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Virginia Department of Environmental Quality  
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**Re: Mountain Valley Pipeline and Atlantic Coast Pipeline Projects  
State Water Control Board Request for Technical Information on Specific Wetland  
and/or Stream Crossings**

Dear Agency Officials:

The Interstate Natural Gas Association of America (“INGAA”) welcomes this opportunity to provide technical comments and information to the Virginia Department of Environmental Quality (“DEQ”) on the Mountain Valley Pipeline (“MVP”) and Atlantic Coast Pipeline (“ACP”) projects. INGAA understands that DEQ’s request for comment is limited to (1) the sufficiency of the general and regional conditions associated with Nationwide Permit (“NWP”) 12; (2) the sufficiency of the NWP 12 permit authorization for each project; and (3) the sufficiency of DEQ’s Clean Water Act Section 401 water quality certification of NWP 12. INGAA also understands that all written comments that are submitted “must be to a specific wetland or stream crossing.” For the reasons explained below, INGAA respectfully submits that NWP 12 and its associated general, regional, state and project-specific conditions are protective of water quality in Virginia. Because each crossing for the MVP and ACP projects is a “single and complete project” which must *individually* satisfy all requirements of the NWP verification, these comments are directed to *each and every* wetland and stream crossing identified in the impact tables for the MVP and ACP projects.

INGAA is a non-profit trade association whose member companies transport over 95% of the nation’s natural gas through a network of 200,000 mile of pipelines. Ensuring the safety, security, and reliability of this natural gas pipeline network is crucial to meeting the energy needs of the United States and contributes directly to the U.S. economy by powering domestic industry and providing jobs. INGAA members rely on, and make regular use of, NWPs such as NWP 12 for three principal reasons.

First, Congress authorized the use of NWP's precisely for projects such as MVP and ACP 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> To be sure, pipeline projects may be different in terms of size, location and affected environmental features. However, for United States Army Corps of Engineers ("Corps") permitting purposes, they are fundamentally similar. This is because interstate natural gas pipeline projects must comply with Federal Energy Regulatory Commission ("FERC") requirements.<sup>2</sup> FERC's requirements are designed to ensure that pipeline crossings cause only temporary construction impacts, do not result in permanent fill of jurisdictional waters, are restored to preconstruction contours and elevations immediately after construction, and are fully mitigated. In short, under FERC oversight, pipeline projects fall squarely within Congress' authorization of NWP's.<sup>3</sup>

Second, NWP's provide an efficient permitting mechanism that helps to streamline the review and approval process without precluding or compromising the consideration of any necessary project-specific conditions. Construction and maintenance of natural gas pipelines typically occur on tight schedules designed to ensure the safety, security, and reliability of the natural gas pipeline network and to meet the growing demands of natural gas customers. Obtaining coverage under a NWP takes considerably less time than an individual permit, while still ensuring appropriate consideration of all applicable avoidance, minimization and mitigation measures.<sup>4</sup>

Third, the conditions associated with the NWP's are designed to ensure that no crossing will have more than a minimal effect. NWP's are subject to a set of 32 general conditions that protect a range of different environmental resources, including spawning areas, migratory bird breeding areas, shellfish beds, water supply intakes, wild and scenic rivers, endangered species, migratory birds, bald and golden eagles, historic properties, and designated critical resource waters. In each case, these conditions prohibit activities that would have more than minimal impacts on these resources. Importantly, as DEQ noted in its materials for the December 2017 State Water Control Board meeting, when the Corps reissued its NWP's in 2017, it imposed a number of enhanced and additional conditions relevant to NWP 12, including:

- A new recommendation to use equipment mats during temporary work in wetlands;
- A new requirement to provide remedial plans for inadvertent hydraulic drilling fluid releases during horizontal directional drilling;

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<sup>1</sup> 33 U.S.C. § 1344(e)(1); *see also Sierra Club, Inc. v. Bostick*, 539 F. App'x 885 (10th Cir. 2013) (upholding the Corps' authorization of a pipeline construction project through the use of NWP's).

<sup>2</sup> *See* FERC Office of Energy Projects, Wetland and Waterbody Construction and Mitigation Procedures (May 2013), <https://www.ferc.gov/industries/gas/enviro/guidelines.asp>.

<sup>3</sup> We note that as the "lead federal agency" for these kinds of projects, FERC is responsible for preparing an environmental impact statement under the National Environmental Policy Act, consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act, and consulting with the Advisory Council on Historic Preservation and the relevant State Historic Preservation Officers under the National Historic Preservation Act. All of these requirements, and associated materials, serve to augment the record of analysis for the Corps' own review of wetland and stream crossings that are under its jurisdiction.

<sup>4</sup> One study concluded that on average, it takes an extra 475 days to obtain an individual permit versus an NWP. *See* David Sunding and David Zilberman, *The Economics of Environmental regulation individual by Licensing: An Assessment of Recent Changes to Wetland Permitting Process*, 42 Nat. Resources J. 59, 76 (2002) (reporting that it took on average 313 days to prepare and obtain an NWP versus 788 days for an individual permit).

- A new requirement to coordinate with the Virginia Field Office of the U.S. Fish and Wildlife Service, which also incorporates the Virginia Department of Game and Inland Fisheries and Department of Conservation and Recreation (“DCR”) into the process;
- A new recommendation to use Virginia native species for revegetation as identified by DCR;
- New requirements to restore the pre-construction conditions at stream crossings using materials that mimic the natural stream bed, proscribe the use of riprap except in limited circumstances, and require the free passage of aquatic organisms; and
- A new requirement specifying that a mitigation plan is needed for all permanent loss over 1/10 acre and/or 300 linear feet of waters.<sup>5</sup>

In addition to these general conditions, each Corps District has the authority to impose regional conditions. The Corps Norfolk District, which has jurisdiction over MVP’s and ACP’s wetland and waterbody crossings in Virginia, imposed an additional 14 regional conditions. These conditions protect a range of regionally relevant environmental resources, including submerged aquatic vegetation, anadromous fish use areas, national estuarine research reserves, critical habitat for protected species, steep terrain, floodplains, and designated trout waters. The regional conditions also include further limitations on utility line activities – beyond NWP 12 itself – to minimize impacts from access roads and the clearing/grubbing of wetlands vegetation.

All Corps-regulated projects also require a water quality certification from the affected state under Section 401 of the Clean Water Act. In this case, DEQ provided conditional certification of NWP 12 on April 7, 2017, imposing three additional conditions relating to surface water withdrawals, compensatory mitigation, and temporary diversions of surface water.

In addition to these general, regional and state conditions, the Corps District Engineer is also obligated to impose any project-specific conditions necessary to ensure that project-related impacts are minimal. The Norfolk District Engineer did so for each of the pipeline projects at issue here, through its verification letters dated December 26, 2017 (for MVP) and February 9, 2018 (for ACP). By way of example, the District Engineer imposed 12 “special” conditions in its verification of NWP 12 for ACP. These special conditions require all work to be performed in compliance with approved construction plans and cross-section drawings; all waters and wetlands to be flagged in the field prior to construction to prevent any accidental impact to resources not necessary for construction; to remove all temporary stream construction entrances within 15 days; to replace to pre-project contours, stabilize, and re-seed all stream banks, riparian areas and wetlands disturbed at each crossing within 15 days; to limit the approved width of work at each crossing; and to verify the successful completion of restoration and revegetation, among other requirements.

These conditions work together to ensure that *no* project – let alone MVP or ACP – is allowed to proceed with activities under NWP 12 that have more than a minimal impact. And as

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<sup>5</sup> The Corps held a public review and comment period from June 1, 2016 to August 2, 2016 on the proposed reissuance of its NWPs. *See* 81 Fed. Reg. 35,185 (June 1, 2016). The Corps received and considered over 53,000 comments specific to NWP 12. *See* 82 Fed. Reg. 1860 (Jan. 6, 2017). After considering all comments and responding to comments raised regarding the use of NWP 12 for interstate pipeline projects, the Corps reissued NWP 12 on January 6, 2017 with a March 19, 2017 effective date. *Id.*

noted above, the conditions address the full range of resources potentially impacted by the projects, including trout waters, habitat for listed species, steep terrain, floodplains, water supplies, and other sensitive resources. So even at the most sensitive crossing, the conditions associated with NWP 12 preclude construction from having more than a minimal impact.

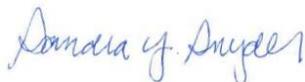
For all of these reasons, INGAA respectfully submits that NWP 12 (and its associated conditions) is sufficiently protective of *all* of the Commonwealth's aquatic resources affected by MVP and ACP, and that DEQ certified NWP 12 by way of its conditional Clean Water Act Section 401 water quality certification in April 2017, after considering all of the relevant general and regional conditions imposed by the Corps.

The protectiveness and continued availability of NWP 12 for these purposes is critically important to INGAA and its members, and we appreciate this opportunity to provide our technical comments and information to DEQ. Please feel free to contact us with questions or for more information.

Sincerely,



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