

January 23, 2015

**VIA EMAIL**

Tom Speaks, Forest Supervisor  
USDA Forest Service  
George Washington and Jefferson National Forests  
ATTN: Atlantic Coast Pipeline Survey Comments  
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Roanoke, VA 24019  
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**RE: Atlantic Coast Pipeline Survey Comments**

Dear Mr. Speaks,

We appreciate this opportunity to comment on the application by Atlantic Coast Pipeline, LLC, and its agent Dominion Transmission, Inc., (“Dominion”) to conduct surveys on the George Washington National Forest (“GW”). These comments are submitted on behalf of the Southern Environmental Law Center, the Shenandoah Valley Network, Highlanders for Responsible Development, the Dominion Pipeline Monitoring Coalition, Friends of Shenandoah Mountain, and the Augusta County Alliance (with contact information listed at the end of this letter). We share the concerns raised by Appalachian Mountain Advocates and the Dominion Pipeline Monitoring Coalition and incorporate those comments here by reference.

The proposed surveys are an important step in Dominion’s plan to build and operate a major natural gas pipeline—known as the Atlantic Coast Pipeline (“ACP”)—that would pass over Shenandoah Mountain and through the heart of the GW. If approved, the surveys will entrench the current study corridor and influence the data available to decision-makers, including the Forest Service, the Fish and Wildlife Service, and the Federal Energy Regulatory Commission (“FERC”). Thus, Dominion’s application represents a significant decision point with real implications for the environment. The Forest Service must complete an environmental analysis whose rigor matches the significance of the proposed surveys.

With this in mind, we urge the Forest Service to adopt the following process for evaluating Dominion’s application:

- Deny Dominion’s application and require the company to submit a new application that identifies alternative study corridors for the ACP, including alternatives that use existing utility or natural gas transmission corridors.

- Prepare an environmental assessment (“EA”) that examines alternatives to the proposed route through the GW and the Monongahela, and to the proposed survey methodology, and offer the EA for public comment.
- Through the EA, identify specific alternative routes that Dominion must survey as part of the temporary special use permit.
- Through the EA, establish appropriate protocols to ensure that the proposed surveys capture the necessary detail for a comprehensive evaluation of the impacts of pipeline construction and operation.

Our proposal is designed to solve a core problem with conducting surveys at this early stage in the NEPA process: their potential to skew the environmental analysis of the pipeline itself. Because the surveys would single out just one route for continued investment and study, their approval represents a bureaucratic commitment that will make it more difficult to change course in the future. Preparing an EA would facilitate NEPA compliance by ensuring that the surveys (1) preserve any reasonable alternatives for siting the ACP, (2) generate the information necessary for a robust alternatives analysis, and (3) put the Forest Service in a position to contribute to the environmental impact statement (“EIS”) being prepared by FERC. The preparation of an EA now will help ensure that alternative pipeline routes that avoid or minimize impacts on national forest resources receive balanced and meaningful consideration during FERC’s environmental review of the ACP.

Furthermore, we urge the Forest Service to insist that FERC’s EIS is a comprehensive, programmatic study and comparison of suitable pipeline corridors from the Marcellus shale region to markets in the southeastern United States. The EIS should examine the ACP, the Mountain Valley Pipeline, the Appalachian Connector pipeline, other foreseeable pipeline projects, and alternatives to these projects that provide a regional planning perspective. With the benefit of this high-level analysis, decision-makers could screen out proposals, such as the ACP, that take a needlessly damaging path in order to benefit private interests.

As a practical matter, the decision before the Forest Service is about more than just a survey application. Dominion has identified a route upon which it proposes to build a major natural gas pipeline through the GW and the Monongahela, and the Forest Service now has a crucial, but fleeting, opportunity to proactively study and plan for pipeline development in this region. We urge the Service to select a course of action that seizes that opportunity and contributes to a meaningful environmental review of the ACP and other pending proposals.

### **Analysis**

#### **I. The Forest Service should prepare an EA for the ACP survey proposal.**

The Forest Service is contemplating a categorical exclusion from detailed review under the National Environmental Policy Act (“NEPA”) for Dominion’s proposed surveys. The principal failure of using a categorical exclusion in this case is that, in doing so, the Forest Service will

ignore the availability of alternative routes that could avoid or minimize the harm to national forest lands at a critical and influential stage in the development of this project. Dominion has simply ignored alternative routes in its application. When asked to “[d]escribe other reasonable alternative routes and modes considered,” Dominion states that “[n]o alternative routes have been identified for these surveys.”<sup>1</sup> In response to a question asking why alternatives were not selected, Dominion simply states, “Not applicable.”<sup>2</sup>

For the reasons set forth in this section, the Forest Service should not accept Dominion’s wholly unsupported assertion that alternative survey routes are “not applicable.” We believe that the agency would be well-served by and should prepare an EA.

#### **A. The proposed pipeline is not compatible with the forest plan.**

As an initial matter, the Forest Service should prepare an EA for the proposed survey route because construction of the pipeline itself is not compatible with the GW forest plan, and the agency already knows that an alternative route or routes must be examined. First, the forest plan specifies that special use permits are available for those uses that “cannot be accommodated on non-Federal land.”<sup>3</sup> Dominion’s application simply dismissed any possible routes that avoided the GW: “Given the general trajectory of the planned pipeline route between West Virginia and southern Virginia (northwest to southeast) . . . it is not feasible to avoid a crossing of the GWNF.”<sup>4</sup> However, Dominion’s assertion is undercut by the routes proposed for other pipelines that avoid the Monongahela and the GW.<sup>5</sup> Dominion has simply ignored its obligation to avoid or minimize crossings of national forest lands in its application.<sup>6</sup> The Forest Service should require Dominion to identify an alternative that avoids or at least greatly minimizes the amount of national forest land it transects.

Second, the GW forest plan favors the expansion of existing utility corridors “in order to reduce the need for additional commitment of lands for these uses.”<sup>7</sup> Under the forest plan, each existing “utility corridor is developed and utilized to its greatest potential in order to reduce the

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<sup>1</sup> Atlantic Coast Pipeline, LLC, Standard Form 299: Application for Transportation and Utility Systems and Facilities on Federal Lands, Response to Question 13 (“Standard Form 299”).

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Forest Serv., Revised Land and Resource Management Plan, 3-24 (2014).

<sup>4</sup> Standard Form 299, Response to Question 13.

<sup>5</sup> Mountain Valley Pipeline, LLC, Summary of Alternatives, Pre-Filing Draft, 10-7, 10-8 (Dec. 1, 2014) (FERC Docket No. PF15-3).

<sup>6</sup> *Id.*, 10-3 (Dec. 1, 2014) (“One of MVP’s primary objectives with respect to pipeline routing was to avoid if possible or minimize crossings of . . . significant natural resources, namely crossings of National Forests, National Parks, the Appalachian Trail, and the Blue Ridge Parkway.”)

<sup>7</sup> U.S. Forest. Serv., Revised Land and Resource Management Plan, 4-24 (2014).

need to develop additional corridors.”<sup>8</sup> The plan commits approximately 7,000 acres to utility corridors, including natural gas transmission lines.<sup>9</sup> But Dominion’s proposed route does not occupy any existing corridors, and again the company offers no explanation for that decision in its application. Dominion’s approach is in stark contrast to the approach of other pipeline proponents that have prioritized co-location in their route planning.<sup>10</sup> The Forest Service should require Dominion to identify an alternative route that uses corridors already established on the national forests to achieve its objectives.

Finally, pipeline construction is also not compatible with the forest plan’s protection measures for the Cow Knob salamander. This protected species is known to occur close to the proposed route to the north and south. Under the plan, new utility corridors and rights-of-way are prohibited anywhere the Cow Knob salamander is found, absent “an over-riding demonstrated public need or benefit.”<sup>11</sup> Dominion cannot establish that its preferred route meets this standard at this stage of the project, and it would be premature for the Forest Service to conclude that an alternative route will not be required. Indeed, the 1994 Cow Knob Salamander Conservation agreement between the Forest Service and the U.S. Fish and Wildlife Service prohibited the establishment of utility corridors *without exception* wherever the salamander is found to prevent habitat fragmentation.<sup>12</sup> The Forest Service should require Dominion to identify an alternative route that wholly avoids known or potential Cow Knob salamander habitat to protect this species.

Under the National Forest Management Act (“NFMA”), all permits for the use and occupancy of national forest lands must be consistent with the forest plan.<sup>13</sup> Issuing a permit to survey for a pipeline which is not consistent with the forest plan would itself be inconsistent with the forest plan, in violation of the NFMA. This would be especially true if an inconsistent survey permit were summarily issued under a categorical exclusion, without first preparing an EA to consider alternatives that would be consistent or more consistent with the forest plan and that would avoid or minimize adverse impacts on the natural resources the plan was intended to protect.

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<sup>8</sup> U.S. Forest Serv., Revised Land and Resource Management Plan, 2-33 (2014). As further evidence of the forest plan’s preference for co-location of pipelines with existing uses, it notes specifically that “pipelines associated with development of natural gas resources will be constructed within road corridors.” U.S. Forest Serv., Revised Land and Resource Management Plan, 4-21 (2014).

<sup>9</sup> *See id.* at 3-1.

<sup>10</sup> *See* Mountain Valley Pipeline, LLC, Summary of Alternatives, Pre-Filing Draft, 10-4 (Dec. 1, 2014).

<sup>11</sup> U.S. Forest Serv., Revised Land and Resource Management Plan, 4-5, 4-116 (2014).

<sup>12</sup> *See* U.S. Forest Serv. & U.S. Fish & Wildlife Serv., Conservation Agreement for the Cow Knob Salamander, ¶ 2 (1994) and Conservation Assessment - Management Measures, attached, ¶ 14.

<sup>13</sup> 16 U.S.C. § 1604(i).

**B. Dominion’s proposed survey could skew FERC’s eventual NEPA analysis in favor of a route over Shenandoah Mountain.**

Dominion’s proposed survey could skew FERC’s eventual NEPA analysis in favor of the company’s preferred route over Shenandoah Mountain, resulting in serious and extraordinary effects on the environment. In connection with the use of categorical exclusions, the Forest Service regulations state, “If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA.”<sup>14</sup> In this context, the term “significant” has special meaning, echoing the requirement in NEPA to prepare an EIS for any “major Federal action[] *significantly* affecting the quality of the human environment.”<sup>15</sup> “*Significantly* as used in NEPA requires considerations of both context and intensity,”<sup>16</sup> with “intensity” referring to “the severity of impact,” including “[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.”<sup>17</sup>

A decision on Dominion’s survey application “may establish a precedent for future actions with significant impacts” and “represents a decision in principle about a future consideration.” By approving Dominion’s survey application, the Forest Service would give its imprimatur to pipeline-related activities on a particular route through the GW. Dominion has asserted in filings at FERC that it made route adjustments based on pre-NEPA discussions with the Forest Service, implying that the survey route already accounts for the Service’s concerns about the ACP.<sup>18</sup> Moreover, Dominion is proposing to devote substantial time and expense to studying this corridor, having ignored alternatives with the potential to diminish the impacts on national forest resources. Dominion’s exclusive focus on this corridor will instill the route with bureaucratic momentum more than a year before FERC expects to present an alternatives analysis in a draft EIS.

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<sup>14</sup> 36 C.F.R. § 220.6(c).

<sup>15</sup> 42 U.S.C. § 4332(2)(C) (emphasis added).

<sup>16</sup> 40 C.F.R. § 1508.27.

<sup>17</sup> 40 C.F.R. § 1508.27(b), (b)(6). The proposed surveys also implicate other factors used to evaluate intensity. *See, e.g., id.* § 1508.27(b)(3) (calling for the consideration of “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.”).

<sup>18</sup> *See* Atlantic Coast Pipeline, LLC, Resource Report 1, Appendix 1E, 673-74 (Dec. 12, 2014) (FERC Docket No. PF15-6) (Meeting minutes (1) stating that northern pipeline route “was identified based on review of allowable uses within management prescription units in the forest as well as verbal comments from GWNF staff at a previous meeting,”(2) recounting GWNF staff comments that “northern route generally is ‘much better’ than the southern route,” and (3) stating that “Dominion will meet with GWNF staff . . . to continue routing discussions and review a draft SF299 application package for a temporary use permit to conduct survey activities within the forest.”).

The proposed surveys will also provide information used by FERC and other agencies—including the Forest Service—to review the ACP proposal. When those agencies attempt to compare alternative routes at the EIS stage, the preferred route will be set apart by detailed information concerning its impacts and ways to avoid, minimize, or mitigate those impacts. Thus, we are deeply concerned that FERC’s eventual alternatives analysis will be influenced by Dominion’s continued focus on this study corridor, and by any Forest Service decision to approve the proposed survey route.<sup>19</sup>

A curtailed alternatives analysis would increase the risk of unnecessary harm to the environment—and if the ACP proceeds on Dominion’s proposed survey corridor, that harm will be significant. Constructing and operating a pipeline on this route would degrade the exceptional scenic value of the region; offer a direct avenue into the forest for invasive species and diseases; disturb portions of the forest that are suitable for the Cow Knob salamander; and impede essential natural processes, such as migration for amphibians and other small wildlife species. Excessive sediment loads caused by erosion could threaten the integrity of headwater streams that supply much of the water used by the local communities surrounding the forest, including those in the Shenandoah Valley. Sedimentation could also threaten exceptional trout waters regarded as some of the best fisheries in the Southeast.<sup>20</sup> Additionally, we are concerned that the presence of the pipeline through the national forest would make these public lands and the surrounding region more desirable for additional infrastructure or natural gas drilling in the future. The pipeline would remove a significant obstacle to development—the transmission of gas to end users—for as long as it is in the ground.

The “cause-effect relationship” between the proposed surveys and these unprecedented effects on the GW, as well as the significant “degree of the potential effect,” precludes the use of a categorical exclusion in this case.<sup>21</sup> As you know, actions may only be categorically excluded from further NEPA analysis if there are no extraordinary circumstances present.<sup>22</sup> These may include potential effects on imperiled species, municipal watersheds, and historic areas—all of

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<sup>19</sup> See *Anglers of the Au Sable v. U.S. Forest Serv.*, 565 F. Supp. 2d 812, 832 (E.D. Mich. 2008) (Finding that although future actions “would require individual EAs prior to approval, the Forest Service ha[d] not assessed the extent to which approving the current proposal could affect those future decisions” and that allowing drilling at one location “would almost certainly color the Forest Service’s analysis of the environmental impact of . . . future wells.”).

<sup>20</sup> These concerns have been heightened by Dominion’s poor track record in West Virginia. In October 2014, the West Virginia DEP issued a consent order addressing Dominion’s numerous violations relating to sediment deposits, slip areas, and even a pipeline break that released crude oil. Consent Order Issued Under the Water Pollution Control Act, West Virginia Code, Chapter 22, Article 11 and the Groundwater Protection Act, West Virginia Code, Chapter 22, Article 12 (Oct. 1, 2014), *available at* <http://www.dep.wv.gov/pio/Documents/Settlements%20and%20Orders/DOMINION%20TRANSMISSION%20INC.pdf>.

<sup>21</sup> 36 C.F.R. § 220.6(b)(2).

<sup>22</sup> 36 C.F.R. § 220.6(a).

which are present here. Moreover, the permit’s inconsistency with the forest plan should be considered an extraordinary circumstance that precludes the use of a categorical exclusion.<sup>23</sup> Fundamentally, such exclusions are intended to be used only for geographically small, simple, routine, well-understood projects of short duration. It would be inappropriate to use a categorical exclusion for a project as novel and consequential as conducting surveys for the ACP.

While we recognize that the Forest Service’s decision on this survey application does not represent a final verdict on the ACP, significance involves “*the degree to which the action*” may establish a precedent or a represent decision in principle. To a significant degree, the Forest Service’s decision on this survey application could affect the eventual route of the pipeline, and it therefore represents the type of action that “may have a significant effect” under 36 C.F.R. § 220.6(c). Thus, the agency should prepare an EA.

**C. NEPA requires the Forest Service to study, develop, and describe alternatives when there are unresolved conflicts concerning the use of national forest lands.**

But even if the Forest Service disagrees that its decision on the survey application “may have a significant effect,” NEPA still requires the agency to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”<sup>24</sup> This obligation attaches “even if the agency finds no significant environmental impact.”<sup>25</sup> Here, “unresolved conflicts” exist. Dominion’s proposed route through western Virginia and the GW has been hotly contentious since its announcement in 2014. Many commenters have opposed the use of national forest lands for this project and have urged the Forest Service and FERC to identify alternative routes that avoid or minimize the harm to forest resources. As discussed above, the proposed survey is an integral part of the entire project and has the potential effectively to set the wheels in motion for construction of the pipeline along Dominion’s preferred route.<sup>26</sup> These conflicts warrant the preparation of an EA.

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<sup>23</sup> 36 C.F.R. § 220.6(b). The list of conditions that should be considered in determining extraordinary circumstances “is not intended to be exhaustive” and “is intended as a starting place and does not preclude consideration of other factors or conditions . . . with the potential for significant environmental effects.” 73 Fed. Reg. 43,084, 43,091 (July 24, 2008) (preamble to Forest Service’s NEPA procedures). Not only is inconsistency with the governing forest plan clearly an extraordinary circumstance by itself, but, in evaluating the significance of effects, a factor to consider is whether the action threatens a violation of federal law or other requirements for environmental protection. 40 C.F.R. § 1508.27(b)(10) (emphasis added).

<sup>24</sup> 42 U.S.C. § 4332(2)(E).

<sup>25</sup> *River Road Alliance v. Corps of Engineers*, 764 F.2d 445, 452 (7th Cir. 1985).

<sup>26</sup> *See Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir. 1988) (“Because the Deep Creek lease sale opens the door to potentially harmful post-leasing activity, it involves unresolved conflicts concerning alternative uses of available resources.”) (internal quotations omitted).

#### **D. The Forest Service must consider cumulative impacts and connected actions.**

Providing yet another reason to complete an EA, NEPA requires the consideration of the “cumulative impacts” and “connected actions” related to a proposed action. Under the NEPA implementing regulations, the cumulative impact of an action includes the impact of “reasonably foreseeable future actions.” Moreover, “[a]ctions are connected if they: . . . (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.”<sup>27</sup> As we have explained above, Dominion’s survey request is an integral part of the company’s plan to construct a natural gas pipeline through the GW, and Dominion is making a significant investment in this route. It is reasonably foreseeable that Dominion’s survey will result in an application for right-of-way through the national forest to construct and operate the pipeline. Furthermore, the survey depends on the larger action—actual construction of the pipeline—for its justification. It would not be feasible to construct the pipeline without first conducting surveys, nor would it be sensible to conduct surveys with no intention of constructing a pipeline. Because surveys and construction are “interdependent parts” of the ACP project, Dominion’s application is a poor candidate for a categorical exclusion.

#### **E. The Forest Service has authority to prepare an EA.**

There can be no question that the Forest Service has authority to prepare an EA for the proposed surveys. Under NEPA regulations, “[a]gencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.”<sup>28</sup> Preparing an EA would be a useful way for the Forest Service to plan for the possibility of a pipeline on the GW and the Monongahela, and it would facilitate NEPA compliance in several ways. First, through an analysis of possible alternatives, the EA would help ensure that Dominion’s surveys do not foreclose better options for siting a pipeline in or around this region. Second, by documenting the unique geology and ecology of the region, an EA would generate the type of information needed for a robust alternatives analysis of the ACP. And third, the EA would prepare the Forest Service to contribute information related to national forest resources early and actively to the environmental review that is being conducted by FERC.

An agency may elect to prepare an EA even when a categorical exclusion is applicable.<sup>29</sup> Moreover, notwithstanding the exclusions listed in USDA regulations “*or identified in agency procedures*, agency heads may determine that circumstances dictate the need for preparation of an EA or EIS for a particular action.”<sup>30</sup> For the reasons previously discussed, Dominion’s

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<sup>27</sup> 40 C.F.R. § 1508.25(a)(1).

<sup>28</sup> 40 C.F.R. § 1501.3(b).

<sup>29</sup> *Id.* at § 1508.4 (“An agency may decide in its procedures *or otherwise*, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so.”)

<sup>30</sup> 7 C.F.R. § 1b.3(c) (emphasis added).



proposal has serious implications for the GW and should not be addressed through a categorical exclusion. The Forest Service has the authority to prepare an EA, and we urge it to do so.

**F. The Forest Service should evaluate the adequacy of Dominion’s proposed survey methods.**

Dominion’s proposed surveys are intended to provide the baseline data for the Forest Service, FERC, and the public to understand and evaluate the impacts of pipeline construction through the GW.<sup>31</sup> They will provide the foundation for decision making about whether to allow construction of the pipeline through this national forest and if construction is allowed, how to avoid, minimize, or mitigate the harm to forest resources.

In light of the significance of the proposed surveys for the evaluation of the entire project, the Forest Service should carefully examine the adequacy of the proposed survey methods. We believe Dominion’s proposed methods are inadequate for analyzing slope stability, the integrity of core forest habitat, and the presence of endangered, threatened, and other sensitive species. The proposed surveys are especially inadequate to detect the presence of the imperiled Cow Knob salamander which may be present on the surface only seasonally under optimal moisture conditions. Rather than accept the survey program proposed by Dominion, the Forest Service should use the EA process to develop a survey protocol that will ensure robust data collection in consultation with the Fish and Wildlife Service and other expert agencies. In particular, we recommend that a Forest Service or Fish and Wildlife Service biologist accompany those surveying for threatened, endangered, and rare species, including the Cow Knob Salamander.

**G. An EA will be a critical building block for an EIS for Dominion’s proposed pipeline.**

Under NEPA, one of the principal functions of an EA is to “[f]acilitate preparation of a statement when one is necessary.”<sup>32</sup> It is undisputed that construction and operation of the Dominion pipeline will require an EIS led by FERC. Moreover, the Forest Service will be a cooperating agency in the FERC analysis with an obligation to provide information about the impacts of the project on the GW.<sup>33</sup> An EA will ensure that the Forest Service can meet its NEPA obligations during FERC’s review.

An EA at this stage of the Dominion pipeline project will collect and preserve critical information about alternative routes to facilitate an EIS for the Dominion pipeline. Importantly,

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<sup>31</sup> See U.S. Forest Serv., Public Notice for Special Use Application from Atlantic Coast Pipeline, LLC, 2 (Dec. 11, 2014) (“These surveys are collectively necessary to determine the feasibility of the proposed route and collect the environmental and cultural resources data needed to make future decisions on whether or not to allow the construction and operation of the proposed gas pipeline on the GWNF.”)

<sup>32</sup> 40 C.F.R. § 1508.9(a)(3).

<sup>33</sup> See 40 C.F.R. § 1508.5.

preparing an EA could save time in the long run. With its intense focus on this environmentally sensitive corridor, Dominion could cause delays if, through the EIS process, it eventually becomes clear that another route or corridor needs to be selected, studied, and surveyed. Rather than speeding ahead with this ill-conceived route only to double back later, the Forest Service should ensure that the environmental review process is headed in the right direction at this early stage.

## **II. A comprehensive programmatic EIS is necessary to address pipeline siting throughout this region.**

As a cooperating agency in the FERC process, the Forest Service should ensure that FERC's EIS for the Dominion pipeline is a comprehensive, programmatic study of pipeline development in this region.<sup>34</sup> Dominion's proposed pipeline survey is just one piece of a much larger pipeline development effort confronting the Forest Service. Three natural gas pipelines are currently proposed from the Marcellus shale region of West Virginia to the southeastern United States through national forest lands. Taken together, the proposed pipelines could have a profound effect on our region's national forests. The ACP would cross 12.6 miles of the GW and approximately 17 miles of the Monongahela.<sup>35</sup> Other recent proposals include the Mountain Valley Pipeline, which would cross the Jefferson National Forest, and the Appalachian Connector pipeline, which appears likely to cross Forest Service lands in southwest Virginia.<sup>36</sup> With natural gas production booming in the shale gas fields, it is reasonable to anticipate additional proposals that will put great pressure on the public lands of the GW, the Jefferson, or the Monongahela National Forests.

Thus, the Forest Service is confronted with a regional pipeline expansion effort without the benefit of a regional analysis of where potential pipeline corridors may exist that would avoid or minimize impacts to national forest lands and resources and other public lands. And the agency does not have the broad, planning-level information it needs to guide pipeline development in an efficient and responsible manner across national forest lands. This spate of pipeline construction

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<sup>34</sup> The Interagency Agreement on interstate natural gas pipelines requires the Forest Service to proactively "[i]dentify the issues and concerns related to the proposed project that need[] to be addressed in order for the agency to meet its obligations," provide FERC with "information concerning the status of matters the agency considers relevant," and attempt to resolve any concerns with the draft EIS. Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission, Section III.B. (May 2002) (FSM 1537.11).

<sup>35</sup> Atlantic Coast Pipeline Request to Initiate the Pre-Filing Process in Docket No. PF15-6, Transmittal Letter, 4 (Oct. 31, 2014).

<sup>36</sup> See, e.g., Duncan Adams, Western Marcellus Pipeline is 3<sup>rd</sup> seeking passage through Va., *The Roanoke Times* (Oct. 30, 2014), available at [http://www.roanoke.com/news/local/western-marcellus-pipeline-is-rd-seeking-passage-through-va/article\\_d6072f0c-900e-5fe6-a26b-081863a8a839.html](http://www.roanoke.com/news/local/western-marcellus-pipeline-is-rd-seeking-passage-through-va/article_d6072f0c-900e-5fe6-a26b-081863a8a839.html).

proposals amounts to a major, regional infrastructure expansion and development project without the advance regional planning by responsible agencies upon which the public expects these types of decisions will be based. By preparing an EA here, the Forest Service can begin to set a more effective study in motion, while at the same time gathering and developing needed information about impacts and alternatives related to national forest resources.

At minimum, a comprehensive programmatic EIS must consider: (1) construction of the ACP, including proposed segments in the GW and the Monongahela; (2) construction of the Mountain Valley Pipeline, including a proposed segment through the Jefferson; (3) construction of the Appalachian Connector pipeline through the Jefferson; and (4) any other foreseeable pipeline proposals from the Marcellus to the southeast. The programmatic EIS should also consider the effects of reasonably foreseeable actions, recognizing the possibility that new utility corridors would attract further pipeline development and natural gas drilling.<sup>37</sup>

Courts have explained that “under NEPA, proposals for ... actions that will have cumulative or synergistic environmental impact upon a region ... pending concurrently before an agency ... must be considered together.”<sup>38</sup> For example, the Ninth Circuit has found that a programmatic analysis is required “[w]here there are large scale plans for regional development.”<sup>39</sup> Under CEQ regulations, “a programmatic EIS *should* be prepared if actions are ‘connected,’ ‘cumulative,’ or sufficiently ‘similar’ that a programmatic EIS is ‘the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions.’”<sup>40</sup> The proposed pipelines from the Marcellus to the southeast are similar actions, as well as cumulative actions, and they would be best assessed through a programmatic EIS.<sup>41</sup>

The ACP and Mountain Valley Pipeline applications are proceeding concurrently before FERC, and Williams has taken significant steps towards initiating the approval process for its Appalachian Connector pipeline. All of these pipelines would cross the Appalachian Mountains on routes from West Virginia to the southeast. As natural gas “highways” with similar timing and geography, these projects should be considered in a comprehensive EIS that fully captures the possible alternatives and their environmental consequences.

The ACP, the Mountain Valley Pipeline, and other similar proposals all stem from the same set of circumstances: dramatically increased natural gas production in the Marcellus region, paired with demand for natural gas in the southeast. Caught in the middle are this region’s

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<sup>37</sup> See 40 C.F.R. §§ 1508.7, 1508.25.

<sup>38</sup> *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)) (internal quotations omitted).

<sup>39</sup> *Churchhill County v. Norton*, 276 F.3d 1060, 1077 (9th Cir. 2001).

<sup>40</sup> *Nevada v. Dept. of Energy*, 457 F.3d 78, 92 (D.C. Cir. 2006) (quoting 40 C.F.R. § 1508.25(a)).

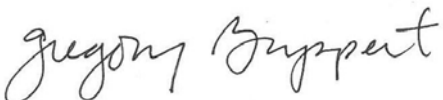
<sup>41</sup> 40 C.F.R. § 1508.25(a)(2) & (3).

landowners, its rural character, and its treasured national forests. Too much is at stake for permitting agencies to proceed on an ad hoc basis, allowing public lands to be fragmented by routes designed to “satisf[y] the needs of the people paying for the pipeline.”<sup>42</sup> The Forest Service must ensure that no pipeline is approved until FERC completes a programmatic EIS. This analysis must consider all proposals for natural gas pipelines in the GW, Jefferson, and Monongahela; other reasonably foreseeable pipeline proposals; and a robust set of alternative routes.

### III. Conclusion

The GW is a magnificent public resource that has been sustained and restored through almost a century of taxpayer investment and Forest Service stewardship. As explained in the forest plan, the GW was created in 1918 from “lands nobody wanted” and transformed into an ecological gem by a “tradition of watershed restoration, protection and stewardship begun on this national forest over 90 years ago.”<sup>43</sup> Before starting down a path that leads to pipeline development in the heart of the GW, the Forest Service should, at minimum, examine any viable alternatives. We therefore urge the Forest Service to prepare an EA on Dominion’s proposed surveys, and to insist that FERC prepare a programmatic EIS for all natural gas pipelines in the region.

Sincerely,



Gregory Buppert, Senior Attorney  
Kathryn Boudouris, Associate Attorney  
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<sup>42</sup> Michael Martz, *Gas pipeline faces mountain of opposition in western Virginia*, Richmond Times-Dispatch (Jan. 3, 2015) (quoting Dominion spokesman James W. Norvelle), *available at* [http://www.richmond.com/news/virginia/article\\_2f830d85-f1ac-5e77-95e6-c25dafd66699.html](http://www.richmond.com/news/virginia/article_2f830d85-f1ac-5e77-95e6-c25dafd66699.html).

<sup>43</sup> U.S. Forest Serv., Revised Land and Resource Management Plan, 2-1 to 2-2 (2014).

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