



# APPALACHIAN MOUNTAIN ADVOCATES

Great Horned Owl © Estate of Roger Tory Peterson.

West Virginia Office  
Post Office Box 507  
Lewisburg, WV 24901  
Telephone: (304) 645-9006  
Facsimile: (304) 645-9008  
info@appalmad.org  
www.appalmad.org

Virginia Office  
415 Seventh Street Northeast  
Charlottesville, VA 22902  
Telephone: (434) 529-6787

December 8, 2015

Mr. Steve Gibson  
United States Army Corps of Engineers  
Norfolk District Regulatory Branch  
803 Front Street  
Norfolk, Virginia 23510  
steven.w.gibson@usace.army.mil

By U.S. mail and electronic mail

**RE: Dominion Transmission, Inc.’s Atlantic Coast Pipeline Virginia Joint Permit Application serving as a Pre-construction Notification for Authorization under Section 10 and Section 408 of the Rivers and Harbors Act, Section 404 of the Clean Water Act for Nationwide Permit 12 (Utility Line Activities), Virginia Water Quality Certificate under Section 401 of the Clean Water Act, Virginia Water Protection Permit, Stream Crossing Permit, and the Tidal Wetland Permit.**

Dear Mr. Gibson:

Please accept these comments on behalf of All Pain No Gain, Appalachian Mountain Advocates, Augusta County Alliance, Dominion Pipeline Monitoring Coalition, Eight Rivers Council, Friends of Nelson, Greenbrier River Watershed Association, Ohio Valley Environmental Coalition, Sierra Club (Virginia and West Virginia Chapters), West Virginia Highlands Conservancy, and Wild Virginia in reference to Dominion Transmission, Inc.’s (“Dominion”) “Virginia Joint Permit Application serving as a Pre-construction Notification for Authorization under Section 10 and Section 408 of the Rivers and Harbors Act, Section 404 of the Clean Water Act for Nationwide Permit 12 (Utility Line Activities), Virginia Water Quality Certificate under Section 401 of the Clean Water Act, Virginia Water Protection Permit, Stream Crossing Permit, and the Tidal Wetland Permit” (the “Notification”), dated September 15, 2015 and describing the projected impacts of the proposed Atlantic Coast Pipeline (the “ACP” or the “Pipeline”).

Dominion’s Notification is materially incomplete; it lacks essential information about the waterbodies and wetlands potentially impacted by the Pipeline, about Dominion’s mitigation plan, and about the Pipeline’s potential impacts on endangered species and historical landmarks protected by federal law. More importantly, the information Dominion *has* provided

demonstrates that the Pipeline is ineligible for authorization under a Nationwide Permit. Dominion proposes numerous wetland- and waterbody-crossings that fail to meet either applicable water quality certification requirements or the acreage limit imposed by Nationwide Permit 12 (“NWP 12” or the “Permit”). Additionally, the Notification describes a project neither “similar in nature” to those considered during the issuing process nor likely to cause only minimal individual and cumulative impacts to the environment. For these reasons, the Corps must deny the Joint Permit Application and require Dominion to seek authorization for the Pipeline pursuant to an individual permit.

## **BACKGROUND**

On September 15, 2015, Dominion submitted to this District a pre-construction notification on behalf of Atlantic Coast Pipeline, LLC—a joint venture between Dominion, Duke Energy, Piedmont Natural Gas, and AGL Resources created to develop, own, and operate the proposed Atlantic Coast Pipeline (the “Pipeline” or the “ACP”). The Notification is comprised of two documents: a partially-completed “Standard Joint Permit Application” (the “Application”) and a “Supplemental Information” document (the “Supplement”).

Dominion proposes to construct 564.1 miles of pipeline, over 285 miles of which would be located in the Norfolk District, in addition to three compressor stations, numerous access roads, and other associated facilities. Approximately 14 percent of the pipeline length—nearly 80 miles—would be constructed in waters of the United States. The ACP would cross a total of 563 waterbodies, including 520 wetlands and six major rivers, in Virginia.

## **COMMENTS**

### **I. The Atlantic Coast Pipeline cannot be authorized under NWP 12 because of its substantial individual and cumulative impacts.**

Section 404(e) of the Clean Water Act provides for the issuance of nationwide permits for activities that are “similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.”<sup>1</sup> However, courts recognize that “the environmental impact of the activities authorized by a general permit depends on factors that, as a practical matter, are outside the Corps’ ability to predict with certainty *ex ante*.”<sup>2</sup> As such, the Corps has consistently maintained that the limitations contained in Section 404(e) do more than guide the issuance of a nationwide permit; they apply with equal force throughout the verification stage as well.<sup>3</sup> Courts have

---

<sup>1</sup> 33 U.S.C. § 1344(e)(1).

<sup>2</sup> Ohio Valley Environmental Coalition v. Bulen, 429 F.3d 493, 501 (4th Cir. 2005).

<sup>3</sup> See, e.g., 77 Fed. Reg. at 10185-86 (“In response to a pre-construction notification or a request to verify that an activity is authorized by an NWP, a district engineer may add activity-specific conditions to the NWP authorization if he or she determines that the proposed activity would result in more than minimal adverse effects.”); United States Army Corps of Engineers, Decision Document: Nationwide Permit 12 at 4 (Feb. 13, 2012) (hereinafter “Decision Document”) (“Potential adverse impacts and compliance with the laws cited in 33 CFR 320.3 are controlled by,” *inter alia*, “case-specific conditions”); *id.* at 5 (describing “[a]dditional safeguards” for ensuring compliance with prescribed limitations, including that “the Chief of Engineers, division engineers, and/or district engineers [may] assert discretionary authority to require an individual permit for a specific

upheld this interpretation as reasonable, explaining that the unavoidable uncertainties at the issuance stage require some flexibility at the verification stage.<sup>4</sup> In practical effect, this means not every project that meets the formal terms of a nationwide permit is authorized thereby. Instead, Section 404, corresponding regulations, and Corps decision-making documents all confirm that the “safeguard” of individual review is appropriate when understandably-speculative predictions at the issuance stage cannot reasonably account for the number, scope, or magnitude of projects that arise during the permit’s lifetime.<sup>5</sup> Indeed, the Corps in the NWP 12 Decision Document stated that “cumulative effects of the overall utility line should be evaluated to determine if the adverse cumulative effects on the aquatic environment are more than minimal and therefore do not qualify for NWP authorization.”<sup>6</sup>

That is precisely the case here. In assessing the potential impacts of NWP 12, the Corps predicted that it would “be used approximately 7,900 times per year on a national basis, resulting in impacts to approximately 400 acres of waters of the United, including jurisdictional wetlands.”<sup>7</sup> By way of comparison, the Atlantic Coast Pipeline will result in impacts to 396 acres of wetlands *in the Norfolk District alone*.<sup>8</sup> Assuming a similar impacts-per-pipeline-mile ratio in neighboring districts, the Pipeline’s impacts could approach 800 acres—twice the projected annual impacts for all project authorized under NWP 12.<sup>9</sup> The impacts of the ACP would thus greatly exceed the impacts that the Corps determined would be “minimal” when it issued the Permit.

The impacts of the ACP itself would be significant but would pale in comparison to the cumulative impacts of the numerous large-scale natural gas transmission projects currently

---

activity”); *id.* at 27 (“Division and district engineers have the authority to require individual permits in watersheds or other geographic areas where the cumulative adverse effects are determined to be more than minimal, or add conditions to the NWP either on a case-by-case or regional basis to require mitigation measures to ensure that the cumulative adverse effects are minimal.”). See also 33 U.S.C. § 1344(e)(2) (allowing Corps to revoke or modify a general permit if “the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits”).

<sup>4</sup> See generally *Sierra Club v. Bostick*, 787 F.3d 1043, 1060 (10th Cir. 2015) (allowing the “use of project-level personnel to evaluate environmental impacts” at the verification stage); *Bulen*, 429 F.3d 493 (allowing Corps to “rely on post-issuance procedures in making” minimal-impact determinations). But see *Bostick*, 787 F.3d at 1067 (McHugh, J., concurring) (arguing that minimal-impacts determination cannot be deferred to the verification stage).

<sup>5</sup> See, e.g., “Decision Document at 21 (“Division and district engineers will impose, as necessary, additional conditions on the NWP authorization or exercise discretionary authority to address locally important factors or to ensure that the authorized activity results in no more than minimal individual and cumulative impacts”). See also *Bulen*, 429 F.3d at 501 (“[G]iven the inevitable *ex ante* uncertainty the Corps confronts when issuing a nationwide permit, its reliance on post-issuance procedures is a reasonable, if not the only possible, way for it to cement its determination that projects it has authorized will have only minimal environmental impacts.”).

<sup>6</sup> Decision Document at 7.

<sup>7</sup> Decision Document at 37.

<sup>8</sup> See Supplement at B-30.

<sup>9</sup> Some 285.9 miles of the 564.1-mile-long Pipeline—approximately 50-percent—will be located within the Norfolk District. See Letter from Robert M. Bisha, Project Director, Atlantic Coast Pipeline, to Tony Watkinson, Virginia Marine Resources Commission (Sept. 15, 2015) (attached to Notification).

proposed to move fracked gas from the Marcellus and Utica drilling areas. A cumulative impact is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . . .”<sup>10</sup> There are currently numerous proposals for major natural gas transmission projects in the region that qualify as “reasonably foreseeable future actions.” The 301-mile Mountain Valley Pipeline (“MVP”), for example, is projected to begin construction in December 2016—two months after Dominion intends to break ground on the Atlantic Coast Pipeline—and be operational by Fourth Quarter 2018.<sup>11</sup> The Transcontinental Pipeline’s Appalachian Connector is similarly scheduled for operation in late 2018 or early 2019.<sup>12</sup> Like the Atlantic Coast Pipeline, both the MVP and Appalachian Connector will begin in north-central West Virginia and traverse Virginia, necessarily crossing numerous streams and wetlands along the way. The ACP and MVP have published proposed routes suggesting impacts to waters within West Virginia’s West Fork HUC8 watershed. Preliminary proposals for the Appalachian Connector suggest its impacts will be similar to those of the MVP.<sup>13</sup>

Other proposed large-scale natural gas utility line projects in the region anticipate a similar timeline, including the 100-mile PennEast Pipeline,<sup>14</sup> the 1,150-mile Kinder Morgan Utica Marcellus Texas Pipeline,<sup>15</sup> and the Mountaineer XPress Pipeline.<sup>16</sup> The Pittsburgh Post Gazette recently reported that “[o]ver the next three years, the Marcellus Shale region can expect to see about 17 pipeline projects meant to ship . . . natural gas out of Pennsylvania, West Virginia, and Ohio.”<sup>17</sup> All of those projects would necessarily have adverse impacts to waters of the U.S. similar in nature to those of the proposed ACP.

The Decision Document’s prediction that NWP 12 as a whole would authorize impacts equal to roughly one-half of just one of those pipelines plainly demonstrates that the Corps did not consider the cumulative impacts of the numerous proposed linear utility line projects when issuing NWP 12. If it had, the Corps would have been required to find that the gas transmission utility line projects fail to meet Section 404(e)’s requirement that activities authorized by nationwide permits have only “minimal cumulative adverse effect on the environment.” Indeed, the combined impacts of the so-called “Marcellus-to-Atlantic Race”<sup>18</sup> projects could result in

---

<sup>10</sup> 40 C.F.R. § 1508.7.

<sup>11</sup> See Mountain Valley Pipeline, “Project Schedule,” <http://mountainvalleypipeline.info/project-schedule> (last visited Dec. 8, 2015).

<sup>12</sup> See Williams Companies, “Appalachian Connector,” <http://co.williams.com/expansionprojects/appalachian-connector> (last visited Dec. 8, 2015).

<sup>13</sup> See Williams Companies, “Third Quarter 2014 Earnings” at 7 (Oct. 30, 2014), available at <http://www.sec.gov/Archives/edgar/data/1324518/000119312514389930/d811204d425.htm> (last visited Dec. 8, 2015).

<sup>14</sup> See PennEast Pipeline, “Pipeline Overview Fact Sheet,” [http://penneastpipeline.com/wpcontent/uploads/2015/10/Overview\\_PennEast-10-12-15.pdf](http://penneastpipeline.com/wpcontent/uploads/2015/10/Overview_PennEast-10-12-15.pdf) (last visited Dec. 8, 2015).

<sup>15</sup> See Kinder Morgan, “Utica Marcellus Texas Pipeline Project,” <http://www.kindermorgan.com/projects/umtp> (last visited Dec. 8, 2015).

<sup>16</sup> See Columbia Pipeline Group, “Open Season: Mountaineer XPress Pipeline Project,” [http://www.columbiapipeinfo.com/infopost/webmethods/DownloadFile.aspx?Mode=V&S3FN=OpenSeason\\_MountaineerXpressPipelineProject.pdf&S3K=\tco\presentations\Open+Season\\_Mountaineer+XPress+Pipeline+Project.pdf](http://www.columbiapipeinfo.com/infopost/webmethods/DownloadFile.aspx?Mode=V&S3FN=OpenSeason_MountaineerXpressPipelineProject.pdf&S3K=\tco\presentations\Open+Season_Mountaineer+XPress+Pipeline+Project.pdf) (last visited Dec. 8, 2015).

<sup>17</sup> Stephanie Ritenbaugh, “Marcellus Shale region to see wave of large pipeline projects,” *Pittsburgh Post Gazette* (June 23, 2015), <http://powersource.postgazette.com/powersource/companies/2015/06/23/Marcellus-Shale-region-to-see-wave-of-large-pipeline-projects/stories/201506090010> (last visited Dec. 8, 2015).

<sup>18</sup> See generally Joe Fisher, “Transco Joins Marcellus-to-Atlantic/Southeast Race,” *Natural Gas Intelligence Daily* (Sept. 5, 2014), <http://www.naturalgasintel.com/articles/99612-transco-joins-marcellus-to-atlanticsoutheast-race> (last visited Dec. 8, 2015).

impacts an order of magnitude greater than those accounted for and determined to be minimal in the Decision Document.<sup>19</sup> Because the impacts of the ACP and similar “Marcellus-to-Atlantic Race” projects were not considered by the Corps and exceed the statutory threshold of “minimal” impacts both individually and cumulatively, the projects cannot be authorized by NWP 12 but rather may only be considered under the Corps’ individual permitting process.

## **II. The Atlantic Coast Pipeline is ineligible for authorization under the terms of Nationwide Permit 12.**

When an entire linear project is comprised of multiple “single and complete projects,” not all of which qualify for authorization under a nationwide permit, then generally “all portions of the project must be evaluated as part of the individual permit process.”<sup>20</sup> A narrow exception applies only where “the portions of the project qualifying for [nationwide permit] authorization would have independent utility and [would be] able to function or meet their purpose independent of the project.”<sup>21</sup>

Dominion states that the “purpose of the proposed pipeline is to transport natural gas from West Virginia and Pennsylvania to use in areas of Virginia and North Carolina.”<sup>22</sup> Unless

---

<sup>19</sup> Moreover, the environmental impacts of those major projects may be qualitatively different than the impacts of smaller, unrelated utility line projects—even if the projects collectively result in a similar number of impacted acres. As the Corps has recognized, many forest-dependent species are particularly sensitive to degradation along the “edges” left exposed by forest fragmentation. See Decision Document at 30 (“The construction of utility line right-of-ways may fragment existing habitat and increase the amount of edge habitat in the area, causing changes in local species composition.”). The long, linear corridors associated with buried pipelines create co-extensive stretches of newly-exposed forest edge. Along these edges, the abundance and nesting success of forest birds is impaired due to increases in predators (e.g., crows, rat snakes, raccoons) and brood parasites (e.g., brown-headed cowbirds) who use the corridors to penetrate into previously unfragmented habitats. See Aimee J. Weldon, et al., The Effects of Patch Shape on Indigo Buntings: Evidence for an Ecological Trap, 86 *Ecology* 1422, 1428 (2005). See also Erin E. Barding, et al., Raccoons Use Habitat Edges in Northern Illinois, 159 *American Midland Naturalist* 394, 399-400 (2008) (describing foraging habits of nest-predator raccoons, including foraging for lengthy periods in forest- and wetland-edge habitats, especially along linear features “such as roads, trails, fencerows and forest edges”); West Virginia Division of Natural Resources, West Virginia Songbird Forest Management Guidelines at 3 (2006). The severity of these edge effects is highly “context-specific,” varying according to, *inter alia*, “patterns of land cover.” Anna D. Chalfoun, et al., Nest predators and fragmentation: a review and meta-analysis, 16 *Conservation Biology* 306, 314 (2002). See also Therese M. Donovan, et al., Variation in local-scale edge effects: mechanisms and landscape context, 78 *Ecology* 2064, 2072 (1997) (concluding that “[e]dge effects depend, at least in part, on the landscape context”). Unlike the smaller, unconnected corridors associated with unrelated projects, the corridors left by large-scale pipelines allow predators, parasites, and exotic species access to a much larger span of previously unfragmented forest habitat by way of a single corridor. See, e.g., Barding at 399 (noting that raccoons “visited ponds and wetlands interconnected by trails to a greater extent than ponds situated far from trails”). In addition, increased predation along forest edges is heightened where—as with the Atlantic Coast Pipeline and other “greenfield” projects—a corridor cuts through historically unfragmented areas. See Frank R. Thompson, III, Factors affecting nest predation on forest songbirds in North America, 149 *Ibis* 98, 103 (2007). See also Donovan at 2072 (noting significant increase in cowbird parasitism along edges of otherwise unfragmented areas, as compared to edges in previously-fragmented areas).

<sup>20</sup> 33 C.F.R. § 330.6(d).

<sup>21</sup> Id.

<sup>22</sup> See Supplement at 48.

the Pipeline—or, at the very least, its mainstem segment—is constructed in its entirety, its constituent parts will neither “have independent utility” nor be “able to function or meet their purpose.”<sup>23</sup> As such, the Pipeline can proceed under the nationwide permitting scheme only if all constituent parts are authorized under a nationwide permit. As discussed below, however, significant segments of the Pipeline do not qualify for authorization under Nationwide Permit 12, and the entire linear project therefore requires review under the individual permitting process.

A. A substantial segment of the linear project fails to meet applicable water quality certification requirements.

Although the Notification submitted to this District is primarily directed at impacts within the Commonwealth, approximately eighty-seven miles of the proposed Pipeline will traverse West Virginia.<sup>24</sup> As such, all stream and wetland crossings in West Virginia must meet “any case specific conditions added” by West Virginia “in its section 401 Water Quality Certification.”<sup>25</sup> The West Virginia Department of Environmental Protection’s (“WVDEP”) 401 Certification for NWP 12 limits the Permit’s use to pipelines that are “36 inches or less in diameter.”<sup>26</sup> The Supplement, however, describes AP-1—the segment of the mainline Pipeline traversing West Virginia, Virginia, and Northampton County, North Carolina—as “approximately 300.1 miles of 42-inch outside diameter natural gas transmission pipeline.”<sup>27</sup> Dominion thus cannot rely on NWP 12 for construction of its pipeline through WV. Pursuant to 33 C.F.R. § 330.6(d), because Dominion has failed to demonstrate that the West Virginia portion of the ACP can be authorized under NWP 12, the remainder of the project’s “single and complete projects,” including the Virginia segments, are similarly ineligible for NWP authorization.

B. As proposed, at least thirty-four single and complete projects will result in the permanent loss of more than 1/2-acre of wetlands.

Nationwide Permit 12 does not authorize any activity that “result[s] in the loss of greater than 1/2-acre of waters of the United States.”<sup>28</sup> The Permit defines “loss of waters of the United States” as:

[w]aters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that

---

<sup>23</sup> Cf. 33 C.F.R. § 330.6(d).

<sup>24</sup> See Supplement at 6.

<sup>25</sup> 77 Fed. Reg. at 10286.

<sup>26</sup> United States Army Corps of Engineers, Nationwide Permits for the State of West Virginia, Public Notice No. 2011-128 at 15 (March 19, 2012).

<sup>27</sup> See Supplement at 3.

<sup>28</sup> 77 Fed. Reg. at 10271.

change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody.<sup>29</sup>

The Corps has stated that permanent conversion of a wetland of one classification to a wetland of another “may result in the permanent loss of certain functions.”<sup>30</sup> It has nonetheless determined that “conversion of a forested wetland to a scrub shrub wetland does not constitute a permanent loss of waters of the United States, and thus does not count toward the acreage limit.”<sup>31</sup> Though the Corps has not explained why such a “permanent loss of certain functions” will not “change the use” of the wetland, it is presumably because of the many similarities between Forested Wetlands and Scrub-Shrub Wetlands relative to other classifications.<sup>32</sup> But when a Forested Wetland is converted to a lower-functioning wetland such as an Emergent Wetland, a far more dramatic change in use occurs.<sup>33</sup> Such a conversion fits plainly within the definition of “loss of the waters of the United States.”<sup>34</sup>

Dominion proposes a permanent thirty-foot-wide footprint for its Pipeline: a central ten-foot corridor maintained in an herbaceous state, flanked on either side by ten-foot corridors regularly cleared of trees.<sup>35</sup> Dominion acknowledges this footprint will result in permanent impacts on affected waters. While it refers to these impacts as “permanent conversions,”<sup>36</sup> it does

---

<sup>29</sup> Id. at 10289 (emphasis added).

<sup>30</sup> Id. at 10196.

<sup>31</sup> Id.

<sup>32</sup> The sole difference between Forested and Scrub-Shrub Wetlands is the height of the plants comprising the dominant life form (i.e., the tallest life form with at least 30 percent areal coverage). In Forested Wetlands, the dominant plants are taller than 20 feet; in Scrub-Shrub Wetlands, they are shorter. See Federal Geographic Data Committee, Classification of Wetlands and Deepwater Habitats of the United States 34, 37 (2d ed. 2013). Accordingly, the National Wetlands Inventory categorically groups Forested and Shrub Wetlands together as “similar classifications,” while separating Emergent Wetlands and “other miscellaneous wetland[s].” See U.S. Fish & Wildlife Service, “Wetlands Mapper Legend Categories” (June 12, 2015), <http://www.fws.gov/wetlands/data/Mapper-Wetlands-Legend.html>.

<sup>33</sup> See generally Ralph W. Tiner, Assessing Cumulative Loss of Wetland Functions in the Nanticoke River Watershed Using Enhanced National Wetland Inventory Data, 25 Wetlands 405 (2005) (documenting 23-50 percent reduction in most wetland functions within watershed affected by significant conversion of forested and scrub-shrub wetlands to emergent wetlands). See also James A. Schmid, The Effects of Converting Forest or Scrub Wetlands into Herbaceous Wetlands in Pennsylvania at 27, 29-30 (2014) (noting that “[f]orest and scrub wetlands can be converted to herbaceous wetlands” with “more or less catastrophic [effects] . . . on wetland functions,” including impaired structural diversity, biodiversity, soil and streambank stabilization, nutrient storage, and trout habitability).

<sup>34</sup> The decision document accompanying the recent reissue of Nationwide Permit 12 acknowledges that conversion of Forested or Scrub-Shrub Wetland to other wetland categories results in impacts to aquatic habitats qualitatively different from those seen in Forested-to-Scrub-Shrub conversions. This is because the “[w]oody riparian vegetation” associated with both Forested and Scrub-Shrub Wetlands “creates habitat diversity in streams when trees and large shrubs fall into the channel, forming snags that provide habitat and shade for fish.” See United States Army Corps of Engineers, Decision Document: Nationwide Permit 12 at 37 (Feb. 13, 2012) (hereinafter “Decision Document”).

<sup>35</sup> See Supplement at 47.

<sup>36</sup> Id.

not describe with any specificity the ultimate fate of the converted wetlands. Notably, Dominion admits no plan to restore the ten-foot flanking sections to Scrub-Shrub Wetland. Any exception for Forested-to-Scrub/Shrub conversions, then, cannot apply for purposes of the Permit's acreage limitation. In practical effect, this means any crossing of more than 726 feet of Forested Wetland will necessarily result in the loss of over 1/2-acre of waters of the United States. The Notification anticipates at least thirty-four such crossings,<sup>37</sup> at least twelve of which exceed 2,178 feet and would thus trigger the acreage limit even if the Forested-to-Scrub/Shrub conversion exception *did* apply.<sup>38</sup> Without these crossings, the remaining segments will lack "independent utility," thereby requiring review of the entire linear project under the individual permitting process.

### **III. Dominion's Pre-Construction Notification lacks information necessary for authorization under Nationwide Permit 12.**

#### **A. Dominion's Pre-Construction Notification lacks essential information about the waters impacted by the Pipeline.**

Nationwide Permit General Condition 31 requires that any pre-construction notification "include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site."<sup>39</sup> This District's own Regional Condition 3 for Nationwide Permit 12 similarly requires any pre-construction notification include "a map of the entire utility corridor including a delineation of all wetlands and waters of the United States within the corridor."<sup>40</sup> The required delineation "must be prepared in accordance with the current method required by the Corps."<sup>41</sup> The operative Wetlands Delineation Manual anticipates that some delineation may be possible without on-site surveys, but only if sufficient information is available to properly categorize the wetlands.<sup>42</sup>

---

<sup>37</sup> See Appendix A to these Comments.

<sup>38</sup> See Appendix B to these Comments.

<sup>39</sup> 77 Fed. Reg. at 10287. See also 40 C.F.R. § 3301(e)(3).

<sup>40</sup> United States Army Corps of Engineers Norfolk District, Norfolk District Regional Conditions for the 2012 Nationwide Permits at 2 (March 9, 2012) ("Norfolk Regional Conditions").

<sup>41</sup> 77 Fed. Reg. at 10287.

<sup>42</sup> See United States Army Corps of Engineers, Wetlands Delineation Manual at 37 (1987) ("[National Wetland Inventory] maps should not be used as the sole basis for determining whether wetland vegetation is present."); *id.* at 41 ("For routine determinations, the plant community type(s) and dominant species in each vegetation layer of each community type must be known."); *id.* at 42 ("For routine determinations, the soil series must be known."); *id.* at 44 ("For routine determinations, there must be documented evidence of frequent inundation or soil saturation during the growing season."). See also Schmid at 3 ("Topographic maps, National Wetland Inventory maps, floodplain maps, soil survey maps, and planning maps of many kinds can provide useful technical information, but do not identify in detail the limits of regulated wetlands (or streams) that need to be considered by the sponsors of construction projects.").



Dominion states it has surveyed wetlands and waterbodies along approximately 62 percent of the Pipeline’s route through Virginia.<sup>43</sup> For waters not yet surveyed, Dominion states it has conducted “desktop” delineation using the National Wetland Inventory’s National Hydrography Dataset, topographic maps from the United States Geological Survey, and/or aerial photography.<sup>44</sup> These resources, however, do not provide sufficient data to meet delineation requirements;<sup>45</sup> they lack sufficient information about, for example, the endemic “plant community type(s) and [the] dominant species in each vegetation layer of each community type,”<sup>46</sup> the present soil series,<sup>47</sup> or present soil saturation.<sup>48</sup> Accordingly, at least one other Corps district has already determined that Dominion’s approach fails to properly delineate affected wetlands.<sup>49</sup>

Setting aside the inadequacy of Dominion’s “desktop” delineation, the Notification also fails to predict with any certainty the impacts of its access roads. The Supplement states only that “existing access roads will be used where feasible” and that “[w]here access road improvements are necessary for use, waters of the U.S. loss impacts will be minimized to the maximum extent practicable, and will be kept below 1/3 acre at single and complete crossings.”<sup>50</sup> Despite this assurance that it will remain within the Permit’s acreage limitation, Dominion gives no information on where pre-existing access roads are available, where it intends to build new access roads, and what waters will be affected by access road activities. Dominion’s proposal for the Elizabeth River Metering and Regulating Station, for example, illustrates just how indispensable this missing information is. Dominion predicts the Elizabeth River station will require the permanent loss of 0.31 acres.<sup>51</sup> Therefore, even a 1/3-acre loss due to associated access roads would propel this “single and complete project” beyond the Permit’s acreage limit.

And assuming that Dominion would have provided this information if available, its omission further suggests that Dominion cannot predict with requisite certainty that less than 1/3 of an acre will be impacted at each crossing—or, for that matter, that individual or cumulative impacts of crossings will be minimal. Furthermore, without complete information regarding impacts to wetlands, Dominion and the Corps cannot determine the amount of compensatory mitigation required.

---

<sup>43</sup> See Supplement at 45.

<sup>44</sup> Id. at 45-46.

<sup>45</sup> See Wetlands Delineation Manual at 37; Schmid at 3.

<sup>46</sup> Compare Wetlands Delineation Manual at 37 with id. at 41.

<sup>47</sup> Compare id. at 37 with id. at 42.

<sup>48</sup> Compare id. at 37 with id. at 44.

<sup>49</sup> See U.S. Army Corps of Engineers Notice of Incomplete Application (oct. 15, 2015) at 1-2, attached as Appendix D.

<sup>50</sup> See Supplement at 47.

<sup>51</sup> Id. at 57, B-82.

B. Dominion’s Pre-Construction Notification lacks information necessary to determine whether the project’s mitigation plan meets requirements imposed by Virginia’s Section 401 Water Quality Certification.

Nationwide Permit General Condition 27 requires that any activity authorized under a nationwide permit comply with, *inter alia*, “any case specific conditions added . . . by the state . . . in its section 401 Water Quality Certification.”<sup>52</sup> The Virginia Department of Environmental Quality’s (“VDEQ”) Section 401 Water Quality Certification for the 2012 Nationwide Permit Program conditions certification of activities under Nationwide Permit 12 upon compliance with Section 62.1-44.15:23 of the Code of Virginia, which contain requirements for use of mitigation banking credits. Specifically, Section 62.1-44.15:23 requires that any mitigation bank be: (1) located in the Commonwealth; (2) located within either the impacted HUC8 watershed<sup>53</sup> or, if necessary, an adjacent HUC8 watershed; (3) “ecologically preferable to practicable onsite and offsite individual mitigation options as defined by federal wetland regulations;” and (4) subject to a mitigation bank instrument “approved by a process that included public review and comment.”<sup>54</sup>

Though Dominion states its mitigation plan is to “purchase . . . commercially available mitigation credits from an agency-approved mitigation bank,”<sup>55</sup> the Notification fails to demonstrate compliance with Section 62.1-44.15:23. Most notably, the Notification fails to allege that any mitigation bank will be “ecologically preferable to practicable onsite and offsite individual mitigation options”—a necessary requirement of any VDEQ-certified mitigation plan. Moreover, while Dominion states it intends to seek credits “from mitigation banks servicing the [impacted] area (HUC 8 watershed, or approved service area),” it also states that if no such credits are available, it will “seek authorization to purchase credits from . . . the next nearest mitigation.”<sup>56</sup> Dominion’s application has not demonstrated, however, that the next nearest mitigation bank will be in an adjacent HUC8 watershed—or even in the Commonwealth.<sup>57</sup> Finally, Dominion has not shown that the mitigation credits that it plans to use were approved following public notice and comment.

---

<sup>52</sup> 77 Fed. Reg. at 10286.

<sup>53</sup> Although the statute speaks in terms of “fourth order subbasin[s],” these units are synonymous with HUC8 accounting units. See Environmental Protection Agency, “How to Find a Watershed Address,” <http://water.epa.gov/type/watersheds/address.cfm> (last accessed Dec. 8, 2015) (“The 6 digit accounting units and the 8 digit accounting units are generally referred to as basin and sub-basin.”). See also Virginia Department of Conservation and Recreation, “Hydrologic Unit Geography,” <http://www.dcr.virginia.gov/soil-and-water/hu> (last accessed Dec. 8, 2015).

<sup>54</sup> Va. Code § 62.1-44.15:23 A.

<sup>55</sup> See Supplement at 55.

<sup>56</sup> Id.

<sup>57</sup> In light of similar uncertainties in Dominion’s notification to the Wilmington District, that District recently advised Dominion that it requires submission of “a detailed mitigation plan . . . for review and approval, prior to verification” of the Pipeline project under Nationwide Permit 12. See Appendix D at 2. And while even promises to comply with applicable water quality certification conditions would offer some assurance, the Wilmington District has further instructed Dominion to submit letters from mitigation banks “stating that they are willing to accept payment for the impacts associated with [the Pipeline] project.” Id.

C. Dominion's Pre-Construction Notification lacks a sufficient alternatives analysis.

This District's Regional Condition 3 for Nationwide Permit 12 requires all pre-construction notifications contain "[a]n alternatives analysis, which specifically addresses," inter alia, "allowance of natural succession to restore the area to tree and scrub/shrub except for a 20-foot wide access corridor, to the maximum extent possible."<sup>58</sup> In its Supplement, Dominion states that it intends to permanently maintain "[t]he center 30-feet of the cleared rights-of-way that previously consisted of forested wetlands . . . free of trees" and "[t]he center 10-feet of the cleared rights-of-way that previously consisted of forested and scrub-shrub wetland . . . in an herbaceous state."<sup>59</sup> The Supplement does not explain, however, why a twenty-foot wide corridor would be inadequate or why a thirty-foot wide corridor is necessary. Dominion has thus failed to demonstrate that its plan for the ACP will allow natural succession "to the maximum extent possible."

D. Dominion's Pre-Construction Notification lacks information necessary to determine whether certain crossings qualify as "single and complete projects."

Nationwide Permit 12 authorizes only activities that do not "result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project."<sup>60</sup> It defines a "single and complete linear project" as "that portion of the total linear project . . . that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location."<sup>61</sup> In further defining what constitutes a "specific location," the Permit states that when "crossing a single or multiple waterbodies several times at separate *and distant* locations, each crossing is a single and complete project for purposes of NWP authorization."<sup>62</sup> The definition also provides that "individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossing of such features cannot be considered separately."<sup>63</sup>

In its Supplement, Dominion plainly states that "[w]here the route crosses a single wetland more than once, each crossing was counted separately."<sup>64</sup> The Notification wholly ignores whether crossings of the same wetland are actually "distant," or whether they will traverse "individual arms of a large, irregularly shaped wetland." This is a material omission, as the Supplement documents no less than 260 crossings within 0.1 miles of another crossing.<sup>65</sup> At least 39 of these crossings are within 0.1 mile of *two* other crossings, and at least 4 are within 0.1

---

<sup>58</sup> See Norfolk Regional Conditions at 2.

<sup>59</sup> See Supplement at 47.

<sup>60</sup> 77 Fed. Reg. at 10271.

<sup>61</sup> Id. at 10290.

<sup>62</sup> Id. (emphasis added).

<sup>63</sup> Id.

<sup>64</sup> See Supplement at 57, B-75.

<sup>65</sup> See Appendix C to these Comments.

mile of *three* other crossings. Without adequate information to determine whether those crossings are indeed “single and complete” projects, the Corps cannot reasonably authorize the ACP under NWP 12.

E. Dominion’s Pre-Construction Notification lacks essential information about potential impacts to protected historic resources and endangered species.

Nationwide Permit General Conditions 18 and 20 requires compliance with, respectively, the Endangered Species Act (the “ESA”) and the National Historic Preservation Act (the “NHPA”).<sup>66</sup> Because the Pipeline is a FERC-regulated project under Section 7 of the Natural Gas Act,<sup>67</sup> the Notification states that FERC will coordinate with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the Virginia State Historic Preservation Office to review the Pipeline’s compliance with these statutes.<sup>68</sup> Dominion promises to provide this District with the results of FERC’s review, “upon request, . . . when they become available.”<sup>69</sup> This information, however, is required now, at the authorization stage.<sup>70</sup> As the Wilmington District recently determined, FERC’s “final opinion on whether the proposed activity may affect properties [protected], or eligible for [protection, under the NHPA]” and its “final opinion on whether or not the [Pipeline] project ‘may affect’ a listed species or critical habitat” protected by the ESA are both needed “before a Nationwide Permit can be issued for this project.”<sup>71</sup> Because Dominion’s application lacks that essential information, the Corps must deny coverage under the Permit.

**IV. The Atlantic Coast Pipeline is not “similar in nature” to other activities authorized under Nationwide Permit 12.**

Nationwide permits must be limited in scope to a single “category of activities . . . similar in nature.”<sup>72</sup> Before issuing a nationwide permit, the Corps’ own regulations require that it “set forth in writing an evaluation” that includes, *inter alia*, “a *precise description* of the activities to be permitted under the General permit, explaining why they are sufficiently similar in nature and environmental impact to warrant regulation under a single General permit.”<sup>73</sup>

---

<sup>66</sup> 77 Fed. Reg. at 10284.

<sup>67</sup> 15 U.S.C. § 717f.

<sup>68</sup> See Supplement at 40-41, 45.

<sup>69</sup> Id.

<sup>70</sup> See Decision Document at 42 (“For activities that require agency coordination during the pre-construction notification process, the USFWS and NMFS will review the proposed activities for potential impacts to threatened and endangered species and their critical habitat. Any information provided by local maps and databases and any comments received during the pre-construction notification review process will be used by the district engineer to make a ‘no effect’ or ‘may effect’ decision.”).

<sup>71</sup> See Appendix D at 3.

<sup>72</sup> 33 U.S.C. § 1344(e)(1).

<sup>73</sup> 40 C.F.R. § 230.7(b) (emphasis added).

On its face, Nationwide Permit 12 applies to all “activities required for the construction, maintenance, repair, and removal of . . . any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission of electrical energy, telephone, and telegraph messages, and radio and television communication.”<sup>74</sup> The Decision Document accompanying the Permit states:

The activities authorized by this NWP are sufficiently similar in nature and environmental impact to warrant authorization by a general permit. The terms of the NWP authorize a specific category of activity (i.e., discharges of dredged and fill material for the construction, maintenance, repair or removal of utility lines and associated facilities) in a specific category of waters (i.e., waters of the United States). The terms of the NWP do not authorize the construction of utility line substations in tidal waters or in non-tidal wetlands adjacent to tidal waters. The restrictions imposed by the terms and conditions of this NWP will result in the authorization of activities that have similar impacts on the aquatic environment, namely the replacement of aquatic habitats, such as certain categories of non-tidal wetlands, with utility line facilities. Most of the impacts relating to the construction maintenance, repair, or removal of utility lines will be temporary.<sup>75</sup>

Although the language defining the scope of the permit is broad, the apparent scope of any permit remains subordinate to the limitations expressed in Section 404: that activities under a general permit are “similar in nature, will cause only minimal adverse environmental effects when performed separately, . . . will have only minimal cumulative adverse effects on the environment,” and are not “more appropriately authorized by individual permits.”<sup>76</sup>

Large-scale interstate pipelines like the Atlantic Coast Pipeline are not “similar in nature” to the projects contemplated in the Corps’ decision-making process, nor were such projects evaluated by any “precise description” in the Decision Document. To the contrary, the description of activities contained in the Decision Document appears to entirely exclude such projects. The Corps predicted that “[m]ost of the impacts relating to [activities under the Permit] will be temporary.”<sup>77</sup> By contrast, Dominion’s Supplement states that, at a minimum, approximately 30% of its impacts to wetlands will be permanent.<sup>78</sup> Considering Dominion’s prediction that construction of access roads may result in the permanent loss of up to 1/3 of an acre at each single and complete crossing,<sup>79</sup> permanent impacts may represent up to 46% of the total impacts. And as discussed above, the prediction that the Permit will result annually in 400

---

<sup>74</sup> 77 Fed. Reg. at 10271-72.

<sup>75</sup> Decision Document at 37.

<sup>76</sup> 33 U.S.C. § 1344(e).

<sup>77</sup> Decision Document at 37.

<sup>78</sup> See Supplement at B-30.

<sup>79</sup> *Id.* at 55, 57.

acres of impacts nationwide<sup>80</sup> demonstrates that the Corps' decision-making process did not consider the individual or cumulative impacts of a project of this scale—let alone a multitude of such projects. The Corps thus cannot reasonably determine that Dominion's proposed project is sufficiently "similar in nature" to the projects the Corps envisioned when it issued NWP 12.

**V. The Corps cannot issue an individual Section 404 permit for the Atlantic Coast Pipeline in compliance with the 404(b)(1) Guidelines.**

As explained above, because the Atlantic Coast Pipeline's impacts would be more than minimal both individually and when viewed cumulatively with other proposed natural gas utility line projects in the area, and because the ACP is otherwise not suitable for authorization under NWP 12, the project requires an individual 404 permit. The ACP cannot be authorized as proposed under an individual permit, however, because less environmentally damaging alternatives exist that could meet the needs of the Project.

Corps regulations governing the issuance of 404 permits declare that "[m]ost wetlands constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest."<sup>81</sup> The Corps' and the U.S. Environmental Protection Agency's 404(b)(1) Guidelines ("Guidelines") impose important limitations on when a section 404 permit may be issued. The Guidelines prohibit the permitting of any discharge of dredged or fill material if, among other things, a practicable alternative to the proposed discharge would have less adverse impact on the aquatic ecosystem.<sup>82</sup> When the project is not a "water dependent" activity,<sup>83</sup> such as this one, and the project would fill "special aquatic sites," including wetlands, the Guidelines create a rebuttable presumption that there are practicable and environmentally preferable alternatives, and such alternatives are presumed to have less adverse impact unless "clearly demonstrated" otherwise.<sup>84</sup> This restriction allows only the least environmentally damaging practicable alternative ("LEDPA") to be authorized by the Corps.

The Guidelines define practicable alternatives to include "activities which do not involve a discharge of dredged or fill material;" as well as "discharges of dredged or fill material at other locations," where such discharges would result in fewer impacts to the aquatic environment.<sup>85</sup> Pursuant to § 230.10(a)(2), "an alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered."<sup>86</sup>

---

<sup>80</sup> See Decision Document at 37.

<sup>81</sup> 33 C.F.R. § 320.4(b)(1); see also *id.* § 320.4(b)(2) (identifying eight types of wetland functions important to the public interest).

<sup>82</sup> *Id.* § 230.10.

<sup>83</sup> A project is not "water dependent" when it "does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose." 40 C.F.R. § 230.10(a)(3).

<sup>84</sup> See *Sierra Club v. Flowers*, 423 F.Supp.2d 1273, 1352 (S.D. Fla. 2006); 40 C.F.R. § 230.10(a)(3).

<sup>85</sup> 40 C.F.R. § 230.10(a)(1).

<sup>86</sup> *Id.* § 230.10(a)(2).

The applicant has the burden of demonstrating that no feasible alternative exists, and the Corps must engage in a reasoned analysis of this issue.<sup>87</sup> The Corps cannot blindly and uncritically accept an applicant's study of alternatives and its assertions that no practicable alternative exists.<sup>88</sup> The preamble to the Guidelines explains that consideration of cost when determining the practicability of an alternative is not an economic analysis.<sup>89</sup> The Corps may not simply compare the cost of the applicant's proposed project against the costs of alternatives. Rather, the agency must consider whether a less damaging alternative is "reasonable in terms of the overall scope/cost of the proposed project" and "[t]he mere fact that an alternative may cost somewhat more does not necessarily mean it is not practicable."<sup>90</sup> Failure to "clearly demonstrate" that there is no "practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem" renders the project noncompliant with the Guidelines.

Here, there are numerous practicable alternatives to the ACP that would meet the needs supposedly served by the Project and would have less adverse impacts on the aquatic ecosystem. For instance, evidence shows that significant existing pipeline capacity is available to serve the South East and Mid-Atlantic markets. The Department of Energy has reported that gas pipelines nationwide on average utilized only 54 percent of their capacity between 1998 and 2013.<sup>91</sup> FERC has similarly acknowledged the underutilization of pipeline capacity and found that improved scheduling of natural gas deliveries would make "more efficient use of existing pipeline infrastructure."<sup>92</sup> Utilizing those existing pipelines to their full capacity would serve the ACP's need and have less environmental damage.

In addition to full utilization of existing pipelines, the need for the ACP could be met by reversing the flow of the Transco Mainline, which currently only flows south to north, from the Gulf Coast to New York. Increased supplies of gas coming from the Marcellus region, however, are driving a reversal of flow along that line. Transcontinental Gas Pipe Line Company, LLC, has sought FERC approval for the Atlantic Sunrise Project to deliver 1.7 bcf/day to the Transco Mainline in Lancaster County, Pennsylvania, and reverse flows on the Mainline allowing Marcellus gas to reach existing markets as far south as Choctaw County, Alabama.<sup>93</sup> The company expects this project to be operational in July 2017.<sup>94</sup> A recent study released by the Department of Energy suggests that reversing flow to the south along pipelines could accommodate natural gas demand in the markets that the ACP proposes to serve.<sup>95</sup>

---

<sup>87</sup> See *Flowers*, 423 F.Supp.2d at 1356–57.

<sup>88</sup> *Friends of the Earth v. Hintz*, 800 F.2d 822, 835–36 (9th Cir. 1986).

<sup>89</sup> 45 Fed. Reg. 85,336 at 85,399–43 (December 24, 1980).

<sup>90</sup> 45 Fed. Reg. at 85,339.

<sup>91</sup> U.S. Dep't of Energy, Implications of Increased Demand from the Electric Power Sector at 22 (Feb. 2015), available at [http://energy.gov/sites/prod/files/2015/02/f19/DOE%20Report%20Natural%20Gas%20Infrastructure%20V\\_02-02.pdf](http://energy.gov/sites/prod/files/2015/02/f19/DOE%20Report%20Natural%20Gas%20Infrastructure%20V_02-02.pdf) (last visited Dec. 8, 2015).

<sup>92</sup> FERC, Final Rule, Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities, 151 FERC 61,049, P 107 (April 16, 2015).

<sup>93</sup> See Transcontinental Gas Pipe Line Company, LLC, Resource Report No. 1, Atlantic Sunrise Project at 1-1 (Mar. 2015) (on file with FERC, eLibrary No. 20150331-5153).

<sup>94</sup> See *id.*

<sup>95</sup> U.S. Dep't of Energy, Implications of Increased Demand from the Electric Power Sector at 23 (Feb. 2015) [http://energy.gov/sites/prod/files/2015/02/f19/DOE%20Report%20Natural%20Gas%20Infrastructure%20V\\_02-02.pdf](http://energy.gov/sites/prod/files/2015/02/f19/DOE%20Report%20Natural%20Gas%20Infrastructure%20V_02-02.pdf).

Alternatives that collocate the ACP with existing utility rights-of-way would also have less adverse impacts to waters of the U.S. Dominion has proposed a project that is 94 percent greenfield—or new right-of-way development.<sup>96</sup> In its filings with FERC, Dominion included a long list of potential collocation opportunities that it rejected with minimal analysis, some solely on the basis that it would increase the length of the pipeline.<sup>97</sup> Moreover, Dominion also rejected multiple collocation opportunities with (1) an existing pipeline (the Columbia pipeline), (2) electric power lines (Dominion Virginia Power Electric Transmission Lines and Multiple Electric Transmission Lines), and (3) Interstate and Federal Highways (Interstates 79 and 64, U.S. Highway 250, Interstates 64, 295, and 95, and Interstate 95).<sup>98</sup> Contrary to Dominion’s unsupported assertions, collocating the ACP with any of those existing rights-of-way is practicable, even if slightly more costly. Those practicable alternatives would have less adverse impacts on the aquatic ecosystem. Because Dominion cannot demonstrate that its primarily greenfield route for the ACP is the least environmentally damaging practicable alternative, the Corps may not authorize the Project as proposed pursuant to an individual permit.

### CONCLUSION

To qualify under a nationwide permit, a would-be permittee must submit a notification demonstrating that its project complies with the Clean Water Act as well as the terms and conditions of the applicable permit. Dominion’s Notification, on the other hand, simultaneously proves too little and too much. As one sister division has already determined, it lacks information absolutely essential to bring the proposed project within the terms of Nationwide Permit 12. And yet the information it *does* provide disqualifies the project for consideration under the nationwide permitting scheme altogether. As such, authorization under the general permitting scheme must be withheld and review under the individual permitting process is required. Finally, any review under the individual permit process must reject the ACP as proposed because less environmentally damaging practicable alternatives exist that would satisfy the basic project purpose.

Thank you,



Benjamin A. Lockett  
Appalachian Mountain Advocates  
Post Office Box 507  
Lewisburg, West Virginia 24901  
blockett@appalmad.org

Evan D. Johns

---

<sup>96</sup> FERC Docket No. CP15-554, Resource Report 1 at 1-14.

<sup>97</sup> FERC Docket No. CP15-554, Resource Report 10, Appendix 10A.

<sup>98</sup> Dominion also considered and rejected the alternative of collocating with the proposed Mountain Valley Pipeline. That pipeline would itself be constructed in mainly greenfields, such that collocation would not avoid the adverse effects to the public of pipeline construction and operation and is thus not preferable to collocation with currently existing rights-of-way.



Appalachian Mountain Advocates  
415 Seventh Street Northeast  
Charlottesville, Virginia 22902  
ejohns@appalmad.org

Joseph M. Lovett  
Appalachian Mountain Advocates  
415 Seventh Street Northeast  
Charlottesville, Virginia 22902  
jlovett@appalmad.org

**Appendix A to 2015-12-08 Comments re: Atlantic Coast Pipeline**

<b>Crossings Exceeding 726 Feet</b>		
<b>Page</b>	<b>Crossing ID</b>	<b>Length (ft)</b>
B-13	wgra017f	812
B-14	wgra039f	1,108
B-15	wgrb002f	947
B-16	wgrp006f	1,305
B-16	wgrp001f	1,673
B-16	wgrp004f	2,951
B-16	wsop001f	3,551
B-18	wsol021f	728
B-19	wsoa023f	809
B-19	wsoa024f	1,112
B-20	wsur006f	1,045
B-20	wsuo009f	6,814
B-21	wsuo011f	768
B-21	wchr002f	7,911
B-21	wchr001f	3,712
B-24	DKWA_VA_068F	901
B-26	DKWB_VA_129f	1,352
B-27	DKWB_VA_125f	1,171
B-27	DKWB_VA_124f	2,310
B-27	DKWB_VA_122f	755
B-27	DKWB_VA_119f	1,398
B-27	DKWB_VA_117f	1,513
B-28	DKWB_VA_108f	1,290
B-28	DKWB_VA_102f	2,266
B-28	DKWB_VA_099f	1,759
B-28	DKWB_VA_094f	886
B-29	DKWB_VA_097f	3,352
B-29	DKWB_VA_089f	2,803
B-29	DKWB_VA_038f	806
B-29	DKWB_VA_042f	1,481
B-29	DKWB_VA_043f	1,871
B-30	DKWB_VA_035f	9,261
B-30	DKWB_VA_033f	4,602
B-30	DKWB_VA_048f	2,661

**Appendix B to 2015-12-08 Comments re: Atlantic Coast Pipeline**

<b>Crossings Exceeding 2,178 Feet</b>		
<b>Page</b>	<b>Crossing ID</b>	<b>Length (ft)</b>
B-16	wgrp004f	2,951
B-16	wsop001f	3,551
B-20	wsuo009f	6,814
B-21	wchr002f	7,911
B-21	wchr001f	3,712
B-27	DKWB_VA_124f	2,310
B-28	DKWB_VA_102f	2,266
B-29	DKWB_VA_097f	3,352
B-29	DKWB_VA_089f	2,803
B-30	DKWB_VA_035f	9,261
B-30	DKWB_VA_033f	4,602
B-30	DKWB_VA_048f	2,661

**Appendix C to 2015-12-08 Comments re: Atlantic Coast Pipeline**

<b>Crossings within 0.1 Miles of Another Crossing</b>					
<b>ID 1</b>	<b>ID 2</b>	<b>ID 3</b>	<b>ID 4</b>	<b>Segment</b>	<b>Milepost</b>
whia002e	whib002e	--	--	AP-1	87.2
whia054e	whib104e	--	--	AP-1	102.4
waub102e	waub102e	--	--	AP-1	115.8
waua059f	waua060f	--	--	AP-1	153.4
wbup004f	wbup003f	--	--	AP-1	188.2
wbuc004e	wbuc005f	--	--	AP-1	194.1
wbau200e	wbau201e	wbau201f	--	AP-1	198.5
wpub001f	wbup001s	--	--	AP-1	201.2
wbuk017e	wbuk018e	--	--	AP-1	209.5
wnok003f	wnok003e	--	--	AP-1	228.3
wnok017f	wnok017e	wnok017f	--	AP-1	232.7
wnok020s	wnok020f	--	--	AP-1	233.5
wnok010f	wnok010e	--	--	AP-1	238.6
wnok014s	wnok016s	--	--	AP-1	240.6
wnoc001f	wnoc001e	--	--	AP-1	242.8
wnol005s	wnol005f	--	--	AP-1	244.2
wnok024f	wnok025f	wnok026f	--	AP-1	247.2
wnom002e	wnom003f	--	--	AP-1	248.1
wdim001f	wdim001e	--	--	AP-1	249.1
wdim009e	wdim009f	--	--	AP-1	251.5
wdib004f	wdib005e	--	--	AP-1	255.4
wdil004e	wdil004f	--	--	AP-1	257.8
wgra018f	wgra018f	--	--	AP-1	283.0
wgra011f	wgra011f2	--	--	AP-1	287.8
wgrb003f	wgrb003f	--	--	AP-1	295.7
wgra034e	wgra034e	--	--	AP-1	297.7
wgra031f	wgra030f	--	--	AP-1	298.4
wsop006f	wsop006f	--	--	AP-3	14.4
wsol010f	wsol010e	--	--	AP-3	27.7
wsol012f	wsol012e	--	--	AP-3	28.1
wsol014f	wsol014e	--	--	AP-3	28.3
wsol028s	wsol027f	--	--	AP-3	32.5
wsol026f	wsol021f	--	--	AP-3	32.6
wsol025f	wsol025s	--	--	AP-3	35.1
wsua020f	wsua019s	--	--	AP-3	39.7
wsuo004f	wsuo004e	--	--	AP-3	54.5
wsuo005e	wsuo005f	--	--	AP-3	54.7
wsup005e	wsup004e	--	--	AP-3	56.5
wsup003e	wsup003f	--	--	AP-3	56.6
wsup006e	wsup006f	--	--	AP-3	56.9















## Appendix D to 2015-12-08 Comments re: Atlantic Coast Pipeline

Renee Gledhill-Earley  
North Carolina Department of Cultural Resources  
4617 Mail Service Center  
Raleigh, NC 27699-1617  
Email: renee.gledhill-earley@ncdcr.gov

Mr. Fritz Rohde  
National Marine Fisheries Service  
Habitat Conservation Division – Atlantic Branch  
101 Pivers Island Road  
Beaufort, North Carolina 28516  
Email: Fritz.Rhode@noaa.gov

### Email Copies Furnished:

Dale E. Beter  
SAW  
Email: Dale.E.Beter@usace.army.mil

Jean B. Gibby  
SAW  
Email: Jean B. Gibby@usace.army.mil

Emily C Greer  
SAW  
Email: Emily.C. Greer@usace.army.mil

Adam E. Fannin  
LRH  
Email: Adam.E.Fannin@usace.army.mil

James W. Haggerty  
NAD  
Email: James.W.Haggerty@usace.army.mil

Peter R. Kube  
NAO  
Email: Peter.R.Kube@usace.army.mil

Scott C. McLendon  
SAW  
Email: Scott.C.McLendon@usace.army.mil

## **Appendix D to 2015-12-08 Comments re: Atlantic Coast Pipeline**

Linda Morrison  
Dawson & Associates, Inc.  
FedMark Solutions, LLC  
Email: lmorr@FedMarkSolutions.com

Carl E. Pruitt  
SAW  
Email: Carl.E.Pruitt@usace.army.mil

Joshua D. Shaffer  
LRP  
Email: Joshua.D.Shaffer@usace.army.mil

Alani Taylor  
LRP  
Alani.Taylor@usace.army.mil

Henry M. Wicker  
SAW  
Email: Henry.M.Wicker.JR@usace.army.mil