



Forest Service
U.S. DEPARTMENT OF AGRICULTURE

Region 8, Jefferson National Forest

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Record of Decision

Mountain Valley Pipeline and Equitrans Expansion Project¹



Giles and Montgomery Counties, Virginia
Monroe County, West Virginia

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



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**Record of Decision
for the
Mountain Valley Pipeline and Equitrans Expansion Project
Monroe County, West Virginia and Giles and Montgomery Counties, Virginia**

| | |
|---------------------------------|---|
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Acronyms and Abbreviations

| Acronym or Abbreviation | Description |
|--------------------------------|--|
| ACP | Atlantic Coast Pipeline |
| ANST | Appalachian National Scenic Trail |
| BASI | Best Available Scientific Information |
| BLM | Bureau of Land Management |
| BE | Biological Evaluation |
| BO | Biological Opinion |
| CEQ | Council on Environmental Quality |
| Certificate | Certificate of Public Convenience and Necessity |
| CFR | Code of Federal Regulations |
| CWA | Clean Water Act |
| DEIS | Draft Environmental Impact Statement |
| DSEIS | Draft Supplemental Environmental Impact Statement |
| ECD | Erosion Control Device |
| EIS | Environmental Impact Statement |
| EO | Executive Order |
| ESA | Endangered Species Act |
| FEIS | Final Environmental Impact Statement |
| FERC | Federal Energy Regulatory Commission |
| Forest Plan | 2004 Jefferson National Forest Revised Land and Resource Management Plan |
| Forest Service | USDA Forest Service |
| Fourth Circuit | United States Court of Appeals for the Fourth Circuit |
| FR | Federal Register |
| FS | USDA Forest Service |
| FSEIS | Final Supplemental Environmental Impact Statement |
| FSH | Forest Service Handbook |
| FSM | Forest Service Manual |
| FW | Forest Wide |
| FWS | United States Fish and Wildlife Service |
| JNF | Jefferson National Forest |
| LOD | Limit of Disturbance |
| LRMP | Land and Resource Management Plan |
| MBTA | Migratory Bird Treaty Act |
| MLA | Mineral Leasing Act |
| Mountain Valley | Mountain Valley Pipeline, LLC |
| MP | Milepost |
| MVP | Mountain Valley Pipeline |
| NEPA | National Environmental Policy Act |
| NFMA | National Forest Management Act |
| NFS | National Forest System |
| NHPA | National Historic Preservation Act |
| NOA | Notice of Availability |
| NOI | Notice of Intent |
| NPDES | National Pollution Discharge Elimination System |
| NPS | National Park Service |
| NRHP | National Register of Historic Places |
| NTSA | National Trails System Act |

| Acronym or Abbreviation | Description |
|--------------------------------|---|
| PA | Programmatic Agreement |
| POD | Plan of Development |
| RFSS | Regional Forester Sensitive Species |
| ROD | Record of Decision |
| ROW | Right-of-way |
| RUSLE2 | Revised Universal Soil Loss Equation, Version 2 |
| SBA | Supplement to the Biological Assessment |
| SBE | Supplemental Biological Evaluation |
| SEIS | Supplemental Environmental Impact Statement |
| SF | Standard Form |
| SIO | Scenic Integrity Objective |
| SWPPP | Stormwater Pollution Prevention Plan |
| TES | Threatened, Endangered, or Sensitive |
| The Court | United States Court of Appeals for the Fourth Circuit |
| TUP | Temporary Use Permit |
| U.S. | United States |
| USACOE | United States Army Corps of Engineers |
| USDA | United States Department of Agriculture |
| U.S.C. | United States Code |
| VADEQ | Virginia Department of Environmental Quality |
| WOTUS | Waters of the United States |
| WVDEP | West Virginia Department of Environmental Protection |

1 Introduction and Background

The Mountain Valley Pipeline (MVP) is a proposed 303.5-mile interstate natural gas pipeline that would cross about 3.5 miles of the Jefferson National Forest (JNF), in Monroe County (West Virginia), Giles County (Virginia), and Montgomery County (Virginia) (Figure 1). The pipeline route crosses the Appalachian National Scenic Trail (ANST) and the Brush Mountain Inventoried Roadless Area. As proposed, the construction phase of the MVP will require use of about 83 acres of the JNF, and the operational phase will occupy about 42 acres (less than 0.1 percent) of the JNF. No new roads would be constructed on the JNF.

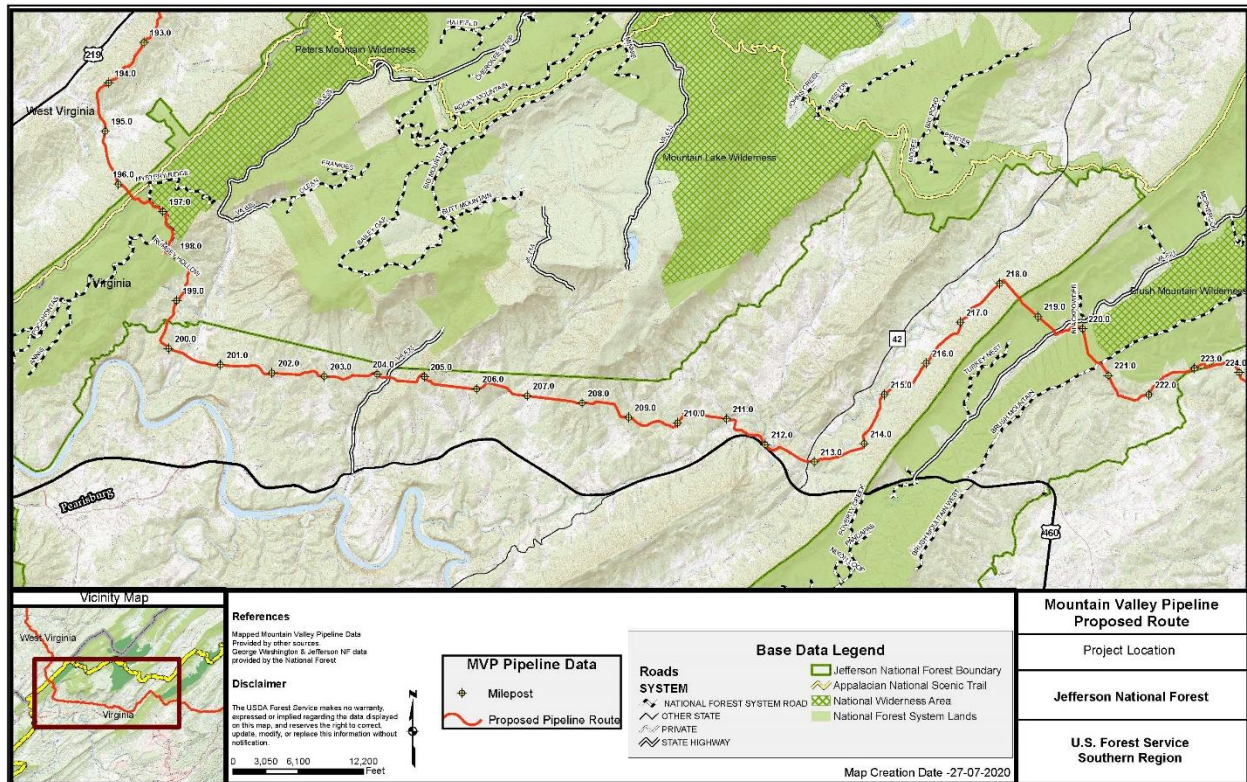
The Federal Energy Regulatory Commission (FERC) regulates interstate transportation of natural gas per the Natural Gas Act of 1938 (as amended) and therefore is the lead federal agency for the coordination of all applicable federal authorizations associated with the larger MVP project.

The Mineral Leasing Act (MLA) (30 United States Code [U.S.C.] § 185 et seq.) authorizes the use of certain federal lands for pipeline rights-of-way (ROWs). Because the proposed MVP would cross lands administered by two different federal agencies (U.S. Army Corps of Engineers [USACOE] and United States Department of Agriculture [USDA] Forest Service [Forest Service]), the Secretary of the Interior is authorized to issue the ROWs for occupancy of involved federal lands after receiving concurrence from those federal agencies. The Secretary of the Interior has delegated to the Bureau of Land Management (BLM) the authority to issue the ROWs. BLM has responsibility for reviewing the proponent's ROW application and authority to issue a decision on whether to approve, approve with modifications, or deny the application.

As a federal agency that administers lands which would be crossed by the MVP, the Forest Service's decision to be made is:

- whether to adopt all or portions of the 2017 FERC Final Environmental Impact Statement (FEIS) that are relevant to National Forest System (NFS) lands;
- whether to approve a 2004 Jefferson National Forest Revised Land and Resource Management Plan (LRMP or Forest Plan) amendment that would modify 11 standards in the Forest Plan and allow the project to be consistent with the Forest Plan;
- whether to concur with BLM in granting the ROW and Temporary Use Permit (TUP), and if so,
- what terms and conditions should be included with the Forest Service concurrence to BLM regarding the project.

For this decision, the USDA Under Secretary, Natural Resources and Environment (Under Secretary), is the responsible official (7 Code of Federal Regulations [CFR] § 2.12). This Record of Decision (ROD) documents the decision and rationale of the USDA Under Secretary (40 CFR § 1505.2). The decision and rationale of the Under Secretary is based upon and supported by the December 2020 Final Supplemental Environmental Impact Statement (FSEIS) prepared by the Forest Service and adoption (40 CFR § 1506.3) of the June 2017 FERC FEIS prepared by the FERC for the MVP Project and Equitrans Expansion Project.

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

2 Decision

The USDA Under Secretary has considered the environmental analysis disclosed in the FSEIS, the FERC FEIS, the project record, the proponent's Plan of Development (POD), and comments from the public on the Draft Supplemental Environmental Impact Statement (DSEIS), partners, and other federal and state agencies. After consideration of Alternatives 1 and 2 as disclosed in the FSEIS, the USDA Under Secretary has decided to select Alternative 2, as described in the FSEIS, thereby deciding to:

- adopt portions of the FERC FEIS that are relevant to NFS lands,
- approve a Forest Plan amendment that would modify 11 standards in the Forest Plan and allow the project to be consistent with the JNF Forest Plan,
- concur with BLM in granting the ROW and TUP across NFS lands, and
- provide terms and conditions to be included with the Forest Service concurrence to BLM regarding the project.

2.1 Adoption of the FERC FEIS

The Forest Service was a cooperating agency during the FERC's preparation of the 2017 FEIS. As a cooperating agency and after an independent review of the FERC FEIS, the Forest Service concluded that its comments and suggestions were satisfied (40 CFR § 1506.3) (1978, as amended in 1986 and 2005). Through its previous ROD in 2017, the Forest Service adopted the FERC FEIS.

As part of this ROD, the Forest Service is again adopting portions of the FERC FEIS which are relevant to NFS lands and has supplemented it with additional analysis disclosed in the FSEIS. The USDA Under Secretary has relied on the FERC FEIS and the FSEIS to inform this decision and to certify that the Forest Service considered a reasonable range of alternatives, analyses, and objections submitted by State, Tribal, and local governments and public commenters (40 CFR § 1505.2(b)). In addition, this FSEIS incorporates by reference the FERC FEIS’s project record.

2.2 Approval of Forest Plan Amendment

The USDA Under Secretary has decided to amend the JNF LRMP as displayed in Table 1. The Plan amendment modifies Plan standards for the following five Plan parts: Utility Corridors; Soil and Riparian; Old Growth Management Area; ANST Area; and Scenic Integrity Objectives (SIOs). Plan language that is new or modified as a result of this decision appears in italicized text in column 2 of Table 1. All design features and mitigation measures described in the FSEIS that are applicable to NFS lands are incorporated by reference into the Under Secretary’s decision (36 CFR § 220.4(h)), and a summary of the MVP Project design features and mitigation measures from the POD associated with these modified standards can be found in Table 1. The areas affected by this decision include approximately 83 acres of lands (including access roads) associated with the about 3.5-mile pipeline corridor for the MVP Project that would cross the JNF in Monroe County, West Virginia and Giles and Montgomery counties, Virginia. This amendment is project-specific and is effective from the date of this decision.

Section 3.4.4.2 of the FSEIS describes the process used to identify the substantive requirements that are directly related to the proposed amendment and how the substantive requirements were applied to the JNF LRMP. Whether a substantive requirement is directly related to an amendment is determined by any one of the following: the purpose of the amendment, a beneficial effect of the amendment, a substantial adverse effect of the amendment, or a substantial lessening of plan protections by the amendment (36 CFR § 219.13(b)(5)). For the eleven standards that will be modified, the purpose of the amendment was the primary factor used to determine which requirements was directly related. No substantive requirements were determined to be directly related to the modification based on adverse effects (FSEIS, Section 3.4.4.2).

Table 1. JNF Forest Plan Standards and Modifications Specific to the MVP Project.

| Jefferson NF Forest Plan Standards | Proposed Modification for the MVP Project | Required Protective Measures in the POD |
|---|---|--|
| 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 (JNF 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. <i>However, this requirement does not apply to the operational ROW for the MVP Project.</i> | None |

Table 1 (Continued). JNF Forest Plan Standards and Modifications Specific to the MVP Project.

| Jefferson NF Forest Plan Standards | Proposed Modification for the MVP Project | Required Protective Measures in the POD |
|--|--|---|
| Part 2 – Soil and Riparian | | |
| <p>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 (JNF LRMP, p. 2-7).</p> | <p>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, <i>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.</i></p> | <ul style="list-style-type: none"> • Appendix C-1 to C-3, Erosion and Sediment Control Plan • Appendix F, Landslide Mitigation Plan • Appendix G, Site-Specific Design of Stabilization Measures in High Hazard Portions of the Route • Appendix H, The Restoration Plan • Appendix I, Timber Removal Plan • Appendix K, Water Crossing Plan • Appendix L, Karst Mitigation Plan • Appendix M, The Winter Construction Plan • Appendix R, Framework for Operations, Maintenance, and Emergency Response Plan • Appendix S, Exotic Invasive Species Plan • Appendix U, Spreads G-H-I Stormwater Pollution Prevention Plan (SWPPP) |
| <p>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 soil moisture exceeds the plastic limit. Soil moisture exceeds the plastic limit when soil can be rolled to pencil size without breaking or crumbling (JNF LRMP, p. 2-7).</p> | <p>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 soil moisture exceeds the plastic limit, <i>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.</i> Soil moisture exceeds the plastic limit when soil can be rolled to pencil size without breaking or crumbling.</p> | <p>Same as FW-5.</p> |

Table 1 (Continued). JNF Forest Plan Standards and Modifications Specific to the MVP Project.

| Jefferson NF Forest Plan Standards | Proposed Modification for the MVP Project | Required Protective Measures in the POD |
|---|---|--|
| 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 (JNF 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, <i>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.</i> | Same as FW-5. |
| Standard FW-13: Management activities expose no more than 10% mineral soil in the channeled ephemeral zone (JNF LRMP, p. 2-8). | Standard FW-13: Management activities expose no more than 10% mineral soil in the channeled ephemeral zone, <i>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.</i> | <ul style="list-style-type: none"> • Appendix C-1 to C-3, Erosion and Sediment Control Plan • Appendix F, Landslide Mitigation Plan • Appendix L, Karst Mitigation Plan • Appendix H, The Restoration Plan • Appendix M, The Winter Construction Plan • Appendix R, Framework for Operations, Maintenance, and Emergency Response Plan • Appendix S, Exotic Invasive Species Plan • Appendix U, Spreads G-H-I SWPPP • Appendix V, Plant Wildlife Conservation |
| 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 (JNF 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, <i>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.</i> | Same as FW-13. |

Table 1 (Continued). JNF Forest Plan Standards and Modifications Specific to the MVP Project.

| Jefferson NF Forest Plan Standards | Proposed Modification for the MVP Project | Required Protective Measures in the POD |
|--|--|---|
| Standard 11-003: Management activities expose no more than 10 percent mineral soil within the project area riparian corridor (JNF LRMP, p. 3-182). | Standard 11-003: Management activities expose no more than 10 percent mineral soil within the project area riparian corridor, <i>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.</i> | Same as FW-13. |
| 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 and safety; improve threatened, endangered, sensitive, and locally rare species habitat; control non-native invasive vegetation (JNF LRMP, pp. 3-82 to 3-83). | 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 and safety; improve threatened, endangered, sensitive, and locally rare species habitat; control non-native invasive vegetation, <i>clear the trees within the construction zone associated with the Mountain Valley Pipeline; and maintain the operational right-of-way of the Mountain Valley Pipeline in accordance with the approved POD.</i> | <ul style="list-style-type: none"> • Appendix I, Timber Removal Plan |
| 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 (JNF LRMP, p. 3-84) | Standard 6C-026: These areas are unsuitable for designation of new utility corridors, utility rights-of-way, or communication sites, <i>with the exception of the Mountain Valley Pipeline right-of-way.</i> Existing uses are allowed to continue. | None |

Table 1 (Continued). JNF Forest Plan Standards and Modifications Specific to the MVP Project.

| Jefferson NF Forest Plan Standards | Proposed Modification for the MVP Project | Required Protective Measures in the POD |
|--|--|---|
| 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 ROWs to a single crossing of the prescription area, per project (JNF 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, <i>with the exception of the Mountain Valley Pipeline right-of-way</i> . Limit linear utilities and rights-of-way to a single crossing of the prescription area, per project. | <ul style="list-style-type: none"> • Appendix E, ANST Contingency Plan |
| 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 (JNF LRMP, p. 2-48). | Standard FW-184: The Forest Scenic Integrity Objectives (SIOs) Maps govern all new projects (including special uses), <i>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.</i> Assigned SIOs are consistent with Recreation Opportunity Spectrum management direction. Existing conditions may not currently meet the assigned SIO. | <ul style="list-style-type: none"> • Appendix H, Restoration Plan |

2.3 Concurrence with the BLM and Inclusion of Terms and Conditions

The USDA Under Secretary has decided to authorize the Forest Service's concurrence with BLM's granting of a ROW and TUP across NFS lands. As part of the Forest Service's Letter of Concurrence to BLM, the following Terms and Conditions will apply to the construction, operation, and maintenance of the MVP.

1. Mountain Valley shall obtain and comply with the Right-Of-Way (ROW) Grant and Temporary Use Permits as approved by the Bureau of Land Management (BLM).
2. Mountain Valley must implement the construction procedures, mitigation measures, and other requirements applicable to the Jefferson National Forest contained in the July 2020 version of the Plan of Development (POD) and subsequent updates thereof that have been approved by the Forest Service. Additionally, any requests made by the company for activities not included in the approved POD or actions that fall outside of the ROW must be requested to the BLM as a variance and/or FERC as a variance, with concurrence from the Forest Service. Additional environmental analysis may be required as part of NEPA. If accepted, the variance becomes an amendment to the POD. The amendment must be approved prior to the activity taking place (POD Appendix N [MVP 2020w]).

3. Mountain Valley shall comply with applicable provisions of Appendix C – Environmental Conditions of the Federal Energy Regulatory Commission (FERC) Order Issuing Certificates and Granting Abandonment Authority; Docket Nos. CP16-10-000 and CP16-13-000 (issued October 13, 2017).
4. Mountain Valley shall obtain Federal and State Clean Water Act permits and certifications applicable to NFS lands, and must remain in compliance with Erosion and Sediment Controls Plans, as listed below:
 - Mountain Valley shall obtain required approvals/certifications applicable to NFS lands for 401 Certifications and 404 Permits (or waivers thereof) before beginning activity on National Forest System (NFS) land that may impact waters of the U.S.
 - Mountain Valley shall obtain required approvals/certifications for a Stormwater Permit from the Virginia Department of Environmental Quality before beginning construction on NFS land.
 - Mountain Valley shall obtain required approvals/certifications for a Stormwater Permit from the West Virginia Department of Environmental Protection before beginning construction on NFS land.
 - During and after construction on NFS land, Mountain Valley shall comply with associated Erosion and Sediment Control Plan as approved by the Virginia Department of Environmental Quality.
 - During and after construction on NFS land, Mountain Valley shall comply with the associated Erosion and Sediment Control Plan as approved by the West Virginia Department of Environmental Protection.
5. Mountain Valley shall comply with the applicable Reasonable and Prudent Measures, and Terms and Conditions of the September 4, 2020 U.S. Fish and Wildlife Service (FWS) Biological Opinion for the MVP Project. Additionally, Mountain Valley shall implement all measures in the POD and Supplemental Biological Assessment. Mountain Valley shall also implement applicable mitigation measures recommended by FWS through any future Section 7(a)(4) Endangered Species Act (ESA) conferencing for future species that may occur. If species are listed as threatened or endangered under the ESA, any Reasonable and Prudent Measures and Terms and Conditions identified in a Supplemental Biological Opinion conducted under ESA 7(a)(2), must be implemented by Mountain Valley.
6. Mountain Valley shall implement any applicable mitigation measures found in and as disclosed in the June, 2020 Supplemental Biological Evaluation for Forest Service Sensitive Species and the POD.
7. Mountain Valley shall implement the Historic Property Treatment Plan for the Appalachian National Scenic Trail (ANST) as outlined in the ANST Programmatic Agreement and the POD's ANST Contingency Plan.
8. Mountain Valley is not authorized to use NFS roads for activities associated with this project, except where the LOD is coincident with Mystery Ridge Road and with Brush Mountain Road.

9. Mountain Valley is not authorized to undertake activities related to construction on NFS lands until the company has obtained all Federal and State authorizations outstanding for the entire project.

3 Decision Framework and Rationale

Each of the sections below identify and discuss factors, including essential considerations of national policy that the USDA Under Secretary balanced in making the decision. These sections state how those considerations entered into the decision (40 CFR § 1505.2(a)(2)), providing rationale and reasons for the decision.

The sections below also demonstrate that the Forest Service has adopted all practicable means to avoid or minimize environmental harm from the selected alternative and the monitoring and enforcement program for any enforceable mitigation requirements or commitments are disclosed (40 CFR § 1505.2(a)(3)).

3.1 Purpose of and Need for Action/Decision

The overall purpose of the MVP project is described in the FERC FEIS and is generally to transport natural gas produced in the Appalachian Basin to markets in the Northeast, Mid-Atlantic, and Southeastern United States. The purpose of the MVP project is found in more detail within the FERC FEIS (pages 1-8). Despite the remand of the 2017 Forest Service ROD, the project's purpose articulated in the FERC FEIS remains valid.

The Forest Service's purpose and need for the project is narrower than that described in the FERC FEIS, because the agency's decisions are narrower and within the context of the FERC decision to issue a Certificate of Public Convenience and Necessity (Certificate) for the MVP project, which is still valid. The Forest Service's purpose and need for action is to respond to a proposal from Mountain Valley to construct and operate an underground 42-inch interstate natural gas pipeline that would cross NFS lands on the JNF along a proposed 3.5-mile corridor. A Forest Service decision is needed because the project, as proposed, would not be consistent with several Forest Plan standards including utility corridors, soil, riparian, old growth, the ANST, and scenic integrity without a project-specific amendment. Relatedly, there is a need to determine what terms and conditions, or stipulations should be provided to the BLM for incorporation into the ROW grant in order to protect resources and the public interest consistent with the MLA (30 U.S.C. § 185(h)). In addition, there is need for the Forest Service, at a minimum, to demonstrate that an independent review of the sedimentation analysis has occurred, that predicted effects are supported with rationale, and that previous concerns and comments related to erosion and its effects have been satisfied.

Providing rationale for the Under Secretary's decision, selection of Alternative 2 as disclosed in the FSEIS fulfills the above purpose and need for response to Mountain Valley's proposal. This decision fulfills the purpose and need to provide a project-specific Forest Plan amendment to allow the project's compliance with Forest Plan standards. See Table 1 for a list of standards that will be modified by the project-specific Forest Plan amendment. Furthermore, this decision will provide terms and conditions to the BLM for incorporation into the ROW and TUP grants. Lastly, this decision certifies independent agency review of sedimentation analysis.

3.2 Key Information which Framed this Decision

In 2017, following the issuance of the Forest Service's and the BLM's previous RODs, project implementation began in December and continued until July 27, 2018 when the United States Court of Appeals for the Fourth Circuit (Fourth Circuit or the Court) vacated and remanded both RODs².

In the remand, the Fourth Circuit found that the Forest Service violated NEPA by arbitrarily and capriciously adopting the sedimentation analysis from the FERC FEIS without fully explaining how the agency's previous concerns about the sedimentation analysis had been addressed. The Court found the Forest Service failed to properly conduct an independent review of the FERC FEIS and ensure that the agency's concerns regarding the sedimentation analysis were satisfied as required by 40 CFR § 1506.3(c).

The Fourth Circuit also found that the Forest Service's National Forest Management Act (NFMA) analysis was also deficient, because the Forest Service failed to analyze both the purpose and the effect of the proposed amendment to the JNF Forest Plan. The Court found that the Forest Service, in modifying certain Forest Plan standards with the 2017 ROD, did not comply with its regulations for implementing NFMA (Planning Rule), because the agency failed to properly identify which Planning Rule requirements were directly related to the amended standard as required under 36 CFR § 219.13(b)(5).

Other legal challenges have been filed against the MVP project in context of the associated federal and state authorizations required for the project, including some of which are in active litigation³. Most of the challenges to federal authorizations have either been remanded to the agency by the Fourth Circuit, or the agency has voluntarily withdrawn the decision. Notably, the FERC's issuance of a "Certificate of Public Convenience and Necessity" and the project's Environmental Impact Statement (EIS) was challenged in the D.C. Circuit. In that case, the Court upheld both the issuance of the Certificate as well as the environmental analysis relied upon by the FERC.

On May 29, 2020, Mountain Valley submitted a revised MLA ROW application to the BLM, seeking to construct and operate the natural gas pipeline across the JNF. Mountain Valley also requested that the Forest Service amend the Forest Plan to be consistent with the issues identified by the Court.

To remedy the court-identified deficiencies, the Forest Service, in cooperation with the BLM, developed an FSEIS, which supplements the 2017 FERC FEIS. The FSEIS also reviewed if there were any changed circumstances or new information that has substantial relevance to the environmental concerns and/or bearing on the proposed action and effects. The majority of the analysis within the FERC FEIS is still applicable and relevant. However, as described in the FSEIS, some portions of the FERC FEIS warranted supplementation and are detailed in Section 3.4 of the FSEIS.

In framing the scope of the MVP FSEIS analysis, the Forest Service reviewed all relevant legal precedent, including the Fourth Circuit's decision in *Cowpasture River Preservation Association v. Forest Service* regarding the now-canceled Atlantic Coast Pipeline (ACP) project. The Fourth Circuit *Cowpasture* decision found that the Forest Service failed to properly analyze whether the project's need could be reasonably met on non-NFS lands as required by a George Washington Forest Plan standard and Forest Service manual policy. This issue was not raised in the Fourth Circuit's remand in *Sierra Club et al v. United States Forest Service* regarding the MVP project, however an analysis of non-NFS lands alternatives to determine whether the project could be met off NFS lands is included in the FSEIS to ensure consistency with the controlling case law, the JNF Forest Plan, and agency policy.

² *Sierra Club, Inc. v. United States Forest Serv.*, 897 F.3d 582, 589 (4th Cir.), reh'g granted in part, 739 F. App'x 185 (4th Cir. 2018)

³ To date the following challenges are currently on the docket with the Fourth Circuit Court of Appeals: *Sierra Club v. U.S. Army Corps of Engineers*, 20-2042ACE and *Appalachian Voices v. U.S. Dept. of the Interior*, 20-2159.

In the context of the legal history above, the Under Secretary finds the record provides supporting rationale for this decision because it has been independently reviewed and responds to Key Issues raised by the Fourth Circuit Court. Namely, this decision is based upon analysis and responses to the Key Issue of NEPA deficiency, the Key Issue of NFMA deficiency, the Key Issue regarding off-Forest accommodation, and the Key Issue of ANST on NFS lands.

Responsiveness to Key Issue – NEPA Deficiency

The Court found that, when adopting the FERC FEIS to support the previous ROD, the Forest Service acted arbitrarily and capriciously by failing to demonstrate an independent review of hydrologic and sedimentation analysis, given the agency's concerns documented in the FERC FEIS record. The Court ruled that the Forest Service violated NEPA by failing to take a hard and independent look at the effects related to erosion and sedimentation. To inform this decision, the Forest Service has a responsibility to demonstrate in the FSEIS that:

- The agency completed a full independent review of hydrologic and sedimentation analyses,
- The agency has disclosed rationale for its use of the Revised Universal Soil Loss Equation, Version 2 (RUSLE2) model and its methodologies which informed predicted effects described in hydrologic and sedimentation analysis⁴, and
- The agency has satisfied previous comments and concerns about the conclusions of the hydrologic and sedimentation analysis.

The Under Secretary's decision is supported by the rationale that the FSEIS responds to the Court-identified NEPA deficiency by demonstrating that the Forest Service has conducted an independent review of the updated hydrologic analysis. See the Soils; Water Resources; and Threatened, Endangered, or Sensitive (TES) species sections in Section 3.4 of the FSEIS for information on how the hydrologic analysis was used to inform environmental consequences.

Responsiveness to Key Issue – NFMA Deficiency

In July 2018, the Fourth Circuit found the Forest Service improperly applied the Planning Rule (36 CFR 219) in the 2017 Forest Plan amendment. The Court found a need for the Forest Service to identify the purpose and the effects of the amendment to be consistent with the Planning Rule and the NFMA. In response, the FSEIS reanalyzed the purpose of the amendment and effects of the proposed Forest Plan amendment in context of the substantive requirements of Planning Rule. The FSEIS analysis of the proposed Forest Plan amendment provides the basis for the Under Secretary's rationale to select amending the JNF Forest Plan.

The Forest Service has an affirmative responsibility to manage NFS resources for long-term productivity for the benefits of human communities and natural resource sustainability pursuant to the Organic Act, Multiple-Use Sustained Yield Act, and the Planning Rule. Although the project-specific forest plan amendment reduces protection to certain resources, the reduction is not to the extent that the agency cannot meet productivity and sustainability requirements. Moreover, the record is replete with analysis of potential effects from the project, and the agency's efforts to analyze and mitigate effects. The Forest Service has considered the scope and scale of the project-specific amendment within the context of the JNF Forest Plan and finds that JNF Forest Plan goals and objectives can be met. The Forest Service retains authority to modify standards within its Forest Plan using a project-specific amendment process

⁴ RUSLE2 is a commonly used model in the US and internationally for estimating soil erosion caused by rainfall and its associated overland flow. It is adaptable to unique site-specific conditions and factors in climate, soil, topography, and land use.

(16 U.S.C. § 1604)(f)(4); 36 CFR § 219.15(c)(4)). Compliance with the NFMA is further detailed in Section 5.1 of this ROD.

In addition, the Forest Service has an affirmative responsibility to expedite applications for construction of natural gas pipelines across federal land pursuant to Section 368 of the Energy Policy Act of 2005 and Executive Order (EO) 13868 Promoting Energy Infrastructure and Economic Growth. The selection of Alternative 2 is the most expeditious path for development of the MVP project. The No-Action alternative disclosed in the FSEIS would not amend the JNF Forest Plan and would result in a delay as the FERC would be required to issue a new decision, additional consultations, and additional analyses.

The Under Secretary's decision is supported by the rationale that the FSEIS responds to the Court-identified NFMA deficiencies by properly analyzing the purpose and the effects of the amendment, disclosed in the FSEIS at Section 3.4.4.

Responsiveness to Key Issue – Off-Forest Accommodation

The Court determined that no evidence was provided as to why the project cannot be reasonably accommodated on non-NFS lands. For the Forest Service, the Court ruled this was a violation of both NEPA and NFMA. The Forest Service has a responsibility to demonstrate consideration of off-NFS routes (Forest Service Manual [FSM] 2703.2(2)) and to demonstrate the need cannot be reasonably met off NFS-lands (JNF Plan Standard FW-244).

In response to this issue, the Forest Service organized a team of resource specialists to review the alternatives that would avoid NFS lands and to determine if other non-NFS options existed (see FSEIS Section 1.9.2). The evaluation considered whether there were new options for using existing ROWs.

Three criteria were selected to guide the evaluation: (1) Whether all reasonable alternatives that would avoid NFS lands had been reviewed; (2) How special use permit screening requirements found at 36 CFR § 251.54(d)(e) supported a review of alternatives; and (3) Whether the JNF Forest Plan standard FW-244 had been adequately addressed.

The route ultimately selected by the FERC is the proposed route. Ninety-four corridor segments and 2,362 miles of potential routes that received some level of review are in the FERC FEIS and/or docket (2020 MVP SF 299). Other routes and alternatives independently considered by the Forest Service are displayed in the FSEIS at Section 2.3 including alternative delivery systems such as motorized transport. See Table 2 below for an evaluation of MVP routes and variations.

Table 2. Evaluation of MVP Alternative Routes and Variations

| Information Source | Source | Description Summary | Review Comments | Summary of Findings |
|---|---|--|---|--|
| Summary of Alternative Routes reviewed | Updated 2020 MVP Standard Form (SF) 299 | “The identification of alternative routes for the Project as a whole, and for specific Project segments for crossings of the Weston and Gauley Bridge Turnpike Trail and JNF, began with a detailed routing analysis performed in May 2014 that analyzed 94 corridor segments including 2,362 miles of potential pipeline routes that would move gas from Northern West Virginia to Transco Station 165 in Pittsylvania County, Virginia.” | The identification of 94 corridor segments and 2,362 miles of potential routes are in the FERC FEIS and/or docket. | -- |
| Summary of Alternatives Considered in addition to the Proposed Action | Updated 2020 MVP SF 299 | Mountain Valley continued to identify and evaluate alternatives as issues were raised by stakeholders or located in the field. Two alternatives evaluated (Alternative 1 and Northern Alternative-ACP Collocation Alternative) would avoid crossing the Weston and Gauley Bridge Turnpike Trail and would include alternative crossing locations of the JNF. | Notes alternative crossing locations on the JNF not entire avoidance of NFS lands. | -- |
| Alternative 1 | Updated 2020 MVP SF 299 | Alternative 1 would maximize collocation; would be collocated primarily with existing electric transmission lines for approximately 101 miles, or about 31% of its total length. | Reduces crossing NFS from 3.5 to 1.6 miles; Reduces acres of old growth crossed from 1,710 feet to 0; Reduces designated old growth affected from 4.9 acre to zero. | Does not eliminate routes on NFS lands, so does not meet intent of the Court issue for the Forest Service. |
| FS Avoidance Route | Updated 2020 MVP SF 299 | This route would entirely avoid NFS lands and locate the pipeline on private lands. | See evaluation and review of this alternative (see Section 2.3.1.1). | Eliminates routes on NFS; therefore does meet intent of Court issue. See evaluation. |

Table 2 (Continued). Evaluation of MVP Alternative Routes and Variations

| Information Source | Source | Description Summary | Review Comments | Summary of Findings |
|-----------------------------------|---|--|--|--|
| Northern Pipeline-ACP Collocation | FERC FEIS; Updated 2020 MVP SF 299, BLM Practicality Analysis | Collocated entirely on federal lands with two parallel 42" pipelines with two 125' ROWs. | Crosses NFS, but in conjunction with ACP. 22 miles more of side slope routes; issue with collocating two pipelines along ridges. Milepost (MP)37 to MP303.5. | Does not eliminate routes on NFS; therefore does not meet intent of Court issue. See BLM practicality analysis for additional analysis. As the ACP was canceled, this is no longer a viable alternative. |
| Highway Collocation | FERC FEIS, BLM Practicality Analysis | Alongside of Interstate 77. | Crosses NFS but in conjunction with the Interstate 77 ROW. Two versions analyzed: one within highway ROW and one adjacent to highway ROW. | See BLM practicality analysis for additional analysis. |
| Alt 1-Hybrid 1A | FERC FEIS, BLM Practicality Analysis | Alternative 1 maximizes collocation with an existing electric transmission line with Hybrid 1A follows approved route to MP 135, then follow Alternative 1, re-converging at MP 303.5. | Collocates with electric transmission lines. | Does not eliminate routes on NFS lands; therefore it does not meet intent of Court issue. However, it does reduce the pipeline length on NFS lands to 1.6 miles. |
| Variations 110, 110R, and 110J | FERC FEIS, BLM Practicality Analysis | Developed to avoid sensitive resources in the general vicinity of the JNF crossing between MPs 175-235. | Crosses more miles of federal lands than the approved route | Does not eliminate routes on NFS lands; therefore it does not meet intent of Court issue. |
| SR-635-ANST Variation | FERC FEIS, BLM Practicality Analysis | Developed to reduce effects to ANST hikers by crossing the ANST at an existing state road. MPs 191.7 to 207.8. | Crosses 2.9 miles more of federal land. | Does not eliminate routes on NFS lands; therefore it does not meet intent of Court issue. |

Table 2 (Continued). Evaluation of MVP Alternative Routes and Variations

| Information Source | Source | Description Summary | Review Comments | Summary of Findings |
|--|--------------------------------------|--|---|---|
| Columbia Gas of Virginia Variation | FERC FEIS, BLM Practicality Analysis | Collocates MVP with Columbia Gas of Virginia for about 1.6 miles. MPs 195 to 200. | Reduces un-collocated crossing on federal lands but increase total pipeline by about 9 miles with 4.1 miles on steep slope and 4.6 miles of side slope. Increases total disturbance by 136.3 acres with 60.8 more acres on forested land. | Does not eliminate routes on NFS lands; therefore it does not meet intent of Court issue. |
| American Electric Power - ANST Variation | FERC FEIS, BLM Practicality Analysis | Developed to reduce effects to AT hikers by crossing the ANST at an existing electric transmission line. MPs 195.4 to 200. | Increases crossing of federal lands by about 0.9 miles. | Does not eliminate routes on NFS lands; therefore it does not meet intent of Court issue. |
| Brush Mountain Alternatives 1 and 2 | BLM Practicality Analysis | Developed to reduce effects to the Craig Creek watershed. MP 219.5 to 220.7. | Crosses same amount of JNF land. | Does not eliminate routes on NFS lands; therefore it does not meet intent of Court issue. |
| Slussers Chapel Variations | BLM Practicality Analysis | Two route alternatives between MPs 220.7 and 223.7 to reduce effects on the Slussers Chapel Conservation Site. | Modified Variation 250 entirely on non-federal lands but has about 2.3 miles on federal land. Other alternative crosses more federal lands. | Does not eliminate routes on NFS lands; therefore it does not meet intent of Court issue. |

As described in detail in the FSEIS (Section 2.3.1) the Forest Service found that the Forest Service Avoidance Route would meet the intent of the Court issue. This route was considered but eliminated because all actions that would have occurred on NFS lands would be transferred to other lands. This alternative would increase the length of the pipeline from approximately 303 miles to 351 miles and the acres of land that would be disturbed from the ROW during construction increases by 745 acres. The number of human-populated areas that are within ½ mile of the pipeline increase from 8 to 31, and the number of private lands crossed would increase by about 248 parcels. Relatedly, the number of residences that are in close proximity (within 50 feet) to the ROW would increase from 63 to 168. The ANST and the Blue Ridge Parkway, important features on this landscape, would still be crossed under the Avoidance Route, just not on NFS lands.

In response to comments received on the DSEIS, the Forest Service reviewed three additional route alternatives that had been recommended including the Gap, WB Xpress, and the Transco Alternative (FSEIS, Section 2.3.1). Table 3 summarizes the evaluation and conclusion on why these alternatives were considered but eliminated from detailed study.

Table 3. Additional Off-NFS Lands Alternatives Evaluated in Response to DSEIS Comments

| Recommended Alternative | Description Summary | Review Comments | Summary of Findings |
|--------------------------------|---|---|---|
| Gap Alternative | The recommendation was to review the gaps in land ownership to route the pipeline off NFS lands. | To avoid designated wilderness the route would need to go some distance north or south. In order to avoid excessive distance, NFS lands would have to be crossed. | After a review of looking for alternative routes both north and south of NFS lands, the Forest Service found the FERC's Variation 110R is very similar. |
| WB Xpress Alternative | The recommendation was to tie in with the existing WB Xpress pipeline as a means of avoiding NFS lands. | The WB Xpress is part of the larger Columbia Gas pipeline. Re-routing the MVP to use this route results in the gas not getting to its intended location in the most direct manner possible. | The Forest Service concluded it is not reasonable to take a more indirect route via the Columbia gas line to the Transco Interconnect. The Forest Service reviewed the FERC FEIS and found that a Columbia System Pipeline alternative had been considered but dismissed for reasons including (but not limited to) capacity which is already contracted (spoken for) (FERC FEIS, pp. 3-10 to 3-11). The WB Xpress pipeline alternative had been considered but eliminated because of current pipeline capacity limitations (FERC FEIS, p. 3-16). |

Table 3 (Continued). Additional Off-NFS Lands Alternatives Evaluated in Response to DSEIS Comments

| Recommended Alternative | Description Summary | Review Comments | Summary of Findings |
|--------------------------------|---|---|---|
| Transco Alternative | This route would use the Transco pipeline by using the Columbia Gas pipeline. | The Columbia Gas pipeline would be used to transport gas east to the Transco Interconnect. The Transco Interconnect would be used to transport gas south. | The Forest Service reviewed the use of the Columbia gas line in the previous alternative and found that it was not reasonable to take a more indirect route via the Columbia gas line to the Transco Interconnect. For this reason, the Transco route is not reasonable. A review of the FERC FEIS indicates this alternative was considered but eliminated because it currently does not extend to the natural gas production areas of West Virginia (FERC FEIS, p. 3-13). |

In summary, the Forest Service has demonstrated an independent and extensive consideration of off-NFS routes in the FSEIS. The Under Secretary's decision is supported by the rationale that the FSEIS responds to the Key Issue of Off-Forest Accommodation.

Responsiveness to Key Issue - Appalachian National Scenic Trail on NFS Lands

In the *U.S. Forest Service, et al. v. Cowpasture River Preservation Association, et al.*, 140 S. Ct. 1837 (2020)⁵ case, the Supreme Court considered whether Forest Service had the authority under the MLA to grant a ROW for the ACP to cross the ANST on NFS lands. The Court determined that the interaction of three federal laws, namely The Weeks Act (36 Stat. 961),⁶ the National Trails System Act (82 Stat. 919),⁷ and the MLA (41 Stat. 449)⁸ were key to determining that Forest Service retained jurisdiction over NFS lands where the ANST traversed.

The U.S. Supreme Court specifically ruled that the jurisdiction of the land underlying the ANST was not transferred to the National Park Service (NPS) by the presence of the ANST upon those lands. The Forest Service and NPS have over fifty years of experience in cooperatively managing the ANST while simultaneously furthering goals associated with both the ANST and NFS lands. This cooperative management is exhibited through the Comprehensive Plan, multiple Memoranda of Agreements and Understanding, and Transfer Agreements. The MVP project as well as other projects are often refined or modified in order to ensure compliance with the long-standing cooperative management of the ANST.

⁵ This case originated from the Fourth Circuit's ruling against Forest Service regarding the ACP project. Only the MLA portion of the opinion was petitioned for Certiorari with the Supreme Court.

⁶ The Weeks Act allows for acquisition of lands for inclusion in the National Forest System and is one of the primary authorizations that lead to the creation of most National Forests in the eastern United States.

⁷ The National Trails System Act established national scenic and historic trails (among other types of trails) and at its inception created the ANST to be administered primarily as a footpath by the Secretary of Interior in conjunction with the Secretary of Agriculture.

⁸ The Mineral Leasing Act authorizes appropriate agency heads to grant rights-of-way for pipeline purposes through federal lands, although federal lands is defined by the Act to not include lands in the National Park System.

The Supreme Court noted in their decision that “[o]bjections that a pipeline segment interferes with rights of use enjoyed by the NPS would present a different issue,”⁹ but that the ACP project would not cause such interference because the plans for the project involved “a method of drilling that will not require the company to clear any land or dig on the Trail’s surface.”

To avoid interference with rights of use, the MVP project has now incorporated similar project design elements. Construction of the MVP project at the ANST crossing will be completed using subsurface boring from one side of Peters Mountain to the other, a distance of approximately 600 feet. This construction method will be completed with no ground disturbance or clearing of trees and vegetation on the ANST’s surface or within an approximately 300-foot buffer on either side of the ANST.

The forested buffer provides trail users with a visual experience that is much the same as is currently when they hike north or southbound on this portion of the trail. Furthermore, the southern bore hole will not be visible from the trail because the ANST is located on the northern-facing slope of Peters Mountain and the entry bore hole will be located on the southern-facing slope, blocked from view by the ridge of the mountain. The northern bore hole will be located downhill from the ANST and due to topography and existing vegetation will not be visible during construction. Once construction is completed, both bore holes will be revegetated to provide additional visual screening.

As described in the FSEIS Section 3.3.13, trail users may experience minor temporary effects of noise, dust, and visual intrusions during periods of active construction. It is anticipated that these effects will be localized to the immediate area around the ANST crossing. As noted above, the BLM is responsible for issuing the ROW and TUP grants for the use and occupancy of the MVP project on federal lands. However, the BLM can only authorize the ROW grants for areas that the land managing agency has jurisdiction over. The Supreme Court’s determination that the Forest Service retains jurisdiction over NFS lands where the ANST traverses thus affords the BLM the ability to grant the MLA crossing for the MVP project.

3.3 Alternatives Considered

No Action Alternative

Under the No Action alternative, the Forest Plan would not be amended, and no concurrence would be provided to the BLM for granting of a ROW across NFS lands for the construction and operation of the MVP. Concurrence for issuing the TUP for the construction phase of the project would not be provided. The BLM would not issue a ROW or a TUP. The current Forest Plan would continue to guide management of NFS lands in the project area. Mountain Valley would have to utilize other lands for the pipeline in order to satisfy the stated demand for natural gas and energy in the project area, or end users would have to seek alternate energy from other sources such as other natural gas transporters, fossil fuels, or renewable energy (FERC FEIS, Section 3.1).

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

The project was partially implemented prior to the Court ruling and, as a result, some resource effects as described in the FERC FEIS (Section 4.0 to 5.0) have already occurred.

⁹ Footnote 7, Slip Opinion 17-18.

Therefore, the effects associated with the No Action alternative are effects resulting from the removal of materials and restoring the project area to its pre-project condition.

Proposed Action Alternative

The Forest Service's proposed action is to amend the Forest Plan to allow for the MVP to cross the JNF. The Forest Service would provide construction, operation, and maintenance terms and conditions as needed for the actions listed below. The Forest Service would submit the terms and conditions to the BLM for inclusion in the ROW grant. The Forest Service would provide concurrence to the BLM to proceed with the ROW grant and with issuing a TUP for the construction phase. Consistent with the Forest Service's plan amendment, the BLM would grant a ROW and a TUP under the MLA, 30 U.S.C. § 185, for the project to cross the JNF. The MLA ROW would include terms to protect the environment and the public.

In addition to adopting the alternatives considered but eliminated from detailed study in Section 3.2 of the FERC FEIS (pp. 3-4 to 3-119), the FSEIS (Table 3, Section 2.3) displays fourteen multiple route variations, and alternatives that were identified and evaluated in response to Issue 2 (FSEIS, Section 1.8.2). In addition, three alternative modes of transporting natural gas were evaluated: shipping, trucking, and by railroad.

Environmentally Preferable Alternative

The environmentally preferable alternative is the alternative that best promotes the national environmental policy as provided by Section 101 of NEPA, 42 U.S.C. 4321. Ordinarily, the environmentally preferable alternative causes the least damage to the biological and physical environment (36 CFR § 220.3). In application, the environmentally preferable alternative seeks to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences, while preserving important historic, cultural, and natural aspects of our national heritage.

This decision's evaluation of the environmentally preferable alternative focuses on the 3.5 miles that affect the JNF and not the entire pipeline route. On the JNF, much of the disturbance to the physical and biological environment has already occurred. After the FS 2017 decision and the BLM issuance of the ROW grant, implementation began. All trees, including those that contributed to forested habitat for species, were felled to create the ROW corridor. On Sinking Creek Mountain and Brush Mountain, soils were removed from the ROW and stockpiled, and erosion control devices were installed. Since the FERC issued the Stop Work Order in July 2018, stabilization activities have been in place. These stabilization activities include, seeding of the disturbed ROW on NFS lands, installation of erosion control devices, and maintenance of the sedimentation and erosion control measures.

Alternative 2, the selected alternative, is the environmentally preferable alternative. Implementation of Alternative 2 is environmentally preferable because it would require mitigation of the environmental effects of further construction on NFS lands and may prevent further environmental effects resulting from additional construction of routes which avoid NFS lands (see Table 4). Environmental mitigation required by Alternative 2 is provided by the terms and conditions, and stipulations that the Forest Service would submit to the BLM for inclusion in the ROW grant. The No Action alternative lacks requirements for environmental mitigations in the event of off-NFS construction, and selection of the No Action alternative would remove existing erosion-control structures.

Additional disturbance would occur if either alternative were implemented (FSEIS, Section 2.2). Under Alternative 1 (no action), the proponent would be required to restore JNF lands to pre-project conditions and ECDs would be removed. If Mountain Valley pursued completing the pipeline along a different route, a potential increase in area of disturbance would occur on non-NFS lands or along new alternative locations on NFS lands. Implementation of Alternative 2 will require additional disturbance to NFS lands

as felled trees are removed from the site, the pipeline is installed, and stream crossings are constructed across four streams and the ANST. Table 4 provides a comparison of environmental effects differing between a route which avoids NFS lands and the Proposed Route.

Table 4. Comparison of Proposed Action and NFS Lands Avoidance Route

| Feature | Forest Service Avoidance Route¹⁰ | Proposed Action Alternative |
|--|--|------------------------------------|
| General | | |
| Total length (miles) | 351 | 303.5 |
| Length adjacent to existing ROW (miles) | 332 | 22 |
| Land disturbed within construction ROW (acres) | 5,301 | 4,556 |
| Land Use | | |
| Populated areas within ½ mile (number) | 31 | 8 |
| National Forest System lands crossed (miles) | 0 | 3.4 |
| National Forest Wilderness crossed (miles) | 0 | 0 |
| ANST crossings (number) | 1 | 1 |
| Blue Ridge Parkway crossings (number) | 0 | 1 |
| NRHP designated or eligible historic districts crossed (miles) | 0.1 | 10.1 |
| Landowner parcels crossed (number) | 1,743 | 1,495 |
| Residences within 50 feet of construction workspace (number) | 168 | 63 |
| Resources | | |
| Forested land crossed (miles) | 206.0 | 245.2 |
| Forested land affected during construction (acres) | 3,121.2 | 3,720.0 |
| Forested land affected during operation (acres) | 1,248.5 | 1,486.0 |
| Interior forest crossed (miles) | 41.1 | 129.8 |
| Wetlands (National Wetlands Inventory) crossed (feet) | 18,918 | 3,299 |
| Forested wetlands crossed (feet) | 7,761 | 1,721 |
| Forested wetlands affected by construction (acres) | 13.4 | 3.0 |
| Forested wetlands affected by operation (acres) | 8.9 | 2.0 |
| Perennial waterbody crossings (number) | 206 | 97 |

Alternative 2 provides the widest range of beneficial uses, because it fulfills to the need to respond to Mountain Valley's proposal to construct energy infrastructure on NFS lands. Alternative 2 meets the energy infrastructure and economic development priorities that have been set by the Federal Government and the USDA as reflected in several Presidential Executive Orders: EO 13766, Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects; EO 13868, Promoting Energy Infrastructure and Economic Growth; and EO 13927, Accelerating the Nation's Economic Recovery From the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities.

Alternative 2 will preserve historic, cultural and other important aspects of our heritage including the ANST. ANST users could experience minor short-term impacts from noise and construction dust, but long-term impacts are not anticipated (FSEIS, Sec 3.4.4., p. 137). Cultural sites will be protected in compliance with the National Historic Preservation Act (NHPA) (FSEIS, Section 3.3.3).

¹⁰ The Forest Service Avoidance route is the only pipeline route that is entirely off of NFS lands (see 2020 SF-299 application).

In balancing environmental consequences disclosed in the FSEIS with the widest range of beneficial uses, and while preserving important historic, cultural, and natural aspects of our national heritage, Alternative 2 is the environmentally preferable alternative.

The Under Secretary's decision to select Alternative 2 is supported by rationale that it is environmentally preferable, it best fulfills the purpose and need to respond to the proposal, and it accommodates infrastructure development.

3.4 Public Involvement Which Informed This Decision

The FERC FEIS, Section 1.4 (pp. 1-27 to 1-38), documents the public involvement that occurred from April 2015 through the Draft Environmental Impact Statement (DEIS) comment period that ended on December 22, 2016 and is incorporated by reference. In summary, Section 1.4 describes the FERC's issuance of the Notice of Intent (NOI) to prepare an EIS on April 17, 2015, and the publication of that NOI in the Federal Register on April 28, 2015 (80 FR 23535). The NOI was sent to 2,846 parties, including federal, state, and local government agencies; elected officials; environmental groups and non-government organizations; Native Americans and Indian tribes; affected landowners; local libraries and newspapers; and other stakeholders who had indicated an interest in the MVP project. The NOI initiated a 60-day formal scoping period and the FERC sponsored six public scoping meetings in the project area. Approximately 650 people attended those meetings. In addition to the NOI and the public scoping meetings, the FERC sent out brochures that updated the status of the environmental review process. The FERC received 964 comment letters during the scoping period and 428 letters after the scoping period ended.

On September 27, 2016, the Notice of Availability (NOA) for the FERC DEIS was published in the Federal Register, and a 90-day comment period ran until December 22, 2016 (81 FR 66268). The notice was sent to approximately 4,400 parties. During the comment period, seven meetings were held in the vicinity of the project area. The FERC received 1,237 written individual letters or electronic comments.

On July 30, 2020, an NOI was published in the Federal Register (85 FR 45863), informing the public of the Forest Service's intent to prepare a Supplemental Environmental Impact Statement (SEIS). The NOI clarified that the requirement for scoping (40 CFR § 1501.7; 36 CFR § 220.4(c)(1)) had previously been fulfilled as completed and summarized in the FERC FEIS (FEIS, Section ES-1.4). The White House Council on Environmental Quality (CEQ) regulations do not require scoping for an SEIS. A revised NOI was published December 1, 2020 (85 FR 77142) to correct information regarding pre-decisional administrative review and responsible official.

On September 25, 2020, the NOA for the DSEIS was published in the Federal Register (85 FR 60458). The publication of the NOA initiated a 45-day comment period which ended on November 9, 2020. Approximately 4,400 comment letters were received during the 45-day comment period. Timely comments were given full consideration and were analyzed for substantive content (40 CFR § 1503.3 and 40 CFR § 1503.4) (1978, as amended in 1986 and 2005). Content from analysis of comments yielded 136 statements which summarized the concerns expressed through public comment. These concern statements and agency responses can be found in Appendix C of the FSEIS. Literature and references submitted with public comments was also reviewed for consideration¹¹. Where new information was found, it was assessed and, in some cases, resulted in changes to the FSEIS. The NOA for the FSEIS was published in the Federal Register on December 11, 2020 (85 FR 80093).

¹¹ Comments received after close of the 45-day comment period have been reviewed for additional information and are included in the project record.

Rationale for the Under Secretary's decision is supported by the consideration for public comment and opportunity for public involvement, both found in the FSEIS.

3.5 Use of Best Available Scientific Information (36 CFR § 219.3)

The decision to amend the JNF Forest Plan is informed, in part, by the 2017 FERC FEIS, the supporting project record, and the analysis displayed in the FSEIS, all of which are based on the use of Best Available Scientific Information (BASI).

The Forest Service Planning Regulations at 36 CFR § 219.3 provides direction on the incorporation and use of BASI. The Forest Service planning regulations state that the responsible official shall use the best available scientific information to inform the planning process. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered.

BASI was used to inform this decision, specifically but not limited to: soil and riparian resources, local, regional and national socio-economic trends, sedimentation effects, and biological species (such as TES species and Regional Forester Sensitive Species [RFSS]). BASI was also used to inform the analysis on how the forest plan amendment met planning rule requirements (FSEIS, Section 3.4) in accordance with 36 CFR § 219.14(a)(3). All scientific information submitted to the agency during the public comment period was considered in the development of the FSEIS.

This decision relies upon the record for the FSEIS, which uses a variety of information sources to generate independent, professional judgments regarding probable effects. For example, agency conclusions about sedimentation issues are informed by the Hydrologic Analyses (Geosyntec Consultants 2020a and 2020b); approved erosion and sediment control plans; monitoring reports; field visits and personal observation; scientific literature; communication with JNF professional resource specialists; and opposing views, data, and information described in public comments on the DSEIS.

Unpublished information provided by cooperative Forest Service monitoring efforts was reviewed, as was information provided by interest groups with knowledge and expertise. Some members of the public submitted scientific information during and outside the public comment period and this information was also reviewed. Cooperation between county, State, and Federal agencies and tribes also contributed to the best available scientific information. Literature and references submitted with public comments were reviewed for consideration. Where new information was found, regardless of the source, it was assessed and, in some cases, resulted in changes to the FSEIS. Changes between the DSEIS and FSEIS are disclosed in the FSEIS, Section 1.7.

By following the Agency's planning regulations, this decision is based on sound science, supported by a thorough independent agency review of that science and modeling by federal scientists, local resource professionals and support staff.

The Under Secretary's decision is informed by the Forest Service's independent agency review of BASI, as disclosed in the FSEIS and the planning record. The use of BASI provides supporting rationale for this decision, and this decision certifies the use of the most accurate and reliable scientific information available that is relevant to the issues considered in this analysis (36 CFR § 219.3).

4 Other Context Which Informs the Decision

Included below is pertinent information and context which supports this decision.

4.1 Authorization History

The following is a summary of the necessary the FERC, Forest Service, and BLM authorizations associated with this project which are pertinent to NFS lands and which provided context for this decision.

The FERC prepared an FEIS in 2017 and several Federal and State agencies, including the Forest Service and the BLM, participated as “cooperating agencies” in the development of the FEIS¹². The NOI to prepare an EIS was prepared by the FERC, published in the Federal Register on April 17, 2015, and sent to 2,846 interested and affected parties. The NOI initiated a 60-day formal scoping period. Section 1.4 of the FERC FEIS documents and describes the public involvement that occurred from April 2015 to December 22, 2016. This formal scoping effort, a requirement for an EIS (40 CFR § 1501.7 (1978, as amended in 1986 and 2005); 36 CFR § 220.4(c)(1)) also satisfied the scoping requirement for the Forest Service SEIS process. On June 29, 2017, the NOA for the FERC FEIS and the Forest Service’s Draft ROD for the Mountain Valley Project LRMP Amendment was published in the Federal Register.

On December 1, 2017, the Forest Service adopted the FERC FEIS, and a ROD was signed by the JNF Forest Supervisor. The ROD amended the January 2004 JNF Forest Plan to modify certain Forest Plan standards that would otherwise have precluded the use of standard pipeline construction methods for the MVP. The ROD included resource protection terms and conditions that would condition the Forest Service’s concurrence to the project, should BLM decide to grant a ROW.

In 2017, the BLM received written concurrence to the project from both the USACOE and Forest Service and on December 20, 2017, issued a ROD approving the MLA ROW grant to construct and operate the MVP across Federal lands. The BLM ROD included a temporary use authorization to allow the proponent to use and occupy the federal lands necessary to construct the pipeline.

Project implementation began on NFS lands in February of 2018 and continued until the FERC issued a Stop Work Order on July 27, 2018, halting project implementation on NFS lands. Since then, MVP has only been allowed to undertake stabilization activities including, but not limited to, seeding of the disturbed ROW on NFS lands and maintenance of the sedimentation and erosion control measures.

4.2 Changes to Application and Plan of Development (POD)

On October 23, 2015, Mountain Valley filed an application with the FERC under Section 7(c) of the Natural Gas Act to construct and operate certain interstate natural gas pipeline facilities in West Virginia and Virginia. The FERC is the federal agency responsible for authorizing interstate natural gas transmission facilities under the National Gas Act.

Mountain Valley submitted a Right-of-Way Grant application to the BLM on April 5, 2016 and filed a copy with the FERC on April 8, 2016. It updated its form SF-299 Right-of-Way application in March 2017 with several updates to the POD. BLM verbally accepted MVP’s revised application as complete in March 2017.

¹² The June 2017 FERC FEIS lists the following entities as cooperating agencies in the preparation of the FEIS: U.S. Department of Interior’s Bureau of Land Management; U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; U.S. Department of Agriculture’s Forest Service; U.S. Fish and Wildlife Service; U.S. Department of Transportation; West Virginia Department of Environmental Protection; and West Virginia Division of Natural Resources.

Following the Fourth Circuit Court of Appeals remand of the 2017 Forest Service ROD, Mountain Valley submitted to the BLM an amended application, and associated POD¹³, for a ROW grant on May 1, 2020. Pursuant to the BLM's statutory obligations under the MLA, the BLM reviewed the revised application and on May 29, 2020, notified Mountain Valley that they determined the application for the MVP project to be complete.

Several changes were included in the May 2020 application and POD. Below is a list of those changes which are relevant to this decision and its supporting environmental analysis contained in the Forest Service 2020 FSEIS.

Application and POD changes that are incorporated into the FSEIS analysis are:

1. MVP is no longer planning to use USFS roads, specifically Pocahontas Road and Mystery Ridge Road to access the ROW. A Forest Service Road Use Permit is no longer needed.
2. MVP will install the pipe using a subsurface boring method to cross the ANST. There are no anticipated changes to ANST hiker experience or other areas of the POD where crossing the ANST is discussed.
3. Land clearing in the JNF for the ROW is in various stages to reflect work that was permitted up until the stop work order in the JNF.
4. The Time of Year Restrictions and list of threatened and endangered species were updated in coordination with the FWS and the state resource agencies.
5. The MVP requested, and the FERC approved, and two-year extension of the construction timeframe.
6. Temporary work areas needed for construction on the JNF include two additional temporary workspaces totaling 0.66 acres.

In addition, some changes to the POD are reflected in the FERC approved variances, including but not limited to:

1. MVP requested and received the FERC approval on a variance request to change the crossing technique for six streams (MP 218.9 to 220.0) from an open-cut dry ditch method to conventional bores in order to reduce potential sedimentation impacts in and adjacent to the JNF.

Any additional changes to approved mitigation measures, construction procedures, and construction work areas due to unforeseen or unavoidable site conditions will require regulatory approval from the applicable land management agencies.

4.3 Changes to Resource Conditions

In June 2020, Forest Service resource specialists assessed resource conditions to determine if changes or new information had occurred. After assessment, the Forest Service found that changes to resource

¹³ A Plan of Development (POD) is a detail project description plan which requires the applicant/proponent to provide details about the project they are applying for on federal lands. The POD must be as specific as possible in describing the project, its location, and dimensions. It includes the legal description of the affected public land. The POD thoroughly describes the project from the initial construction phase through termination and rehabilitation of the public land.

conditions would warrant supplemental analysis for the following resource areas: Soils, Water, Threatened & Endangered Species, and NFMA.

Supplemental analysis of those resource areas is disclosed in the FSEIS at Chapter 3.4. The Under Secretary's decision to select Alternative 2 as disclosed in the FSEIS is further supported with rationale that the FSEIS considered changed conditions in its analysis of effects.

5 Findings Required by Other Laws, Regulations, and Policies

Information in this section demonstrates compliance with laws, regulations, and policy which are pertinent to this decision and the FSEIS.

5.1 National Forest Management Act (NFMA)

The NFMA requires the Forest Service to adopt regulations to guide the development, amendment, and revision of land management plans for all units of NFS lands (36 CFR 219, referred to as the Planning Rule). See 36 CFR § 219.13, as amended (81 FR 90738, December 15, 2016) regarding the amendment of plans. The discussion under the section "Decision Rationale" explains how the decision meets the applicable requirements of the Planning Rule and is consistent with the NFMA; 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), and using the correct format for standards (§ 219.7(e) and § 219.13(b)(4)).

Based on the analysis of the purpose and the potential effects of the amendment (both beneficial and adverse) the substantive requirements directly related to this amendment are: § 219.8(a)(2)(ii) – Soils and soil productivity; § 219.8(a)(2)(iii) – Water quality; § 219.8(a)(2)(iv) – Water resources in the plan area; § 219.8(a)(3)(i) – Ecological integrity of riparian areas; § 219.8(b)(3) – Multiple uses that contribute to local, regional, and national economies; § 219.9(a)(2) – Ecosystem diversity of terrestrial and aquatic ecosystems; § 219.10(a)(3) – Appropriate placement and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors; § 219.10(b)(1)(i) – Sustainable recreation, including recreation setting, opportunities, access, and scenic character; § 219.10(b)(1)(vi) – Other designated areas or recommended designated areas; and § 219.11(c) – Timber harvest for purposes other than timber production. All these substantive requirements were determined to be directly related through the purpose of the amendment and not due to any substantial adverse effect, except for § 219.8(b)(3), which was directly related due to potential beneficial impacts to the local and regional economy. This amendment is in full compliance with the Planning Rule because all applicable substantive requirements are applied to provide protection to resources without substantial lessening of protections for those resources across the JNF.

During the public comment period for the DSEIS, commenters questioned the project's compliance with several additional Forest Plan standards and with the Planning Rule (36 CFR 219) due to the exclusion of certain substantive requirements. The Forest Service responded in detail to these concerns in Appendix C of the FSEIS. Specifically, this decision is consistent with the Forest Plan standards FW-63, 4A-004, and 4A-020 and with the substantive Planning Rule requirements § 219.8(a)(1), § 219.8(b)(2), and § 219.9(b). The following information demonstrates consistency with NFMA and those Forest Plan standards:

FW-63 – The MVP project is consistent with this standard because, as noted on page 4-135 of the FEIS, karst topography is not located along the MVP pipeline route on NFS lands. Commenters are concerned that a citizens group has documented sinkholes adjacent to NFS lands. The Forest

Service is aware of some karst features adjacent to NFS lands and has determined that proximity to the ROW is consistent with the FSEIS and standard FW-63.

4A-004 – The MVP project is consistent with this standard because vegetation management limitations in this standard do not apply to clearing of trees for a utility ROW. The Forest Plan discloses that the purpose of Management Area 4A focuses on the condition of the ANST corridor and user experience. The Forest Plan description for Management Area 4A states: “Roads, utility transmission corridors, communication facilities, or signs of mineral development activity exist or may be seen within the prescription area, although the goal is to avoid these types of facilities and land uses to the greatest extent possible and blend facilities which cannot be avoided into the landscape so that they remain visually subordinate.” Thus, utility ROWs can occur in Management Area 4A as demonstrated by standards 4A-024, 4A-028, and 4A-029, which all relate to issuance of a utility corridor authorization. Tree clearing in ROWs is excluded from standard 4A-004 because the Forest Plan acknowledges that new utility ROWs are permissible within 4A. To interpret it otherwise would render the three standards related to utility corridors superfluous. Although standard 6C-007 is similar, an amendment is needed to modify it because Management Area 6C prohibits both vegetation management and utility corridors.

4A-020 – The MVP project is consistent with this standard because the pipeline will cross under the ANST via a 600-foot long bore and because a forested buffer, vegetative screening, and location of bore pits would minimize visual impacts. This is specifically addressed in the FSEIS in Appendix C, Scenery, Concern Statement 124. Commenters also allege the statement in the DSEIS at 102 (“It is not possible or practical to modify the MVP construction methods and achieve consistency with high and moderate SIOs”) is evidence that the proposal is inconsistent with standard 4A-020. The statement in the DSEIS refers to the standard trenching pipeline construction, which is not the case at the ANST crossing. Certainly, if the project utilized standard trenching construction practices to cross the ANST, standard 4A-020 would not be met. However, the Forest Service recognized this issue and addressed it by ensuring the ANST is sufficiently buffered from the boring operations.

219.8(a)(1) – Ecosystem integrity – The now-vacated 2017 Forest Service ROD considered the relationship of § 219.8(a)(1), ecosystem integrity, to modification of old-growth management standards in the context of sustainability. In the FSEIS, the Forest Service instead analyzed the substantive requirement § 219.9(a)(2), ecosystem diversity of terrestrial and aquatic ecosystems, because it is more applicable to this project’s diversity concerns in modification of old-growth management standards and because its components echo those of § 219.8(a)(1) with regard to terrestrial and aquatic ecosystems. In addition, only about 2 acres of old growth out of the approximately 30,200 acres of old growth on the JNF would be impacted, and the intent of the JNF LRMP will be met.

219.8(b)(2) – Sustainable recreation; including recreation settings, opportunities, and access; and scenic character – As a related substantive requirement, the FSEIS analyzes § 219.10(b)(1)(i), sustainable recreation, including recreation setting, opportunities, access, and scenic character. Both § 219.8(b)(2) and § 219.10(b)(1)(i) are plan components for sustainable recreation, including recreation setting, opportunities, access, and scenic character. Whether recreation components are considered in context of sustainability or of multiple use, both are identical in the application of amendment considerations based on the scope and scale of the amendment. Under the Multiple-Use Sustained-Yield Act, both fulfill the requirements for sustainability of recreation.

219.9(b) – Additional, species-specific plan components – This substantive requirement is specifically for federally listed threatened, endangered, proposed, and candidate species or species of conservation concerns. This substantive requirement is not applicable because the amendment for the MVP project is not modifying any species-specific standards and the effects of the project on NFS are not substantially adverse as documented in the FSEIS.

5.2 National Environmental Policy Act (NEPA)

Citations of the CFR throughout this decision and its supporting documents are in reference to NEPA. This decision and supporting documents are in compliance with NEPA. To support the decision to amend the LRMP as outlined in this ROD, the Under Secretary has adopted the FSEIS and the 2017 FERC FEIS pursuant to 40 CFR § 1506.3(c). Review of the FSEIS and the FERC FEIS find they meet the requirements of NEPA, CEQ (40 CFR §§ 1500-1508) and Forest Service regulations (36 CFR 220). Forest Service direction pertaining to implementation of NEPA and CEQ regulations is contained in chapter 10 and 20 of Forest Service Handbook (FSH) 1909.15 (Environmental Policy and Procedures). The Forest Service provided opportunities for public involvement in development of the FSEIS, and comments received were used to develop a range of reasonable alternatives that addressed issues (FSEIS, Sections 1.0 to 3.0). Using the best available scientific information, the FSEIS 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 ANST 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.

5.3 National Trails System Act (NTSA)

The NTSA established the Appalachian Trail and the Pacific Crest Trail as National Scenic Trails and provides authority for the Secretary of the Interior or the Secretary of Agriculture to grant easements and ROWs 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 NFS, respectively, provided that any conditions contained in such instruments shall be related to the policy and purposes of the Act. This decision will require compliance with the POD, which itself requires restoration measures to attain existing SIOs within five years after completion of construction and a reduction in width of the long-term ROW. In addition, this decision requires compliance with the POD to implement measures to avoid direct impacts to trail users by boring under the ANST footpath. To ensure consistency with the JNF LRMP as amended, BLM's ROW grant must require implementation of the design features and mitigation measures of the POD that will reduce impacts to ANST users. Therefore, this decision is compliant with the NTSA.

5.4 National Historic Preservation Act (NHPA)

Section 106 of the NHPA requires each federal agency to take into account the effects of its actions on historic properties prior to approving expenditure of federal funds on an undertaking or prior to issuing any license.

The FERC remains the lead agency for compliance with Section 106 of the NHPA. The FERC and the other cooperating federal agencies, including the Forest Service and the BLM, together with tribal governments, executed a single Programmatic Agreement (PA) with the West Virginia and Virginia State Historical Preservation Offices, fulfilling the obligations for compliance with the NHPA (36 CFR § 800.14(b)(3)). Under the PA, the FERC has responsibility to ensure that the stipulations in the PA are

followed and that any required cultural resource treatment plans for sites on NFS lands have been completed, including a Treatment Plan for the mitigation of adverse effects to site 44GS0241. Because this decision adopts portions of the FERC FEIS that are relevant to NFS lands, this decision is compliant with NHPA.

In addition, letters sent on July 8, 2020 informed tribal governments from the Cherokee Nation, the Eastern Band of Cherokee Indians, the Monacan Indian Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma about the undertaking of an SEIS. These letters outlined the FERC's involvement as the lead federal agency for the pipeline project, and invited tribal authorities to bring questions or queries to the Forest Supervisor as Project Manager of the supplemental analysis.

5.5 Clean Water Act (CWA)

The CWA (33 U.S.C. § 1251 et seq.) establishes the basic structure for regulating discharges of pollutants into the WOTUS and regulating quality standards for surface waters. Under the CWA, it is unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained. Under the CWA, the USACOE was given authority to issue permits for the discharge of dredged or fill material into WOTUS including wetlands.

An application was submitted for this project in 2016 to the USACOE for permits to cross WOTUS and wetlands under Section 404 of the CWA, with an updated application in March 2017.

The Environmental Protection Agency has delegated CWA Section 401 and National Pollution Discharge Elimination System (NPDES) permitting under CWA to state agencies (i.e., the VADEQ and the WVDEP). Mountain Valley submitted its Section 401 and Section 402 applications to the WVDEP and the VADEQ in 2016.

The FSEIS analyzes the effects of a dry-ditch, open-cut stream crossing method and a conventional bore method for stream crossing. This decision would supply Terms and Conditions in the Forest Service concurrence to BLM, which requires Mountain Valley to obtain Federal and State CWA permits and certifications applicable to NFS lands, and to remain in compliance with Erosion and Sediment Controls Plans. Construction and operation-related impacts on WOTUS and wetlands are also mitigated by MVP's compliance with their Wetland and Waterbody Construction and Mitigation Procedures as well as the conditions of any CWA Sections 404 and 401 permits.

In 2020, Petitioners brought legal proceedings to the Fourth Circuit challenging the USACOE issuance of CWA 404 permits for MVP in certain Districts of the USACOE. On November 9, 2020, the Court granted the motions for stay based on its consideration of submissions and arguments on petitioners' motions, pending briefing and a decision on the merits. This stay is not permanent and does not represent full disposition of the case. At the time of this ROD, the Fourth Circuit has not vacated the 2020 USACOE Nationwide Permit 12 for the MVP Project.

5.6 Roadless Area Conservation Rule

The 2001 Roadless Area Conservation Rule (66 FR 3243), hereafter referred to as the 2001 Roadless Rule, prohibits road construction, road reconstruction, and timber harvesting within inventoried roadless areas on NFS lands with limited exceptions. A portion of the MVP project is within the Brush Mountain Inventoried Roadless Area that is subject to the 2001 Roadless Rule. No road construction or reconstruction is proposed on NFS lands for this project. However, timber harvesting has occurred within the ROW on NFS lands. Timber harvesting is allowed by the 2001 Roadless Rule that is incidental to the implementation of management activities not otherwise prohibited by the Rule (36 CFR § 294.13(b)(2)).

Pipeline construction, maintenance, and operation are not a prohibited activity under the 2001 Roadless Rule; therefore, this decision complies with the 2001 Roadless Rule.

5.7 Endangered Species Act (ESA)

The ESA of 1973 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. The FERC, as lead federal agency, consulted with the FWS to determine whether any federally listed (or proposed for listing) species, or their designated critical habitats would be affected by the MVP.

The Forest Service reviewed new information and analysis related to threatened or endangered species, including the listing of new species. For example, in response to the ESA listing of a new species (candy darter) and the emergence of new information including field studies about potential effects of the project, the FERC requested reinitiation of Section 7 consultation for the MVP project in August 2019. The FWS confirmed reinitiation of consultation in September 2019. On October 16, 2019, the FWS requested that the FERC provide additional data/information regarding species surveys. Also, in October 2019, the Fourth Circuit stayed the 2017 BO pending the resolution of a legal challenge.

As mentioned above, since publication of the FERC FEIS, the designation of several species as federally listed or RFSS has changed. An SBA was submitted to the FWS in April 2020 and revised on May 28, 2020. This SBA changes the determination of effects for several federally listed aquatic species and eliminated some species from consideration. The SBA describes the surveys conducted, and the POD identifies measures that will be implemented to minimize adverse effects to aquatic species from the construction and operation and maintenance of the MVP. The SBE was finalized using data from surveys completed in summer 2020 and the Forest Service's updated RFSS list for Region 8.

In order to address species that were determined likely to be adversely affected, the FWS issued a new BO and Incidental Take Statement for the MVP project on September 4, 2020 that incorporates new data and to ensure that the FWS continues to use best available scientific and commercial information (FWS 2020b). The new 2020 BO superseded the original 2017 BO. For the broader 303.5-mile-long project, the FERC remained the lead consulting agency which is why the 2020 FWS BO addresses the MVP as a whole.

The Forest Service project biologists have formed professional judgments on probable effects. Professional judgments are based on field visits and site-specific information; the FERC FEIS; the 2017 Biological Assessment (FERC 2017c); the SBA (MVP 2020b); the 2017 BO (FWS 2017); the 2017 Biological Evaluation (BE) (MVP 2017); the POD and appendices (MVP 2020a); and opposing views, data, and information described in public comments on the DSEIS. Aquatic, terrestrial, and plant species evaluated include all TES species.

Any changed designations and the anticipated effects on TES species are discussed in the FSEIS. Independent review and analysis by the Forest Service displayed in the FSEIS indicated that a total of 16 species listed under the ESA, one species proposed for ESA-listing, and 21 RFSS species could be affected by the MVP in or adjacent to the JNF. The Forest Service resource professionals reached determinations on several species and those conclusions and the analysis supporting them are included in the FSEIS.

The Forest Service determined that the project would have no impact or would be unlikely to cause a Trend Toward Federal Listing or Loss of Viability for RFSS. Implementation of required conservation measures in the POD would help reduce project effects to TES species. In addition, the FWS 2020 BO

determined appropriate avoidance and mitigation measures for potential effects to ESA-listed species (FWS 2020b).

5.8 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 2017 FERC FEIS in sections 4.5.1.1 and 4.5.2.6. Although neither species is on the RFSS list, the golden-winged warbler and bald eagle are addressed in the 2017 FERC FEIS Section 4.5.2.6 on Migratory Birds (pp. 4-205 to 4-208) along with mitigation measures. Additionally, Section 7.1.1.2 of the 2020 POD states that Mountain Valley will follow the FWS Bald Eagle Management Guidelines to reduce disturbance.

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

The FERC 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 the FWS (FERC FEIS, Section 4.5). Because impacts would be reduced to the extent practicable, this decision is compliant with the MBTA and EO 13186.

5.9 Regional Forester Sensitive Species (RFSS)

Federal law and direction applicable to RFSS are included in the NFMA and FSM 2670. Under FSM 2670.44 the Regional Forester is responsible for designating sensitive species for which population viability is a concern. The list of aquatic and terrestrial RFSS considered in the 2020 SBE is different from the list in the 2017 BE and FERC FEIS, because the Region 8 RFSS list has been updated since those two documents were written. Preliminary determinations were provided in the FSEIS for six aquatic RFSS that were assessed for their potential to be affected by the project, including three fishes, one dragonfly, and two mussels. Preliminary determinations were provided in the FSEIS for nine terrestrial RFSS that were assessed for their potential to be affected by the project, including seven butterflies and two mammals. The POD identifies measures that will be implemented to minimize adverse effects to RFSS species from the construction and operation and maintenance of the MVP.

6 Administrative Review

This decision was not subject to either the 36 CFR 218 or 36 CFR 219 pre-decisional administrative review because the responsible official is the Under Secretary of Agriculture, Natural Resources and Environment (36 CFR § 218.13(b); 36 CFR § 219.13(b)).

A revised NOI was published on December 1, 2020 (85 FR 77142), correctly identifying the responsible official, communicating the unavailability of pre-decisional review, and fulfilling FSH 1509.15_22.2.

The USDA’s prerogatives to delegate authorities concerning management of the National Forest System are found at 7 CFR § 2.12 and 36 CFR § 218.13, neither of which preclude the Secretary from exercising authorities so delegated. Because the responsible official is the Under Secretary of Agriculture, Natural Resources and Environment, this decision was not subject to either the 36 CFR 218 or 36 CFR 219 pre-decisional administrative review process. 36 CFR § 218.13(b) provides an exemption to the administrative review process for “projects and activities proposed by the Secretary or Under Secretary.”

In the larger context of 36 CFR 218 regulations, “proposed actions of the Forest Service” do not necessarily regard origin of a project, but the consideration, evaluation, and analysis of a proposal.

7 Decision Implementation Date

Upon signature of this decision:

- The Forest Service adopts portions of the FERC FEIS that are relevant to NFS lands.
- A project-specific amendment to modify 11 standards of the Forest Plan (listed in Table 2, above) becomes immediately effective, allowing the MVP project to be consistent with the JNF Forest Plan.
- The Forest Service concurs with BLM in granting the ROW, and is authorized to immediately issue a Letter of Concurrence to the BLM, and
- Terms and conditions are approved for inclusion with the Forest Service’s Letter of Concurrence to BLM regarding the project.

8 Contact Person

For additional information concerning this decision, contact Ken Arney, Regional Forester, at 888-603-0261 or via email at SM.FS.GWJNF-PA@usda.gov. You may also visit the Forest Service’s website for this project at <https://www.fs.usda.gov/project/?project=50036>.

JIM HUBBARD

[DATE]

Under Secretary

U.S. Department of Agriculture, Natural Resources and Environment