



United States Department of the Interior

Bureau of Land Management

Eastern States
Southeastern States District Office
273 Market Street
Flowood, Mississippi 39232
<http://www.es.blm.gov>



ORIGINAL

IN REPLY REFER TO:
2880 (020) VC
VA-ES-058142
WV-ES-058143

December 1, 2016

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E. Room 1A
Washington, District of Columbia 20426

Dear Ms. Bose:

Subject: Comments on the Federal Energy Regulatory Commission (FERC) Coordinated Project Plan and Permitting Timetable for the Mountain Valley Pipeline Project
Docket No. CP16-10-000

FILED
SECRETARY OF THE
2016 DEC - 7 A 11: 17
FEDERAL ENERGY
REGULATORY COMMISSION

The Bureau of Land Management (BLM) appreciates the opportunity to review and provide comments to FERC's request for feedback on the Coordinated Project Plan and Permitting Timetable for the Mountain Valley Pipeline (MVP) Project in accordance with the FAST-41 coordination process for existing covered projects that have pending Federal environmental review. The comments are detailed in the attached document and were submitted to FERC on November 16, 2016.

We request that these comments be entered into FERC's record for Docket No. CP16-10-000.



If you have any questions or concerns, please feel free to contact Vicki Craft, Project Manager at (601) 919-4650.

Sincerely,

Assistant Field Manager, Business Resources

(Acting for) Bruce Dawson
Southeastern States District Manager

cc: Paul Friedman, FERC
Jennifer Adams, JNF
Anita Bradburn, ACOE

Enclosures (2)
BLM Comment Submission (11-16-2016)
Revised Permitting Timetable for MVP





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IN REPLY REFER TO:
2880 (020) VC

November 16, 2016

Nicholas Tackett
Federal Energy Regulatory Commission
888 1st Street NE
Washington, D.C. 20426

Dear Mr. Tackett:

The Bureau of Land Management (BLM) is in receipt of your email dated November 4, 2016 requesting feedback on the Coordinated Project Plan and Permitting Timetable for the Mountain Valley Pipeline project. **As discussed in detail below, BLM does not concur with the permitting timetable.** BLM requests that the permitting timetable be revised to state that the final completion date of BLM's consideration of the right-of-way application is "To Be Determined." BLM also provides specific comments below on the list of roles and responsibilities, potential avoidance, minimization, and mitigation strategies, and the plans and schedule for public and tribal outreach.

On December 4, 2015, the United States President signed into law the *Fixing America's Surface Transportation (FAST) Act*. Title 41 of the FAST Act ("FAST-41") created a new governance structure, set of procedures, and funding mechanisms to improve the timeliness, predictability, and transparency of the Federal permitting and environmental review process for major infrastructure projects (i.e., "covered projects") across a broad range of sectors and project types (the full text of Title 41 can be viewed here: <https://goo.gl/ts1mCt>).

FAST-41 defines covered projects as those that require authorization or environmental review by a Federal agency involving construction of infrastructure for a covered sector, are subject to the National Environmental Policy Act of 1969 (NEPA), are likely to require a total investment of more than \$200,000,000, and do not qualify for abbreviated authorizations or environmental review processes. They may also include construction projects in covered sectors that are subject to NEPA for which, due to their size and complexity, the applicable Federal agencies determine the FAST-41 coordination process and oversight would be beneficial.



One of the first actions that FAST-41 requires agencies on the newly established Federal Permitting Improvement Steering Council (hereafter Council) to take is to establish an inventory of all existing covered projects that have pending Federal environmental reviews or authorizations. Agencies must then create a “specific searchable entry” for each project on the Federal Infrastructure Permitting Dashboard (www.permits.performance.gov)

The Mountain Valley and Equitrans Expansion project has been identified as a potential covered project by the Executive Director of the Federal Infrastructure Permitting Improvement Steering Council.

FAST-41 requires that the lead agency establish a Coordinated Project Plan which shall include: (1) a list of, and roles and responsibilities for, all entities with environmental review or authorization responsibility for the project; (2) “a permitting timetable...setting forth a comprehensive schedule of dates by which all environmental reviews and authorizations, and to the maximum extent practicable, State permits, reviews and approvals must be made”; (3) “a discussion of potential avoidance, minimization, and mitigation strategies, if required by applicable law and known; and (4) “[p]lans and a schedule for public and tribal outreach and coordination, to the extent required by applicable law.”

BLM submits these comments in response to FERC’s request for comments on the Coordinated Project Plan.

I. BLM’s Comments on List of Roles and Responsibilities

BLM notes that the list of federal agencies in the draft Appendix differs from the list of federal agencies in prior documents issued by FERC. Specifically, the National Park Service, ANST is listed as needing to make a non-impairment determination and issue an NPS permit. Presumably, this note refers to the proposed crossing of the Appalachian National Scenic Trail. BLM has no comment on the inclusion of this statement in the Appendix, but BLM requests that FERC consult with the National Park Service regarding this statement.

II. BLM Does Not Concur With the Permitting Timetable

FERC provided a draft permitting timetable of all NEPA reviews and Federal authorizations attached as an Appendix to FERC’s Coordinated Project Plan. FERC’s draft Appendix states that the final completion date for BLM’s consideration of the right-of-way application would be June 8, 2017. FERC states that the final completion date is calculated according to 18 C.F.R. § 157.22 which states that “a final decision on a request for a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law.” *The draft permitting timetable is incorrect because a schedule is otherwise established by federal law.*



The Mineral Leasing Act requires the BLM, acting under authority delegated from the Secretary of the Interior, to consult with the agencies involved in a Mineral Leasing Act right of way application. BLM will not issue or renew a grant or temporary use permit “until the heads of the agencies administering the lands involved have concurred.” 43 CFR 2884.26. Thus, before the BLM can issue its Record of Decision (ROD) for the project, the BLM must receive concurrence from the United States Forest Service and the United States Army Corps of Engineers. The U.S. Forest Service and U.S. Army Corps of Engineers have their own administrative review processes which must occur before concurrence. Those processes are codified by federal law. *See, e.g.*, 36 CFR § 218 and 36 CFR § 219. Those agency processes are, therefore, “established by federal law.” These processes are pre-decisional and must occur before concurrence. The BLM does not have authority to override the Forest Service’s or Corps of Engineers’ processes. Where concurrence is not reached, “the Secretary of the Interior, after consultation with these agencies, may issue or renew the grant or TUP, but not through lands within a Federal reservation where doing so would be inconsistent with the purposes of the reservation.” 43 CFR 2884.26. BLM does not have authority to affect the timetable for the Secretary of the Interior’s consideration of these questions if this scenario occurs.

BLM must also perform an independent assessment of whether the application should be denied for any of the various reasons discussed in 43 C.F.R. 2884.23. BLM’s regulations provide for a flexible processing time subject to BLM’s notification of the applicant in writing of any need for additional time. *See* 43 C.F.R. 2884.21(b).

BLM’s decision is an appealable decision to the Interior Board of Land Appeals (IBLA), which carries its own additional 30-day review timeline. This process is codified by federal law at 43 CFR Part 4.

Finally, BLM’s ability to adhere to any official timetable is also contingent upon receipt of adequate data and analysis, which depends on multiple parties also meeting deadlines. This includes data requests and responses from the Federal Energy Regulatory Commission as well as from the applicant. For example, the Forest Service requested a “leaf-off” visual impacts analysis as far back as March 2016 and the National Park Service requested coordination on visual impacts and additional key observation points in June 2015. In the DEIS the applicant has only provided a visual simulation of a “leaf-on” scenario from a single observation point on the Appalachian National Scenic Trail. The project proponent’s delay in providing key information about the lands subject to the Mineral Leasing Act application substantially hinders the BLM’s ability to provide a concrete date or official timetable.

For these reasons the BLM cannot at this time provide a concrete permitting timetable that is not subject to several contingencies. These contingencies reflect the flexible timeline needed



for the BLM to receive concurrence, if approved, from the Forest Service and the Corps of Engineers, to review the application, to receive adequate information about the application from the project proponent, and to complete its own appeals process through the IBLA.

Section 41003(c)(2)(A) of FAST-41 requires the concurrence of each cooperating agency to establish a permitting timetable. Pursuant to section 41003(c)(2)(A), the Bureau of Land Management does not concur with the permitting timetable. BLM requests that the permitting timetable be revised to state that the "Final Completion Date" for the BLM's right of way authorization is "To Be Determined" or "TBD."

III. BLM's Comments on Potential Avoidance, Minimization, and Mitigation Strategies

BLM, to the extent necessary, will develop avoidance, minimization, and mitigation strategies on the areas encompassed by the Mineral Leasing Act Right-of-Way application. Avoidance, minimization, and mitigation strategies may be imposed for reasons including but not limited to: protecting the natural resources associated with Federal lands and adjacent lands and preventing unnecessary or undue degradation to public lands. See 43 C.F.R. 2881.2. BLM has authority to require the applicant to "[c]omply with all other stipulations that BLM may require." 43 C.F.R. 2885.11. However, the applicant has not provided sufficient information regarding the proposed crossings for BLM to provide a detailed discussion of potential avoidance, minimization, and mitigation strategies on lands managed by the U.S. Army Corps of Engineers or lands managed by the U.S. Forest Service. For example, the applicant continues to reserve the idea of cutting an open trench over the Appalachian National Scenic Trail if conventional boring is unsuccessful and has provided inadequate information to BLM on this contingency. Without further information about this and a number of other issues, BLM cannot provide detailed comments on potential avoidance, minimization, and mitigation strategies.

IV. BLM's Comments on Plans and Schedule for Public and Tribal Outreach and Coordination

BLM employees attended FERC's recent public outreach meetings. BLM will review the comments provided during these meetings. BLM will continue to review comments submitted to FERC's docket. BLM continues to engage in government to government consultation regarding BLM's areas of concern. BLM will issue consultation letters in the coming months regarding MVP's right of way application. BLM reserves the authority and right to "[h]old public meetings, if sufficient public interest exists to warrant their time and expense" in light of FERC's public outreach meetings. If BLM chooses to do so, BLM would publish a notice in the Federal Register announcing in advance any public hearings and meetings regarding the Mineral Leasing Act right of way application. See 43 C.F.R. 2884.21.



If you have any questions or concerns, please feel free to contact Vicki Craft, Project Manager at (601) 919-4650.

Thank you for your cooperation, and we look forward to working with you on this new process.

Sincerely,



(Acting for) Bruce Dawson
Southeastern States District Manager

cc: Vicki Craft, Project Manager, ES020/SSDO



Permitting Timetable for Mountain Valley and Equitrans Expansion Project			
Responsible Federal Agency	Federal Permit/Review	Intermediate Completion Date	Final Completion Date
Federal Energy Regulatory Commission	Certificate of Public Convenience and Necessity for Interstate Natural Gas Pipelines	N/A	TBD*
Federal Energy Regulatory Commission	National Environmental Policy Act (NEPA) Compliance (Draft/Final NEPA documents)	9/16/2016	3/10/2017
Federal Energy Regulatory Commission	NEPA Compliance Cont'd (Record of decision, as issued with final FERC certificate order)	N/A	TBD*
Bureau of Land Management	Right-of-Way Authorization (DOI-BLM)	N/A	TBD
National Park Service, Blue Ridge Parkway	NPS Permit	N/A	6/8/2017**
U.S. Army Corps of Engineers, Huntington	Clean Water Act Section 404 Permit	N/A	6/8/2017**
U.S. Army Corps of Engineers, Huntington	Section 10 Permit	N/A	6/8/2017**
U.S. Army Corps of Engineers, Norfolk	Clean Water Act Section 404 Permit	N/A	6/8/2017**
U.S. Army Corps of Engineers, Norfolk	Section 10 Permit	N/A	6/8/2017**
U.S. Army Corps of Engineers, Pittsburgh	Clean Water Act Section 404 Permit	N/A	6/8/2017**
U.S. Army Corps of Engineers, Pittsburgh	Section 10 Permit	N/A	6/8/2017**
U.S. Army Corps of Engineers, Huntington	Right-of-Way Authorization (Corps)	N/A	6/8/2017**
U.S. Forest Service, Jefferson National Forest	Special Use Permit (FS)	N/A	6/8/2017**
U.S. Fish and Wildlife Service, VA	Endangered Species Act Consultation (DOI)	N/A	
U.S. Fish and Wildlife Service, WV	Endangered Species Act Consultation (DOI)	N/A	

Add note pursuant to 11/16/2016 email/letter from BLM: "BLM cannot at this time provide a concrete permitting timetable that is not subject to several contingencies. These contingencies reflect the flexible timeline needed for the BLM to receive concurrence, if approved, from the Forest Service and the Corps of Engineers, to review the application, to receive adequate information about the application from the project proponent, and to complete its own appeals process. BLM requests that the permitting timetable be revised to state that the "Final Completion Date" for the BLM's right of way authorization is "To Be Determined" or "TBD."

Add note pursuant to 11/18/2016 email from NPS: Two separate permits must be issued by the NPS: a construction permit and a right-of-way permit. These permits are likely to be issued concurrently.

Added pursuant to 2016-11-15 email from Midstream EQT Corporation

Add note pursuant to 11/16/2016 email from FWS's Troy Andersen: "Once FERC has initiated formal consultation and provided all relevant data required by 50 CFR 402.14(c), section 7 implementing regulations (50 CFR 402.14) allow the U.S. Fish and Wildlife Service up to 90 days to conclude formal consultation and an additional 45 days to prepare the biological opinion, unless we mutually agree to an extension."

Add note pursuant to 11/16/2016 email from FWS's Troy Andersen: "Once FERC has initiated formal consultation and provided all relevant data required by 50 CFR 402.14(c), section 7 implementing regulations (50 CFR 402.14) allow the U.S. Fish and Wildlife Service up to 90 days to conclude formal consultation and an additional 45 days to prepare the biological opinion, unless we mutually agree to an extension."

*According to 18 C.F.R. § 3c.2(b), "The nature and time of any proposed action by the Commission are confidential and shall not be divulged to anyone outside of the Commission. The Secretary of the Commission has the exclusive responsibility and authority for authorizing the initial public release of information concerning Commission proceedings."

**The final completion dates are calculated according to 18 C.F.R. § 157.22 (2016), which provides that "a final decision on a request for a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law."

Permitting Timetable for Mountain Valley and Equitrans Expansion Project			
Responsible State Agency	Federal Permit/Review	Intermediate Completion Date	Final Completion Date
West Virginia Division of Culture and History	Section 106 NHPA Cultural Resources Review	N/A	6/8/2017**
Virginia Department of Historic Resources	Section 106 NHPA Cultural Resources Review	N/A	6/8/2017**
Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation	Section 106 NHPA Cultural Resources Review	N/A	6/8/2017**
West Virginia Department of Environmental Protection, Division of Water and Waste Management	Section 401 CWA Review - Water Quality Certification	N/A	6/8/2017**
Virginia Department of Environmental Quality, Water Division	Section 401 CWA Review - Water Quality Certification	N/A	6/8/2017**

Pennsylvania Department of Environmental Protection, Division of Waterways, Wetlands, and Stormwater Management	Section 401 CWA Review - Water Quality Certification	N/A	6/8/2017**
West Virginia Department of Environmental Protection, Division of Water and Waste Management	Section 402 CWA Review - National Pollutant Discharge Elimination System, Stormwater General Permit	N/A	6/8/2017**
Virginia Department of Environmental Quality, Water Division	Section 402 CWA Review - National Pollutant Discharge Elimination System, Stormwater General Permit	N/A	6/8/2017**
West Virginia Department of Environmental Protection, Division of Water and Waste Management	Section 402 CWA Review - National Pollutant Discharge Elimination System, Hydrostatic Test Discharge Permit	N/A	6/8/2017**
Virginia Department of Environmental Quality, Water Division	Section 402 CWA Review - National Pollutant Discharge Elimination System, Hydrostatic Test Discharge Permit	N/A	6/8/2017**
Virginia Department of Environmental Quality, Water Division	Section 402 CWA Review - National Pollutant Discharge Elimination System, Hydrostatic Test Withdrawal Permit	N/A	6/8/2017**
Pennsylvania Department of Environmental Protection, Air Permits Division	Title V CAA Review - Minor Source Operating Permit for Air Emissions	N/A	6/8/2017**
<i>**The final completion dates are calculated according to 18 C.F.R. § 157.22 (2016), which provides that "a final decision on a request for a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law."</i>			

REMOVED

National Park Service, ANST	Non-Impairment Determination (separate from NPS permit)	N/A	6/8/2017**	Pursuant to 2016-11-15 email from Midstream EQT Corporation
National Park Service, ANST	NPS Permit	N/A	6/8/2017**	Pursuant to 2016-11-15 email from Midstream EQT Corporation
West Virginia Department of Environmental Protection	Title V CAA Review - Operating Permit for Air Emissions	N/A	6/8/2017**	Pursuant to 2016-11-15 email from Midstream EQT Corporation
National Park Service, Blue Ridge Parkway	Non-Impairment Determination (separate from NPS permit)	N/A	6/8/2017**	Pursuant to 2016-11-18 email/letter from NPS

Document Content(s)

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