



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

MAY 15 2015

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SECRETARY OF THE
COMMISSION
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FEDERAL ENERGY
REGULATORY COMMISSION

Regulatory Division
Energy Resource Branch
LRH-2014-00905
Mountain Valley Pipeline Project
FERC Docket No. PF15-3-000

ORIGINAL

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Dear Ms. Bose:

I refer to your April 17, 2015 *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Mountain Valley Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings*, FERC Docket No. PF15-3-000. The aforementioned document describes the Federal Energy Regulatory Commission's (FERC) proposal to prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the proposed Mountain Valley Pipeline Project, a joint venture between affiliates of EQT Corporation and NextEra Energy Inc., involving construction and operations of natural gas facilities in West Virginia and Virginia.

In the April 17, 2015 *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Mountain Valley Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings*, information indicates draft resource reports were submitted to the FERC on April 14, 2015. To date, this office has not received the draft resource reports for this project. Once our office receives the draft resources reports, and is able to conduct a thorough review of the draft resource reports, we will provide more detailed comments.

The United States (U.S.) Army Corps of Engineers (Corps) authority to regulate waters of the U.S. is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act (CWA) requires a Department of the Army permit be obtained prior to discharging dredged or fill material into waters of the U.S., including wetlands. Section 10 of the Rivers and Harbors Act of 1899 (RHA) requires a Department of the Army permit be obtained for any work in, on, over or under a navigable water. The referenced laws and related regulations can be found at:

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/FederalRegulation.aspx>

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Based on the project description, the Corps anticipates the proposed project will require authorization under our Section 404 CWA and/or our Section 10 RHA authorities. Therefore, a Department of the Army permit will be required. In this regard, to ensure the information presented in any NEPA document(s) is adequate to fulfill the Corps statutory requirements, including the requirements of 404(b)(1) of the Clean Water Act and the Corps' public interest review, the Corps requests the topics listed in Enclosure 1 be included in the scoping and evaluation of any submitted NEPA document(s).

Further, given the project crosses two states and multiple Corps' District Regulatory Boundaries, permitting requirements may vary based on each state and/or Corps Regulatory District. In order to obtain Corps District specific permitting requirements, we encourage the FERC and EQT Corporation and NextEra Energy Inc to coordinate with each Corps District's point of contact listed below:

Mr. Scott Hans, Pittsburgh District, (412) 395-7154; and
Mr. Tom Walker, Norfolk District, (757) 201-7657.

We look forward to working with the FERC as a cooperating agency for any NEPA document(s) for the EIS. If you have any questions concerning the above, please contact Ms. Audrey Richter at (304) 399-5257 or by email at Audrey.M.Richter@usace.army.mil.

Sincerely,


Ginger Mullins, Chief
Regulatory Division

Enclosures:

CF (via email):

Mr. Paul Friedman, FERC
Paul.friedman@ferc.gov

Mr. Scott Hans, CELRP

Tom Walker, CENAO

Enclosures 1- Corps Request for Items to be Scoped and Evaluated in the NEPA document(s)

- 1) **Purpose and need for the project.** The NEPA document(s) should clearly describe the purpose and need for the proposed projects.
- 2) **Aquatic Resource Identification.** The NEPA documents(s) must include a site-specific identification of all aquatic resources within the proposed project areas, including any aquatic resources within proposed borrow, spoil and mitigation areas. The identification should include a description of any streams, open water areas and wetlands. The identification of aquatic resources within the on-site and off-site project areas must be based on field observations and field data. The identification must include a wetland delineation for each site prepared in accordance with the Corps' 1987 Wetland Delineation Manual (87 Manual) and any applicable Regional Supplement to the 87 Manual. This information would be required to determine the effects of the projects on aquatic resources.
- 3) **Avoidance and minimization.** A fundamental precept of the Corps' Regulatory Program under Section 404 of the CWA is that the discharge of dredged and/or fill material into waters of the United States will be avoided and minimized, where it is practicable to do so. Under Section 404 of the CWA, only the least environmentally damaging practicable alternative would receive Corps authorization. (An alternative is practicable if it is available and capable of being done after taking into consideration cost, logistics and existing technology in light of overall project purposes.) The NEPA document(s) should evaluate how the project was designed to avoid and minimize the discharge of dredged and/or fill material into waters of the United States. The alternatives analysis section of the NEPA document(s) should analyze on-site avoidance and minimization alternatives and avoidance and minimization alternatives for any off-site borrow, spoil and mitigation areas.
- 4) **Compliance with the 404(b)(1) Guidelines.** The Section 404(b)(1) Guidelines (Guidelines) are the substantive criteria used in evaluating discharges of dredged or fill material under Section 404 of the CWA. The Guidelines are published at 40 CFR Part 230. The fundamental precept of the Guidelines is that discharges of dredged or fill material into waters of the United States, including wetlands, should not occur unless it can be demonstrated that such discharges, either individually or cumulatively, will not result in unacceptable adverse effects on the aquatic ecosystem. Subpart B of the Guidelines establishes the four conditions which must be satisfied in order to make a finding that a proposed discharge of dredged or fill material complies with the Guidelines. These conditions generally state:
 - a. No discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

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- b. No discharge of dredged or fill material shall be permitted if it:
- i. Causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard; Violates any applicable toxic effluent standard or prohibition under section 307 of the Act;
 - ii. Jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended.
 - iii. Violates any requirement imposed by the Secretary of Commerce to protect any marine sanctuary designated under title III of the Marine Protection, Research, and Sanctuaries Act of 1972.
- c. No discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. Under these Guidelines, effects contributing to significant degradation considered individually or collectively, include:
- i. Significant adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites;
 - ii. Significant adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical and chemical processes;
 - iii. Significant adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or
 - iv. Significant adverse effects of discharge of pollutants on recreational, aesthetic and economic values.
- Findings of significant degradation related to the proposed discharge are based upon appropriate factual determinations, evaluations, and tests required by Subparts B and G of the Guidelines, after consideration of subparts C through F, with special emphasis on the persistence and permanence of the effects outlined in those subparts.
- d. No discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem.

NEPA document(s) should provide a sufficient analysis to determine compliance with the Guidelines.

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- 5) **Corps public interest review factors.** The Corps must evaluate the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Among the factors that must be evaluated as part of the Corps' public interest review include: conservation; economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplains values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, energy needs, safety, food and fiber production, mineral needs, water quality, considerations of property ownership, air and noise impacts, and, in general, the needs and welfare of the people. (See 33 CFR 320.4) These factors should be scoped and evaluated in the NEPA document(s).
- 6) **Effects to Aquatic Resources.** The NEPA document(s) should quantify the anticipated impacts to waters of the United States, both temporary and permanent, resulting from activities within the Corps jurisdiction. Waters of the United States could include: perennial, intermittent and ephemeral streams; rivers; lakes; ponds; and wetlands. For rivers and streams, the quantity should be described in linear feet and in acreage. For wetlands, this quantity should be described by acreage. The NEPA document(s) should also describe the wetland classification (e.g. palustrine, forested, scrub-shrub or emergent). The NEPA document should differentiate between permanent and temporary impacts and must describe any permanent conversion in the wetland classification (e.g. palustrine forested to palustrine emergent, etc.)
- 7) **Cumulative and Indirect Effects.** The cumulative and indirect impacts on aquatic resources resulting from the projects should be scoped and evaluated in the NEPA document(s).
- 8) **Off-Site Areas.** The NEPA document(s) should include an analysis of the environmental effects to any off-site borrow, spoil or mitigation areas.
- 9) **Compliance with Other Federal Laws.** The NEPA document(s) should document compliance with:
 - a. **Section 7 of the Endangered Species Act.** The Corps suggests the FERC contact the United States Fish and Wildlife Service for an updated list of listed species.
 - b. **Section 106 of the National Historic Preservation Act (NHPA).** The NEPA document(s) must describe compliance with Section 106 of the NHPA and must describe the research efforts undertaken to identify historic properties within the project areas, including any off-site borrow, spoil and mitigation areas. The NEPA document(s) should use site-specific collected data in the identification of historic properties within the project areas.
 - c. **Section 401 of the CWA.** The NEPA document(s) must describe compliance with Section 401 of the CWA.

Document Content(s)

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