



United States
Department of
Agriculture

Forest
Service

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File Code: 2700
Date: January 19, 2016

Ms. Leslie Hartz
Atlantic Coast Pipeline, LLC
707 East Main Street
Richmond, VA 23219

Dear Ms. Hartz:

Thank you for submitting your proposal dated November 12, 2015, for the special use of National Forest System (NFS) lands in West Virginia and Virginia for the Atlantic Coast Pipeline (ACP) Project. In accordance with the pre-application screening process described at 36 C.F.R. §251.54(e), the Forest Service has reviewed the proposal and related documents filed with the Federal Energy Regulatory Commission (FERC) under docket nos. PF15-6-000 and PF15-554-000.

We have determined that the proposed route does not meet minimum requirements of initial screening criteria found at 36 CFR 251.54(e)(1)(i) and (ii). The Land and Resource Management Plans for the Monongahela and George Washington National Forests contain standards and guidelines to protect highly sensitive resources, including Cheat Mountain salamanders, West Virginia northern flying squirrels, Cow Knob salamanders, and red spruce ecosystem restoration areas. The enclosed letter outlines specific inconsistencies with Forest Plan direction and other applicable directives that would result with the proposed route. As discussed in the Forest Service's December 11, 2015, filing with the Federal Energy Regulatory Commission and the enclosed, ACP's proposed route variations do not resolve inconsistencies with Forest Plan direction and the Cow Knob Conservation Agreement.

Therefore, alternatives must be developed to facilitate further processing of the application. Alternatives must avoid the Cheat Mountain and Cow Knob salamanders and their habitats, the West Virginia Northern Flying squirrel and its habitat, and spruce ecosystem restoration areas. These resources, and any other resources that are of such irreplaceable character that minimization and compensation measures may not be adequate or appropriate, should be avoided. The status of the species in terms of risk for loss of viability on the National Forests, consistency with protections in the Forest Plans and other directives, and the uniqueness of ecosystems such as the spruce ecosystem restoration areas must be considered in the development of alternatives.

Please provide the following information and data necessary for the Forest Service to continue with the pre-application screening process for new routes:

1. Develop and evaluate system and/or route alternatives that avoid Cheat Mountain and Back Allegheny Mountain on the Monongahela National Forest (MNF) and Shenandoah Mountain on the George Washington National Forest (GWNF). In addition, the new alternative(s) must conform with the *Conservation Agreement for the Cow Knob Salamander* (USFWS, USFS, January 25, 1994), with particular attention paid to management measure no. 2, *Protection from Take*, stating that the Cow Knob salamander must be actively protected against take; and measure no. 14, *Utility and Transportation Corridors*, stating that corridors of any size will fragment habitat and isolate populations.



The pipeline must be routed around areas where Cow Knob salamander habitat is found. Please note that the Conservation Agreement was initiated to protect the species in lieu of federal listing. The Cow Knob salamander was petitioned for listing in 2012 by the Center for Biological Diversity, and review is currently underway by the U.S. Fish and Wildlife Service.

As similarly described in item 154 of FERC's Information Request of December 4, 2015, please ensure there is a comparative analysis of the new alternative(s) that utilizes current and defensible criteria and data to evaluate resource impacts, such that project effects can be compared across route alternatives, which was also stated in the Forest Service's response to FERC's regulation at 18 C.F.R. §385.2013 for authorizing agencies, filed on November 23, 2015. Criteria to analyze must include resources that are managed under each National Forest's Land and Resource Management Plan and all items that are currently being inventoried for the proposed route. Environmental information about the new alternative(s) must contain sufficient and consistent comparative environmental data such that the agency and the public can reasonably evaluate the potential environmental effects of all alternatives that would affect resources on NFS lands.

2. Because the proposed and alternative ACP routes across the George Washington National Forest hinge on successfully accomplishing horizontal directional drilling (HDD) to cross under the Appalachian National Scenic Trail and Blue Ridge Parkway, the Forest Service will need to review and evaluate the proposed contingency plan as part of the technical feasibility component of the special use pre-application screening process. In addition to the information required in FERC's information request issued December 4, 2015, the Forest Service will detail information requests in upcoming comments on final resource reports. Any special use authorization that may be issued could be conditioned to require the successful completion of HDDs prior to constructing any other spreads across the National Forests as a safeguard to assure viability of an approved route and/or contingency alternative(s).

The Forest Service remains committed to cooperating with FERC and working with ACP on continued development of the project in such a way that addresses public needs, both for the growing demand for natural gas in Virginia and North Carolina, and for the sensitive resources that the Forest Service is entrusted to protect.

For questions or additional information regarding, please contact Jennifer Adams, Special Project Coordinator, at (540) 265-5114 or jenniferpadams@fs.fed.us.

Sincerely,


KATHLEEN ATKINSON
Regional Forester Eastern Region


TONY TOOKE
Regional Forester Southern Region

Enclosures (2)

cc: Clyde Thompson

ENCLOSURE

Assessment of Inconsistencies with Forest Plan Direction and Other Directives Atlantic Coast Pipeline – Proposed Route George Washington and Monongahela National Forests 19 January 2016

A full assessment of the project's consistency with Forest Plan direction and other directives is ongoing. However, based on the portion of the assessment completed to date, the following inconsistencies that cannot be remedied have been identified for the proposed route.

Special Use application screening criterion i: *The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.*

The proposed route is not consistent with the following U.S. Department of Agriculture (USDA) regulations and Forest Service directives as they relate to the Cow Knob salamander and the West Virginia northern flying squirrel, both of which are Forest Service sensitive species:

1. *FSM2670.12 and USDA Directive, Departmental Regulation 9500-4:*
 3. *Avoid actions "which may cause a species to become threatened or endangered"*
2. *FSM2670.22 – Sensitive Species Objectives*
 1. *Develop and implement management practices to ensure that species do not become threatened or endangered because of Forest Service actions.*
3. *FSM2670.32 - Sensitive Species Policy*
 4. *Analyze, if impacts cannot be avoided, the significance of potential adverse effects on the population or its habitat within the area of concern and on the species as a whole. (The line officer, with project approval authority, makes the decision to allow or disallow impact, but the decision must not result in loss of species viability or create significant trends toward federal listing.)*

Cow Knob Salamander: The 1994 Conservation Agreement (CA) for the Cow Knob salamander (CKS) between the U.S. Fish and Wildlife Service and the Forest Service identified management measures to be carried out by the Forest Service to stabilize or enhance populations and avoid actions which may cause CKS to become threatened or endangered under the Endangered Species Act.

CA Management Measure 2, *Protection from Take*, states, "The Cow Knob salamander must be actively protected against taking and killing by humans, except for specified scientific purposes." Based on available information, the construction, operation, and maintenance of the proposed ACP route is highly likely to result in the taking of CKS.

CA Management Measure 14, *Utility and Transportation Corridors*, states, "Because corridors of any size will fragment Cow Knob salamander habitat and isolate populations on either side, new utility corridors must be sited around the SMC-SIA. When opportunities exist, utility corridors should be closed and allowed to revegetate naturally." Though the Cow Knob HDD route variation reduces the size of the ACP corridor where CKS have been found, the proposed ACP route is not sited around these areas.

Authorizing ACP's proposed route would be a Forest Service action that violates the CA, which may cause the species to become threatened or endangered. Such act is prohibited by USDA regulations and Forest Service directives and therefore would not meet the subject screening criterion (Note: In 2012, the CKS was petitioned for listing by the Center for Biological Diversity and review is currently underway by the U.S. Fish and Wildlife Service).

West Virginia northern flying squirrel: The de-listing of the WVNFS was largely predicated on the protection of large patches of suitable habitat on the Monongahela National Forest per the 5-Year review for the WVNFS (USFWS 2006); the Final Rule for Removal of the NFS from the list of Endangered Species (USFWS 2008; "guidelines by the Monongahela National Forest (MNF) effectively abated the main threat to the squirrel ... throughout the majority of its range, by eliminating adverse impacts on all suitable habitat on the MNF..."); and the Post-delisting Monitoring Plan for the species (USFWS 2007; "The Monongahela National Forest contains the greatest amount of modeled WVNFS habitat and therefore bears primary responsibility for the protection, restoration, and management of the red spruce and red spruce-northern hardwood ecosystem in the central Appalachians. The Forest's 2006 Land and Resource Management Plan provides substantial long-term direction and guidance toward implementing this responsibility").

Thus, implementation of the MNF LRMP, and its protective standards and guidelines relative to the WVNFS and its habitat, is critical to the continued recovery of the species. The proposed pipeline could not be constructed without amending the plan to weaken these standards and guidelines.

Special Use application Screening Criterion ii: *The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.*

The proposed route is not consistent and cannot be made consistent with the following standards and guidelines in the Monongahela National Forest Land and Resource Management Plan (Sept. 2006, Updated 2011):

1. Standard TE59 for Cheat Mountain salamander: *Ground and vegetation-disturbing activities shall be avoided within occupied habitat and a 300-foot buffer zone around occupied habitat, unless analysis can show that the activities would not have an adverse effect on populations or habitat.*

As noted in our December 11, 2015, filing, the proposed route, as adjusted, would impact occupied Cheat Mountain salamander habitat.

2. Standard TE64 for West Virginia northern flying squirrel: *Suitable habitat shall be considered occupied. Vegetation management activities in suitable habitat shall only be conducted after consultation with USFWS, and: (a) Under an Endangered Species Act section 10 research permit to determine the effects of an activity on WVNFS or to determine activities that would contribute to the recovery of the species, or (b) To improve or maintain WVNFS or other TEP species habitat after research has demonstrated the beneficial effects of the proposed management, or (c) When project-level assessment results in a no effect or may affect, not likely to adversely affect determination, or (d) To address public safety concerns.*

As noted in our December 11, 2015, filing, the proposed project would not meet any of the exceptions to the prohibition on activities in suitable habitat for the West Virginia northern flying squirrel.