SHPOs, interested Indian tribes, government agencies, and the public regarding potential impacts on historic properties resulting from construction and operation of the MVP (FEIS, Section 4.10).

Using basic ethnographic sources, such as the Handbook of North American Indians (Trigger 1978), and data provided by the applicants, the FERC identified Indian tribes that historically used or occupied the project areas. The FERC's environmental mailing lists included Indian tribes that may have an interest in the projects and their mailing lists also included regional Native American organizations and state-recognized tribes.

The FERC sent copies of the April 17, 2015 NOI for the MVP and the August 11, 2015 NOI for EEP to Native Americans and tribes listed on table 4.10.5-1 of the FEIS. As part of the FERC's government-to-government consultation program with Indian tribes, on July 21, 2015, FERC sent individual letters to tribal leaders informing them about the MVP and requesting comments or information about resources important to tribes that may be affected by the project (see FEIS, Table 4.10.5-1). Only the Stockbridge-Munsee Band of the Mohican Nation responded on May 4,

2015 to the letter, indicating that the MVP is not located within their area of tribal interest. No Indian Tribes filed letters with FERC requesting to participate as consulting parties under the Section 106 process, and no objections to the MVP have been raised by any Indian Tribe.

Archaeological surveys and reports of investigation have been completed on historic sites within the area affected by MVP on the Jefferson National Forest. These reports indicate MVP has the potential to adversely affect an eligible historic property on the Forest. The Forest Service commented to the Virginia Department of Historic Resources (VDHR) that additional consultation is necessary to resolve the adverse effect to the property. The Department concurred with the Forest Service findings that the archaeological site in question is eligible for listing in the National Register of Historic Places. In September 2017 Mountain Valley developed a Treatment Plan to mitigate adverse effects to the site on NFS lands that will be adversely affected by the MVP. On October 24, 2017, the VDHR Resources stated that it found MVP's Treatment Plan to be acceptable to mitigate the adverse effect of the project on the site.

The ANST is another historic property located on the JNF within the project area. Mountain Valley proposes to avoid permanent adverse impacts to the ANST by boring under it. Operating the boring machine will result in localized, short-term noise that may be audible to hikers on the trail if present at the time of construction. The buffer distances between the trail and the boring machine would minimize noise impacts. Additionally, MVP will use vegetative mitigation in the pipeline corridor on National Forest System lands to achieve consistency with the JNF scenic integrity objectives within five years after construction is completed. The aforementioned measures contributed to FERC's finding that MVP would have no adverse effects on the ANST values as a historic district (see FEIS, Section 4.10.7.1). The Forest Service concurs with FERC's finding as it relates to NFS lands. VDHR's determination regarding the effect of the Project on the ANST is pending. FERC will continue to consult with the Forest Service, the National Park Service, and the VDHR regarding MVP's crossing of the ANST and potential project-related effects on ANST views and the experience of visitors to the trail.

In that MVP is a complex multi-state project, effects on all historic properties cannot be determined prior to agencies approval of the undertaking. FERC has developed a Programmatic Agreement (PA), under 36 CFR Part 800.14.b, to resolve adverse effects for this Project as a whole. The PA contains stipulations that will be implemented in order to take into account the effect of the undertaking on historic properties, and will satisfy all responsibilities under Section 106 of the NHPA. The Forest Service is a signatory to the PA. I signed the PA on behalf of the Forest Service on November 30, 2017. Execution and implementation of the PA will satisfy Section 106 responsibilities for all individual actions of the MVP. With execution of the PA, the Forest Service will satisfy its responsibilities under Section 106 of the NHPA. The Plan amendment will be conditioned so that it will not go into effect until the PA has been executed and any Treatment Plans for NFS lands have been completed. I find this decision is compliant with the NHPA.

National Trails System Act (NTSA)

The National Trails System Act established the Appalachian Trail and the Pacific Crest Trail as National Scenic Trails. It authorized a national system of trails to provide additional outdoor recreation opportunities and to promote the preservation of access to the outdoor areas and historic resources of the nation. The NTSA provides authority for the Secretary of the Interior or the Secretary of Agriculture to grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system in accordance with the laws applicable to the

national park system and national forest system, respectively, provided that any conditions contained in such instruments shall be related to the policy and purposes of the Act. This decision will require MVP to implement restoration measures to attain existing SIOs within five years after completion of construction to minimize visual impacts to users of the ANST. In addition, MVP proposes to implement measures contained in the POD to bore under the ANST footpath to avoid direct impacts to trail users. To ensure consistency with the JNF LRMP as amended, BLM's ROW grant must require MVP to implement the design features and mitigation measures of the POD to reduce impacts and reasonably harmonize with the experience of ANST users. Compliance with design features and mitigation measures of the POD and achieving the Plan SIOs within five years will minimize impacts and reasonably harmonize with the experience of users of the ANST. Therefore, this decision is compliant with the NTSA.

Clean Air Act

The Clean Air Act contains provisions to control common air pollutants, requires the United States Environmental Protection Agency (EPA) to establish national ambient air quality standards, and requires States to develop plans to achieve the standards. EPA has delegated to States the responsibility to issue permits to protect air quality. Section 4.11.1 of the FEIS discloses the air quality impacts of the MVP Project. The FEIS indicates the Project would result in no impacts to the James River Face Wilderness, a Class 1 airshed, on the Jefferson National Forest (FEIS, Section 4.11.1.1). The FEIS also states that air emissions and dust associated with construction are intermittent and short-term because pipeline construction moves through an area relatively quickly. MVP will employ mitigation measures to reduce impacts to air quality (i.e. efficient construction sequencing, limited idling of engines, dust control plans, and mulching instead of burning). Once construction activities in an area are completed, fugitive dust and construction equipment emissions would diminish.

The LRMP amendment approved by my decision will not directly authorize any ground disturbing activities or projects that would generate emissions. As discussed in the FEIS, Mountain Valley will implement the measures from its Fugitive Dust Control Plan to reduce construction impacts on air quality. Once construction activities in an area are completed, fugitive dust and construction equipment emissions would subside, and the impact on air quality due to construction would go away completely. Further, MVP will occur in areas classified as attainment or unclassifiable, while EEP's construction emissions would not exceed the General Conformity thresholds in areas of degraded air quality. Therefore, we conclude that the projects' construction-related impacts will not result in a significant impact on local or regional air quality.

Clean Water Act (CWA)

The Clean Water Act establishes the basic structure for regulating the discharges of pollutants into waters of the United States and regulating quality standards for surface waters. The EPA has delegated to the State of West Virginia and the Commonwealth of Virginia the authority to issue discharge permits under the CWA.

The applicable mitigation measures designed to minimize the potential for soil movement (to affect water resources) and to ensure adequate restoration and revegetation are identified in the Erosion and Sediment Control Plan (POD, Appendix C), Landslide Mitigation Plan (POD, Appendix F), the Site-Specific Design of Stabilization Measures in High Hazard Portions of the Route (POD, Appendix G), the Restoration Plan (POD, Appendix H), and the Winter Construction Plan (POD, Appendix M). MVP will also follow the FERC Upland Erosion Control,

Revegetation, and Maintenance Plan and the Best Management Practices for the states of West Virginia and Virginia.

Project impacts to groundwater are expected to be limited to those associated with clearing, grading, and trenching during construction, although it is unlikely the trench would be deep enough to significantly affect aquifers. The project's use of water control practices will result in unquantifiable impacts to water infiltration rates for the life of the project. Project impacts to surface waters include a substantial increase in sediment loads to three subwatersheds during the construction phase. Modeling estimates that sediment loads and yields would reach a new sediment equilibrium within 4 to 5 years from the start of the project. For most streams this would represent a one percent or less increase in sediment load over baseline conditions. Sedimentation is unavoidable during instream construction (16 waterbody crossings on the Forest), but impacts will be minimized by MVP's use of temporary and permanent sediment and erosion controls.

I find my decision is compliant with the CWA. The LRMP amendment approved by my decision will not directly authorize any ground disturbing activities or projects; however, the plan amendment approved by this decision will ensure that applicable mitigation measures identified in MVP's project design requirements and mitigation measures of the POD will be implemented should BLM approve the MVP ROW grant. These measures are designed to minimize sediments and other pollutants related to construction of the pipeline from impacting surface waters.

Floodplains and Wetlands (Executive Orders 11988 and 11990)

These Executive Orders require federal agencies to avoid, to the extent possible, short and long-term effects resulting from the occupancy and modification of flood plains, and the modification or destruction of wetlands. Forest-wide standards and guidelines are provided in the Jefferson National Forest LRMP for soil and water, wetlands, and riparian areas to minimize effects to flood plains and wetlands.

My decision incorporates the applicable mitigation measures in the POD to protect wetlands and minimize compaction include: limiting the construction right-of-way width to 75 feet through wetlands (unless otherwise approved by the FERC); placing equipment on mats; using low-pressure ground equipment; limiting equipment operation and construction traffic along the ROW; locating ATWS more than 50 feet away from wetland boundaries (unless approved by the FS); cutting vegetation at ground level; limiting stump removal to the trench; segregating the top 12 inches of soil, or to the depth of the topsoil horizon; using "push-pull" techniques in saturated wetlands; limiting the amount of time that the trench is open by not trenching until the pipe is assembled and ready for installation; not using imported rock and soils for backfill; and not using fertilizer, lime, or mulch during restoration in wetlands. MVP will also follow the FERC Waterbody and Wetland Construction and Mitigation Procedures. Surveys indicate that less than 0.1 acre of jurisdictional wetlands will be impacted by the MVP Project on the Jefferson National Forest.

I find my decision is compliant with the Executive Orders. The LRMP amendment approved by my decision will not directly authorize any ground disturbing activities or projects; however the plan amendment approved by this decision will ensure that applicable mitigation measures identified in MVP's project design requirements and mitigation measures of the POD will be implemented should BLM approve the MVP ROW grant. These measures are designed to

minimize sediments and other pollutants related to construction of the pipeline from impacting surface waters.

Environmental Justice (Executive Order 12898)

EO 12898 requires federal agencies to consider the adverse health or environmental effects of their programs, policies, and activities on minority and low-income populations. The FERC analysis (FEIS, Section 4.9.1.8) evaluated potential impacts to minority populations as well as other vulnerable populations in the project area including children, the elderly, disabled, non-English speakers, and other disadvantaged people that may be disproportionately affected by the projects. Adverse impacts on water and air quality resulting from construction and operation of the projects were identified as concerns that should be addressed. The FERC analysis determined that although low-income populations exist in the MVP; impacts from the projects will not disproportionately fall on environmental justice populations and impacts on these populations would not appreciably exceed impacts on the general population.

The analysis concludes there is no evidence that the project will cause significant adverse health or environmental harm to any community with a disproportionate number of minorities, low-income, or other vulnerable populations. I find the FERC analysis has adequately addressed potential impacts to minority, low income, and vulnerable populations.

Wilderness Act of 1964

The MVP pipeline route would not cross any designated Wilderness areas, but would be within 0.25 mile of the Peters Mountain Wilderness and the Brush Mountain Wilderness, within 2.5 miles of the Mountain Lake Wilderness, and within 7.5 miles of the Brush Mountain East Wilderness (FEIS, Section 4.8.1.6). A visual analysis conducted for the Brush Mountain and Peter Mountain Wilderness indicated no impacts to the Peters Mountain Wilderness and low visual impacts to visitors in the Brush Mountain Wilderness because of the amount of screening provided by the thick forest between the proposed pipeline route and the Wilderness.

2001 Roadless Area Conservation Rule (RACR)

The MVP pipeline route will cross the Brush Mountain Inventoried Roadless Area (IRA) for a length of approximately 1 mile within the Jefferson National Forest.

The RACR prohibits timber removal and road construction and reconstruction in IRAs except under specific circumstances. The RACR at 36 CFR 294.13(b)(2) allows for timber cutting or removal when it is “incidental to the implementation of a management activity not otherwise prohibited” by the rule. The Preamble to the Rule clarifies that utility corridors are an example of an activity not prohibited by the rule (66 FR. 3244, 3258 (January 12, 2001)). As described elsewhere in this decision, the modified standards will require MVP to implement design features and mitigation measures that will minimize impacts to the Brush Mountain IRA. I find the analysis adequately evaluated impacts to the IRA and that implementation of the MVP Project within the IRA is consistent with the RACR.

Administrative Review/Objections

This decision was subject to the pre-decisional objection process pursuant to 36 Code of Federal Regulation (CFR) § Part 218. The MVP FEIS and the Draft ROD for the LRMP Amendment for the JNF were released to the public in June 2017. The objection process was initiated by the

publication of the legal notice of the beginning of the 45-day objection filing period in *The Roanoke Times* on June 23, 2017.

Objections to the proposed project-specific plan amendment were received via electronic or postal submissions until the objection filing period ended on August 7, 2017. Over 700 individual objections were received. An independent team of resource specialists analyzed the issues raised in the objections along with the documentation in the Project Record including, but not limited to, the FEIS and the DROD. All timely, legible objections received were considered in the administrative review process. Many of the objectors submitted identical, or near-identical issues. Individual issues were grouped to aid the review team. Approximately 100 distinct issues were identified, which were further grouped into four general categories:

Procedural Issues

A category of objections involved issues with the procedure used. Objectors were concerned with the way the Forest Service adopted the analysis, the requirements for adequate notice and timelines, and the opportunities to comment. Objectors also were concerned with timing of mandatory consultations and the signing of the final Record of Decision.

Analysis and Best Available Science Controversy

Another category of objections revolved around the analysis and best available science associated with the decision. This included disagreement over the science used or the scientific methodology itself, the adequacy of the data used to run an analysis model, the use of a particular model, or the scientific references used or not used for the analysis.

Mitigation Measures

A third category of objections concerned the proposed mitigation measures and their sufficiency to minimize impacts from the MVP. Objectors questioned the analysis to determine the sufficiency of the proposed mitigation measures as well as the ability of these measures to protect resources.

Amendment Content

The final category of objections included concerns related to the proposed project-specific amendment to the existing Jefferson National Forest Land and Resource Management Plan. The objectors raised issues regarding the proposed amendment's content, the use of the amendment for the MVP, and noncompliance with the amendment process.

Following the review by the resource specialists, the Reviewing Officer for the Acting Regional Forester determined that:

- While the information sharing procedures likely could have been more clearly explained throughout the process, the Forest Service met all requirements per the controlling law, regulation, and policy;
- As a Cooperating Agency, the Forest Service has met its legal obligations;
- The analysis and science used sufficiently meets the requirements per the controlling law, regulation, and policy;
- The proposed mitigation measures and associated analysis sufficiently meets the required

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law, regulation, and policy; and

- The proposed amendment meets the required law, regulation, and policy.

A written response to the objections was signed on October 19, 2017 by Frank R. Beum, the Reviewing Officer for the Acting Regional Forester. This written response concluded the 36 CFR Part 218 administrative review process for the Mountain Valley Pipeline Forest Plan Project Specific Amendments decision by the Forest Service. In accordance with 36 CFR § 218.11(b)(2), this written response is not subject to further review from any other Forest Service or USDA official.

Effective date (§ 219.17(a))

This project-specific amendment to the LRMP for the Jefferson National Forest will become effective upon BLM issuing the appropriate permits to authorize the project and providing Mountain Valley with a Notice to Proceed.

Contact Person

For additional information concerning this decision, contact Tim Abing, Director of Lands, Minerals, and Uses for the Southern Region at 404-347-4592, or via email at tabing@fs.fed.us.



JOBY P. TIMM
Forest Supervisor
George Washington and Jefferson National Forests



[DATE]

CERTIFICATE OF SERVICE

I, Nathan Matthews, hereby certify under the penalty of perjury that on December 6, 2017, I served a copy of the foregoing Petition for Review and Corporate Disclosure Statement by U.S. mail on the following parties:

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December 6, 2017.



Nathan Matthews

LIST OF RESPONDENTS

Pursuant to Local Rule 15(b), Petitioners hereby provide a list of Respondents specifically identifying the Respondents' names and the addresses where Respondents and/or their counsel may be served with copies of the Petition:

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