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Organization:

Title:

Comments: January 24, 2023

Dr. Homer Wilkes,

Under Secretary, U.S. Department of Agriculture George Washington & Jefferson National Forests MVP Project

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Record of the Past

Below are excerpts from meeting minutes between the MVP, USFS, BLM, USFWS, Cardno, Galileo Project, EQT, GAI, Tetra Tech, Holland & Hart, and ESI. The meetings occurred between the listed entities on a regular basis, and increased in frequency in the late Spring and early Summer. The minutes clearly demonstrate a consistent and concerted effort on behalf of the USFS representatives/staff to obtain MVP's technical submissions, reports and assessments. Many of MVP's documents were found to be inadequate, requiring significant revisions and additional documentation. It appeared the USFS staff were exercising all due diligence attempting to comply with NEPA. Decisions made at the executive level; however, do not appear to be consistent with the published record, supporting scientific literature, or common sense based on actions of the applicant.

Sept 1, 2016 , MVP Project Coordination

\* Jennifer noted the DEIS is being pushed through quickly without adequate time to gather and review data. FS has asked for more time for review, which was previously granted by Paul Friedman (FERC project manager) but has since been taken out of the schedule per objection from proponents. FS noted that completing the DEIS without adequate data could slow down progress from the DEIS to the Final EIS (if FS receives numerous comments from the public).

Tuesday October 25, 2016 MVP, USFS Update Call

\* In future meetings with MVP and the FS, Jennifer requested MVP provide any meeting materials five business days in advance so the right FS team members can attend meetings and complete reviews on time.

Friday November 18, 2016

MP Project Coordination Special Discussion Agency Action Items

BLM and the FS have the following criticisms and concerns that warrant this request.

General:

\* Upon review of the Draft EIS, Plan of Development (POD), and other NEPA analysis documents the FS and BLM both identified significant deficiencies and inconsistencies in the data, analyses, and conclusions presented in the document. BLM and FS are concerned these problems preclude their agencies' making an informed

decision and fully complying with NEPA.

Monday November 21, 2016 MVP Call agenda

Overall Concerns about the MVP DEIS:

BLM: inadequate DEIS, missing info, not enough info to adopt as is Next steps:

Get data

1. Considering deficiency notice to applicant, letter to FERC

Wednesday December 7, 2016

Conference Call; MVP, BLM,USFS, EQT

Actions

Megan works with Jennifer to discuss submitting sedimentation analysis to FS before submitting the updated Biological Evaluation.

Monday February 27, 2017

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\* Karen stated the FS needs additional information from MVP, including the updated Plan of Development (POD), SF-299, and Biological Evaluation (BE) before they can provide full comment responses.

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\* Jennifer reviewed the current project schedule and updated that FS and BLM are not being given adequate review time or review materials in order to meet their NEPA requirements.

\* Jennifer reviewed MVP's proposed Craig Creek Crossing route and reiterated the FS cannot complete its review of the updated alternatives until they receive the full sedimentation analysis.

\* Jennifer said MVP has requested meetings with the FS and other Appalachian National Scenic Trail (ANST) managing partners, including the National Park Service (NPS) and the Appalachian Trail Conservancy (ATC). Jennifer reiterated it is not the job of the FS to consult with these groups on behalf of the proponent.

Monday March 20, 2017

MVP, FS-FWS Coordination Conference Call

FS and FWS continue review of MVP's most recent Biological Assessment (BA).

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\* FS completes its review of MVP's most recent Biological Evaluation (BE) and Sedimentation analysis.

\* Jennifer coordinates with Karen Overcash (FS) and Ava Turnquist (FS) to update the FS's environmental

effects chart as FS specialists review new MVP documents.

Tuesday March 28, 2017

MVP, FERC & Cooperating Agencies Call

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\* FS and BLM noted some of the comments to which FS has been asked to respond include information MVP has yet to provide or provided very recently (i.e. the Biological Evaluation, Hydrological Analysis, etc.). This makes writing complete comment responses difficult.

\* Karen noted the FS did a spot check of comments and identified an additional 72 comments the FS feels should have been assigned to FS for comment, but were not. FS stressed their concerns over litigation based on some of these comments. FERC said FS is welcome to respond to these additional letters, including letters submitted outside of FERC's comment period.

\* Jennifer noted MVP has yet to submit for review analyses and reports that meet FS needs. She is concerned FS will be finished with FEIS review before FS receives necessary documents from MVP. FS is battling a heavy work load and inadequate work submitted by MVP. BLM and FS reiterated they need to be able to make sure the analysis complies with their standards and cannot rely on AFERC to make sure the National Environmental Policy Act (NEPA) documents meet these standards. FS needs time to evaluate project documents as they relate to Forest Plan standards, especially as the MVP project as proposed necessitates several Forest Plan amendments.

\* Jennifer expressed FS concerns regarding future litigation due to inadequate analyses and NEPA documents. At this time the FS does not feel they have enough information from MVP to properly edit the FS-relevant sections of the AFEIS. FS and BLM are concerned about the breadth of new information that still needs to be incorporated into the Final EIS. New information is a key point of litigation.

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\* Jennifer suggested additional issues-based meetings and continued coordination in an effort to assure the Final EIS meets FS needs to assess their NEPA requirements for the proposed MVP project.

Thursday March 30, 2017 Conference Call

BLM, FS, FERC, Cardno, Galileo Project

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\* Tom (Tom Collins) submitted roughly 10 pages of comments during the ADEIS comment period to explain why the FS wanted project-induced geologic impacts to be analyzed in the EIS, with supporting documentation from nearby areas with similar geology. Tom stressed the FS wants fill failures during and after construction, and long term slope stability analyzed in the AFEIS. Landslides are a big concern to the FS, and landslides that happen off of Jefferson National Forest (JNF) lands can still affect JNF Lands.

\* Tony and Paul (Tony Rana from MVP and Paul Friedman from FERC) said the timing of FS comments and the tight deadlines made review of Tom's ADEIS comments difficult to incorporate. Jennifer said she would expect FERC to follow up with FS if they had not received comments they were expecting, and has since required read-receipts for comments emailed to FERC (to be sure they are received).

\* Tony and Paul said information in Tom's comments was irrelevant to impacts to Jefferson National Forest (JNF) lands and could not be incorporated into the EIS, as it cited examples from North Carolina. They said FERC

management would excise this information and stressed they want FS to focus on impacts within the JNF jurisdiction. Tony and Paul also said Tom's ADEIS comments were too long and submitted too late to be fully incorporated.

- \* Tom and Jennifer reiterated that information in Tom's comments provides context and support from other similar landscape and issues from the same FS region, and is relevant and appropriate as scientific basis for Tom's request for a finer-scale analysis of potential geologic impacts caused by the proposed project.

- \* Jennifer noted MVP has only recently submitted geologic information, including site- specific stabilization measures at certain high hazard areas along the route for the JNF. Tony questioned what additional information the FS wanted if the site-specific designs weren't enough. Tom reiterated the geologic impacts (i.e. debris flow, slope failure, etc.) from MVP's project need to be assessed and analyzed in the Final EIS.

- \* Tony said he didn't see any mitigation recommendations in Tom's ADEIS comments. Tom and Jennifer said they want to see impacts analyzed before they can propose mitigation. Tom also stressed that not all impacts can be mitigated. Jennifer said the FS is concerned about safety associated with project-induced geologic impacts. Tony and Paul agreed safety is a concern.

- \* Tony, Paul, and Tom agreed to collaboratively edit the Administrative Final EIS documents by Monday, April 3rd to allow for Cardno to edit and incorporate the FS's needs into the Administrative Final EIS. Tony said some of Tom's example text may be incorporated by reference. Tom and Jennifer said they reserve the right to still review and comment on the Administrative Final EIS once it is released to Cooperating Agencies. Vicki (Vicki Craft from the BLM) agreed this would be a good approach to meet FS needs on short notice, but that more time to review documents would be preferable.

Thursday April 6, 2017

Dawn Kirk & Pauline Adams for USFS

#### Objectives:

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- \* Discuss whether MVP's Sedimentation and Hydrological Analyses are sufficient to accept as part of the Final Environmental Impact Statement, or if more analyses are warranted.

- \* Discuss whether MVP's Sedimentation and Hydrological Analyses can be appropriately translated for Biological impacts assessment.

#### ACTIONS

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- \* Dawn and Pauline check Environmental Protection Agency 2003 article reference to determine adequacy of 10% sedimentation load impact threshold.

- \* Dawn and Pauline confirm aquatic biota sediment standards.

- \* Pauline and Dawn complete and send Sedimentation and Hydrological Analysis comments to Jennifer.

- \* GAI starts review and modifications of MVP's sedimentation analysis section in the Administrative Final

Environmental Impact Statement (AFEIS) as it becomes available.

## DECISIONS/DISCUSSIONPOINTS

Kevin Summarized (Kevin Bortz, GAI Consultant) his comments with MVP's analysis as follows:

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- \* MVP uses broad mapping and a large, watershed-scale with averaged input values across the landscape and lack of localized conditions

- \* MVP's use of analysis model is appropriate to predict erosion due to construction, but he hasn't before seen it applied to a linear project.

- \* MVP's analysis may not adequately capture episodic higher intensity events and their effects on the landscape.

- \* It is unclear how MVP estimated where 10% increase in sediment load would occur, without more specific analysis of stream characteristics.

Dawn and Pauline agreed they are concerned MVP's analysis doesn't capture high intensity episodic events or localized conditions. In addition, Dawn expressed concern that cumulative effects are not evaluated far enough off of National Forest System (NFS) lands to address biological concerns and impacts downstream. Dawn emphasized aquatic species the FS is concerned about are mostly found off NFS lands, yet FS need to manage activities on NFS lands to reduce or impacts off Forest.

Dawn and Pauline expressed concern about MVP's use of sediment threshold increase of 10% to determine where impacts would occur. Kevin said the usual standard in Virginia is to keep sediment load less than 2 tons/acre/year in order to obviate the need for mitigation. Kevin stated this standard is used to prevent impacts to downstream neighbors, and is not specific to Biology. Dawn stressed organisms respond differently to increases in sedimentation, and a 10% impact threshold to determine when impacts would occur is likely not relevant.

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- \* Dawn expressed concern MVP's analysis might not meet her needs to estimate biological impacts, as the cumulative effects area doesn't include Stony Creek and Craig Creek.

- \* Pauline clarified inspection of erosion control measures and sedimentation mitigation measures needs to be specified in the FS's Special Use Permit and/or Bureau of Land Management's Record of Decision.

- \* Joshua, Kevin, Pauline, and Dawn agree the following points in MVP's Sedimentation and Hydrological Analyses need to be addressed:

- \* Lack of background data to confirm analysis results.

- \* How cumulative effects analysis areas were determined and why.

- \* Potential over-and under estimate of impacts from construction activities on sedimentation.

- \* Clarification on whether MVP included all disturbance within the watershed even if it was off NFS lands, in impacts analysis as previously instructed by FS.

\* Accuracy of analysis of efficacy of erosion control measures

\* Pauline clarified there has not previously been a sedimentation analysis analyzed in the AFEIS, and that FS has been waiting for a sedimentation analysis for over a year.

Monday May 8, 2017

MVP FS BLM Biweekly Coordination Call

Objectives:

Discuss critical analyses missing in the Final Environmental Impact Statement (FEIS)

ACTIONS

FS/BLM, and MVP meet to discuss: Sedimentation analysis-Tuesday, May 9, 2017 3:00- 4:00pm

DECISIONS/DISCUSSIONPOINTS

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\* Joe reiterated MVP feels they have completed the necessary analysis and are frustrated that the bar for the level of detail, format of analyses, etc. keeps changing. He said it is MVP's perspective that they are following the law, and that FS and BLM are asking for a higher level of detail than required by law. Tim said it's the FS's and BLM's job and obligation to follow their respective agency standards and help develop a defensible FEIS to ensure a defensible decision for each agency. He also said FS is willing to work with MVP to update the analysis documents to FS's standards but that it's an iterative process that requires collaboration and thorough review and feedback.

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\* John reiterated (John Centofanti from MVP) previous concerns about the FS's comments on MVP's initial sedimentation analysis. John said he wants to work with the FS to avoid having to lower the capture efficiency of erosion control measures in the sedimentation analysis as this would fundamentally change impacts to species. Jennifer said FS comments on MVP's analysis were prepared by FS's own resource experts and are written to help guide MVP on how to structure analysis for FS's needs to address impacts. Jennifer suggested scheduling an additional call with resource experts to discuss John's questions on the sedimentation.

Tuesday, May 9, 2017, 3-4 PM MVP Sedimentation Discussion

Conference Call: FS, MVP, GAI, Tetra Tech, Holland & Hart, ESI, Galileo Actions

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\* Taina (from EIS) sends the following to meeting participants:

\* Sedimentation Analysis reference documents

\* Example United States Geological Survey(USGS)study

\* o MVP Erosion and sediment control plan

\* FS specialists and contractors review sedimentation analysis reference documents

\* FS contractors review Erosion and Sedimentation Control Plan.

#### Decisions/DiscussionPoints

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\* Pauline summarized her concerns that the sedimentation analysis utilized annual averages to model sedimentation risks and doesn't take into account seasonal weather changes. FS and GAI were also concerned there was no way to know when construction would take place, if this was considered in the model, and if so, how time of year was taken into account. Kevin suggested without any data to backup how MVP came to its figure for percent containment, FS has no way of knowing if MVP's assumptions are accurate.

\* John Centofanti and Taina said they are concerned that lowering the containment value from 79% to 48%, as was recommended in FS's comments on the sedimentation analysis, would have ramifications for the entire project analysis and would not accurately reflect the work that MVP has already done. Taina explained the 79%containment figure was based on a field test thesis paper study.

\* Dawn stressed FS wants to be sure the sedimentation analysis can provide the most accurate description of impacts on the Jefferson National Forest (JNF) and in areas downstream from the forest. She cited concerns that MVP's analysis shows an increase of greater than 10% sedimentation in several areas. Taina and John C said the 10% increase figure shouldn't be limiting, and can provide USGS and FS documents that show an increase of 10% will not have a measurable effect on species for over 100 years. Pauline said FS wants to be sure the analysis presents close to a real-world scenario and not the best-case scenario for sediment containment and impacts on the JNF.

\* Pauline said she would like to see additional supporting documentation for how MVP came up with their model assumptions, in particular containment efficiency. She cited a high level of public interest in waterbody crossings on the JNF and impacts to aquatic species on the JNF. Jennifer and Dawn stressed public interest is piqued due to a recent and catastrophic sedimentation control failure on JNF lands, despite monitoring and industry-standard control plans. Dawn stressed good plans aren't enough and must be bolstered by consistent monitoring and accurate implementation.

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\* John C said MVP is happy to provide additional documentation to FS and to the Federal Energy Regulatory Commission docket so that FS has a defensible impacts analysis.

Thursday May 18, 2017

## Conference Call for Federal Infrastructure Permitting Improvement Steering Committee (FPISC)

### III. Sedimentation Analysis

a. FS recounted they have previously asked MVP for a more realistic assessment of sediment control measures in MVP's Hydrological Analysis of Sedimentation. It was settled in previous meetings that MVP would provide additional documentation and studies to the FS for review. Greg (Greg Smith from the USFS) confirmed MVP and FS Washington Office have settled on a consistent and acceptable methodology for the Hydrological Analysis of Sedimentation.

#### Thursday June 8, 2017 Conference Call

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\* Karen (Karen Overcash from USFS) confirms FS has the required sedimentation analysis documents.

\* Karen confirmed the new documents being sent to FS by MVP (i.e. the sedimentation analysis, updated POD, etc.) should not affect the language in the draft ROD. Tim said comments from the FS regional office and BLM are due by Tuesday, June 13, so he can update the draft.

\* Miriam (Miriam Liberatore from BLM) and Vicki Craft expressed concern that FERC has not yet shared their FEIS Notice of Availability (NOA) with the agencies, and that FERC has not yet formally provided an opportunity or deadline to FS and BLM for including language about the objection and comment processes, respectively. Karen stressed she needs to be sure the language describing the objection process and FS Land and Resource Management Plan amendment is correct. Miriam said it's critical to review the NOA before it's published to ensure FERC has not misrepresented comments or language from the cooperating agencies.

#### Monday June 14, 2017

#### MVP, FS, Tetra Tech, BLM Conference Call

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\* MVP completes and uploads Plan of Development, Biological Evaluation, Habitat Equivalency Analysis, and Sedimentation Analysis to Galileo's FTP site. In Process

\* Megan updated the HEA and Sedimentation Analysis are all going through final review. The POD and BE are ready for distribution to FS and BLM. Jennifer reminded Megan the files should be word documents for ease of editing.

#### Thursday, June 22, 2017

#### MVP BLM/FS Biweekly Coordination Call

## Actions

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\* Jennifer sends Draft ROD to Paul Friedman (FERC).

The FEIS Notice of Availability was transmitted July 23, 2017. <sup>1</sup>

These few staff members attempted to obtain the information to satisfy the NEPA requirements for the USFS. Their due diligence cannot be denied and I contend they acted in good faith. I do not believe that they precipitously changed their minds believing that the requirements of NEPA had been met and that potential impacts to sensitive species and habitats identified by the USFS were adequately identified or minimized. Based upon the record, it appears someone in the chain of command acquiesced to the pressures applied by both the MVP and FERC, neglecting the USFS mission to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The USFS failed in their NEPA requirements.

The US Court of Appeals for the Fourth Circuit held the USFS to account for their lack of due diligence, stating that the "Forest Service acted arbitrarily and capriciously in adopting the sedimentation analysis in

<sup>1</sup> eLibrary 201706233-2010

[FERC's] EIS," <sup>2</sup> and ceded "to Mountain Valley's bullish estimate that erosion controls would contain 79% of sediment."<sup>3</sup> The permit was vacated.

In capitulating, the USFS lost the trust of the American people; the people and Forest they were tasked with serving. Perhaps someday when another lawsuit forces the USFS employees to testify we will learn the real truth.

<sup>2</sup> Sierra Club v. United States Forest Serv., 897 F.3d 582, 596 (4th Cir. 2018), reh'g granted in part, 739 F. App'x 185

(4th Cir. 2018).

<sup>3</sup> Ibid.

Record of the Future

Record of Decision the USFS DEIS 2020 and Final USFS DEIS 2022

The USFS "Record of Decision MVP Giles & Montgomery Counties, Virginia, Monroe, County West Virginia" states:

The agency completed a full independent review of hydrologic and sedimentation analyses. The agency has disclosed rationale for its use of the Revised Universal Soil Loss Equation, Version 2 (RUSLE2) model and its methodologies which informed predicted effects described in hydrologic and sedimentation analysis, and the agency has satisfied previous comments and concerns about the conclusions of the hydrologic and sedimentation analysis.<sup>4</sup>

Did the USFS really satisfy previous comments and concerns about the Hydrologic and sedimentation analysis in the Record of Decision? I know my concerns were not addressed. In addition, an eLibrary submission entitled, "MVP Sedimentation Analysis fails to Sufficiently Mitigate Water Quality impacts within the Jefferson National Forest" on November 8, 2020, indicated there were "extensive flaws," in the Hydrologic Analysis for the JNF. This paper was submitted by the Science Policy Initiative (SPI), a fourteen member panel from several Universities who reviewed the Hydrological Analysis of Sedimentation for the JNF that was prepared by Geosyntec Consultants. In their Executive Summary they indicated that the Hydrologic Analysis of Sedimentation for the JNF prepared by Geosyntec contained, "extensive flaws in the estimates of water quality impacts from runoff generated by MVP's land disturbance activities."<sup>5</sup>The USFS did not comment, acknowledge and / or refute this paper and there was plenty of time to do so from November 9, 2020 until December 24, 2022.

I am by no means trained in the area of hydrogeology and / or engineering but when I read a professional paper that disputes the application of equations and ground conditions that a contractor for MVP prepared, I am concerned. I concede that the company Geosyntec Analytics appears to be reputable; however, the SPI also appears to be equally reputable. What SPI documented is cause for concern.

<sup>4</sup> eLibrary 20210112-5129, p. 17 of 37; 20201211-5170

<sup>5</sup> eLibrary 20201109-5049

FW-5, FW-8, FW-9, 11-003 (Forest Plan Amendments)

My additional comments on the USFS Forest Plan pertain to: FW-5 revegetation, FW-8 soil compaction in water saturated areas, FW-9 soil impacts from heavy equipment use, and 11-003 exposed soil within the riparian corridor.

FW-5 and FW-9: On the steep denuded slopes of the Jefferson National Forest prior to, during, and for many months following pipe installation / construction there is a great potential for harm. I am familiar with the JNF in both locations. The terrain is very steep and the impacts from the utilization of heavy equipment to fell and clear trees, trench, and string the pipe will be significant. On Peter's Mountain the boring pits (ingress and egress) and the spoil piles will change the landscape in ways that most people could not imagine. Because the bore distance is long the spoil pile storage will pose significant problems and erode with significant rain events. If it is to be transported down the Mountain it will result in significant ground compaction causing future rills and gully formations and possibly washing out the mountainous Access Road GI-232.

The daily onslaught of transporting construction personnel to and from the site also presents additional burdens / compaction to the land. Many times on Mt Tabor Road in Montgomery County, I witnessed a bulldozer in the ROW, towing a beat up old School Bus to transport their workers from MP 222.7 up to the top at MP 220.8. The safety risks involved and the ground disturbance created by this means of mass transit of personnel to the work site is troubling.

The Peters Mountain elevation changes are significantly greater than Brush Mountain. From the Monroe County, WV side the elevation changes from 2180' at MP195.5 to 3470' at MP196.35 at the top; from the Giles County side using the Permanent Access Road GI-232 from 1800' at the Big Stony Creek Road up to 3470' elevation at MP 196.35. If a cable were to break towing a bus load of workers up the ROW or on the Access Road, the potential for a mass casualty incident is real. In such a remote area as Peter's Mountain this would prove problematic for the Rescue Squads that serve that area.

FW-8 and 11-003: Construction with heavy equipment in low lying areas that are prone to being somewhat saturated, and with waterbodies in close proximity, the associated riparian corridor is a great risk. ATWS and Access Roads are typically located in the low lying areas too and the soil disruption and concomitant compaction of forbs adds further insult. An additional threat in this low lying area is a potential release of hydrocarbons from construction equipment. The Craig's Creek area is already challenged with an ATWS and Access Road with soil piles clearly visible on the MVP map from November 2022. The trees are cleared and the pipe just sits out there rusting away on the ground but the real damage to the waterbody, Craig's Creek, will begin anew with the trenching, stringing, and the mass transit of personnel to the work site by winching them up to the top in an old school bus.

Additionally, I have great concern for the Candy Darter habitat. This TES in the Big Stony Creek of Giles County, VA although newly listed, an isolated population. The USFS should be concerned with waterbodies that are downstream of tree clearing activities or heavy ground moving construction that occurs on Forest land. If boring under the Big Stony is approved by the USCOE, then the riparian border is still highly likely to be disturbed in that area.

I ask that the USFS do its job and DENY the Crossing of the Jefferson National Forest by the MVP.

Respectfully Submitted,

Louisa Gay