

DECISION MEMO

USDA Forest Service

Nine Pipeline

Cheat/Potomac Ranger District, Tucker County, West Virginia

I. DECISION TO BE IMPLEMENTED

Description of Decision

As the Responsible Official, my decision is to authorize Horseshoe Run, LLC's ("Horseshoe") request for a Special Use Permit to construct, operate and maintain a buried natural gas pipeline, brine waterline and telephone line and two pig launcher/receivers on National Forest System lands.

This decision includes authorization for the Nine Pipeline as described below and as shown in the Special Use Permit Application subject to conditions 1- 16 identified in this decision, which are needed to be consistent with and implement the Forest Plan.

The decision also includes installing the Nichols gas pipeline (Decision Memo, Nichols Pipeline and Access Road, signed November 8, 2004), and placing a brine waterline and telephone line in the ditch with the Nichols gas pipeline. The Nichols gas pipeline authorization was conditioned that it could not be constructed until the Nichols A-1 gas well was drilled and deemed to be a producing gas well. Installing the Nichols gas pipeline is necessary to transport the natural gas coming from wells on private land via the Nine Pipeline to the point of sale. The Nichols gas pipeline authorization did not originally include a brine waterline and telephone line.

Pipeline Project Description

My decision authorizes the construction operation and maintenance of a buried 4-inch natural gas pipeline, a 3-inch brine waterline and a telephone line which will originate on private property, cross Forest System land in three sections and tie into the existing pipeline at a producing well site (Smith) on private land. Two pig launcher/retrievers will be constructed on Forest lands as well. (See *Attachments 1-4, Decision Memo Nine Pipeline*)

Approximately 8,050 feet of pipeline will be constructed on National Forest System land (*Figure 1. Nine Pipeline Project*) in 3 different sections, and when in operation, will be able to transport more than 2 million cubic feet of natural gas per day. A waterline will be installed at the same time, which would be utilized to carry brine water (natural gas well wastewater) from the well sites to disposal tanks off Forest System lands. A telephone line will be installed into the ditch as well, to provide telephone service at the well location site. Installation of two pipeline pig launcher/retrievers are authorized.

The attached maps (*Attachments 1-4, Decision Memo Nine Pipeline*) indicate the location of the gas line and the pig launcher/retrievers. The Nine Pipeline will be constructed on National Forest System lands, and tie in with the Nichols Pipeline. The Nichols Pipeline, including a plastic brine waterline and telephone line in the

trench with the gas pipeline, will be constructed from the southern end of the Nine Pipeline and run in an easterly direction across National Forest to private land, and end at the Smith well on private land.

The pipeline will be buried under a minimum of 36 inches of cover along the road bank and in cross-country sections, and under 48 inches of cover within the existing road bed.

Existing public roads and Forest Roads 929 and 929A will provide access to the pipeline project.

Figure 1 shows a breakdown of right-of-way widths. About 8,050 feet of pipeline right-of-way will be constructed on the Forest within different right-of-way widths and positions on the land:

- --Approximately 3,750 feet will be constructed within an existing road bed with a 20-foot wide right-of-way. Construction of the pipeline within the existing roadbed will require use of 1.72 acres of Forest System land, with no new clearing. Placement of the gas pipeline within the existing road bed is technically feasible, practical and economically reasonable in these sections because the existing road provides a sufficiently safe working width for the trench, material excavated from the trench, pipeline assembly prior to lowering into the trench, and construction equipment. In addition, bedrock expected to be encountered within the road bed is projected to be removeable for the required trench depth without requiring blasting.

SECTION	LOCATION OF PIPELINE CONSTRUCTED ON NATIONAL FOREST	WIDTH OF PIPELINE RIGHT-OF-WAY ON NATIONAL FOREST	LENGTH OF PIPELINE RIGHT-OF-WAY ON NATIONAL FOREST	ACRES OF NATIONAL FOREST UTILIZED FOR PROJECT CONSTRUCTION	WIDTH OF NEW CLEARING ON NATIONAL FOREST	ACRES OF NEW CLEARING ON NATIONAL FOREST
A	Cross Country	30'	150'	.03	30'	.03
A	Adjacent to Road right-of-way	25'	400'	.23	15'	.14
A	Existing Road Bed	20'	1700'	.78	0	0
TOTAL A			2250'	1.04		.17
B	Adjacent to Road right-of-way	25'	150'	.09	15'	.05
B	Existing Road Bed	20'	700'	.32	0	0
TOTAL B			850'	.41		.05
C	Cross Country	30'	1350'	.93	30'	.93
C	Adjacent to maintained road right-of-way	30'	1450'	1.0	30'	1.0
C	Adjacent to Road right-of-way	25'	800'	.46	15'	.28
C	Existing Road Bed	20'	1350'	.62	0	0
TOTAL C			4950'	3.01		2.21
TOTAL			8050'	4.46 Acres		2.43 Acres

Figure 1. Nine Pipeline Project

- About 1,350 feet will be constructed within the road bank adjacent to an existing, maintained road with a 25-foot wide right-of-way. Construction of the 25-foot wide pipeline right-of-way on the road bank adjacent to existing roads would require use of 0.78 acre of Forest land, with a total of 0.47 acre of new clearing (*See Figure 2. 25' right-of-way New Clearing Adjacent to Road*). Placement of the gas pipeline outside of the existing road in these sections avoids the likelihood that blasting will be required to bury the pipeline to the required depth. It is technically feasible and practical to limit the clearing width in these sections to 15 feet because the road and terrain adjacent to the road are able to accommodate pipeline installation. This is because construction equipment is able to use the road and reach into the pipeline construction area, leaving the 15-foot wide right-of-way to fit trench, excavated material, and pipeline assembly space needs.

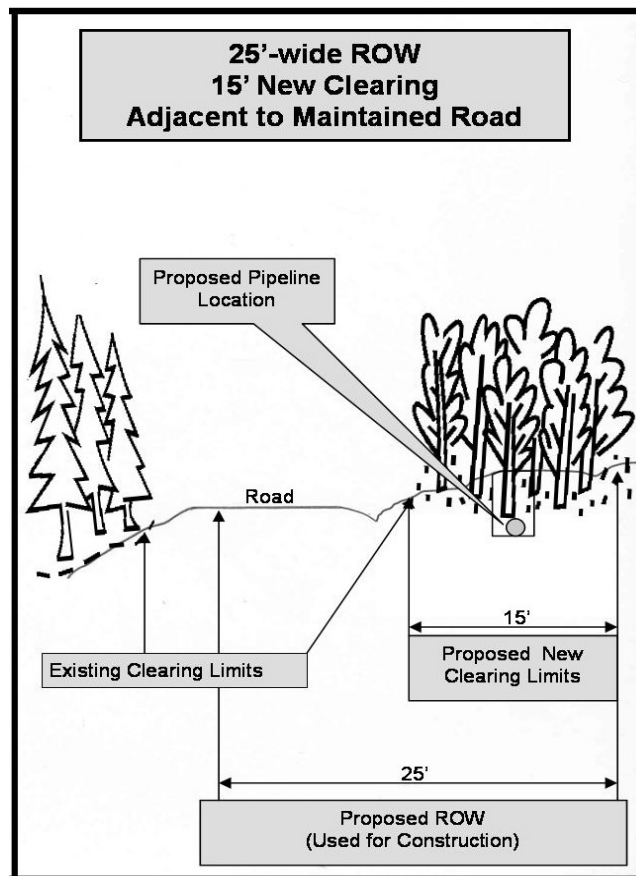


Figure 2. 25' Right-of-way New Clearing Adjacent to Road

- About 2,950 feet of 30-foot wide right-of-way would be cleared next to a road and cross country:
 - About 1,450 feet of 30-foot wide right-of-way adjacent to a maintained road would require 1 total acre for construction and new clearing. (*See Figure 3. 30' Right-of-Way New Clearing Adjacent to Road*). Placement of the gas pipeline outside of the

existing road in these sections avoids the likelihood that blasting will be required to bury the pipeline to the required depth. The road has a higher cut slope in these areas and, as such, construction equipment cannot reach to the pipeline right-of-way to efficiently excavate the pipeline trench. A 30 foot wide right-of-way provides for safe, efficient and practical placement and operation of construction equipment, the trench, material excavated from the trench, and pipeline assembly area.

2. About 1,500 feet of 30-foot wide right-of-way would run cross country, requiring 0.96 acre for construction and new clearing. New clearing for the 2,950 feet of 30-foot wide right-of-way would total 1.96 acres. The cross country segments identified substantially reduce buried pipeline length overall, as well as the number of miles of pipeline placed within maintained roads, or avoids the likelihood that blasting will be required to bury the pipeline to the required depth. Thirty-foot wide right-of-way is needed to support construction on these sections because the terrain over which the pipeline is to be buried requires sufficient width for safe and efficient construction equipment operation on the slopes present (vehicles and equipment are able to pass by each other within the working area), including the pipeline trench, material excavated from the trench, and the pipeline assembly space.

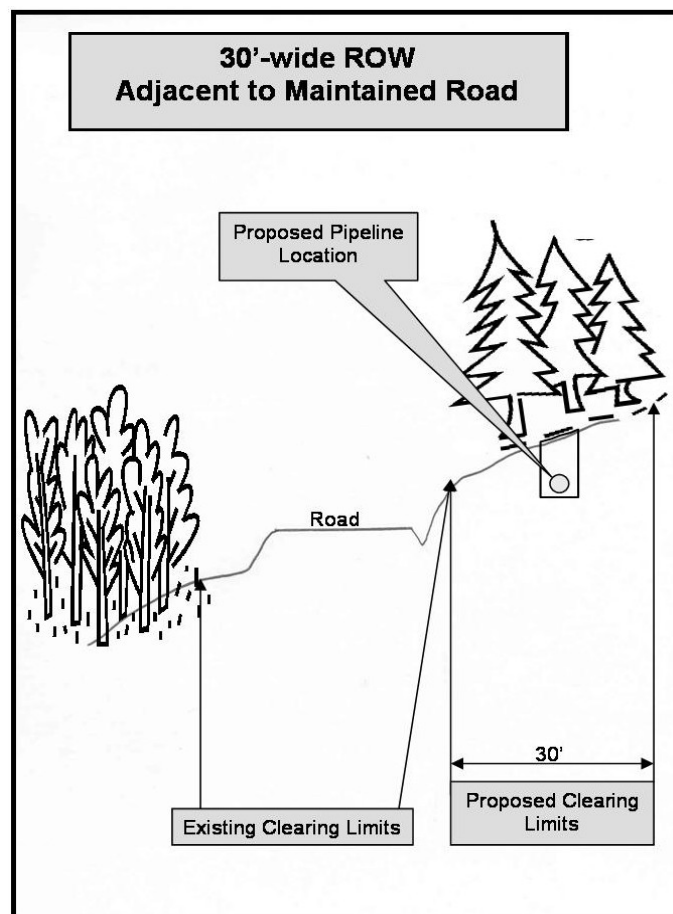


Figure 3. 30' Right-of-Way New Clearing Adjacent to Road

In summary, the use of National Forest System land for the Nine Pipeline project includes temporary use for construction of slightly less than 4.5 acres, with about 2.4 acres of that requiring tree clearing for the pipeline right-of-way.

The pipeline will serve to transport gas from wells on private land, and will not be constructed unless it is needed to transport gas from a producing well.

Horseshoe will contract a professional pipeline construction company to prepare the site and build the pipeline. The gas pipeline will be designed, constructed, operated and maintained in accordance with the Department of Transportation Federal Safety Standards. These standards specify material selection and qualification, minimum design requirements and protection from internal, external and atmospheric corrosion.

The pipeline will be installed between the travel-way and the ditch line, and will be covered with compacted backfill, with a minimum of 48 inches of cover. Marker tape with tracer wire will be placed 12 inches above the pipeline for safety. Pipeline construction in areas off of the roads (“earthen areas” along the road bank and in the cross-country sections) will be covered with compacted backfill, with a minimum of 36 inches of cover. Marker tape with tracer wire will also be placed 12 inches above the pipeline. (See **Figure 4. Typical Trench Detail**).

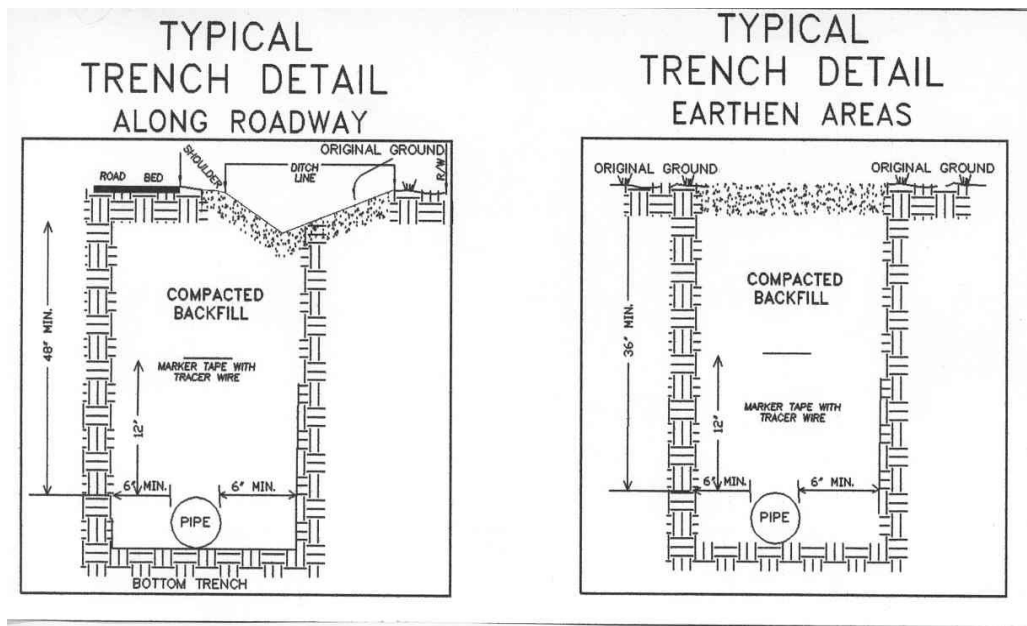


Figure 4. Typical Trench Detail

Pipeline Pig Launcher and Retriever

A pig launcher and a retriever will also be constructed. (See *Attachments 1-4, Decision Memo Nine Pipeline*). A “pig” is a tool utilized in the gas industry which moves through the pipeline, propelled by natural gas. It can be used for diagnostic or cleaning purposes. It is installed at the “launcher”, and then propelled from one end to the other end where it is then removed at the “retriever”, or “catcher”. (See *Figure 5. Pig Launcher/Retriever*).



Figure 5. Typical Pig Launcher/Retriever

The construction phase of the pipeline project is estimated to take approximately two months and is expected to be completed by the end of summer, 2008. When complete, the pipeline expects to be in operation 365 days per year, for an estimated 50 years.

Clean up and restoration of the disturbed areas will take place immediately upon completion of the installation. The topography of the cross-country sections of the construction corridor will be returned to original contour and vegetated with non-aggressive native genera seed, according to a Forest Service approved plan. It is estimated that this activity will take approximately five days to complete. Final inspection and approval by the Forest Service is required by special use permit terms.

A 30-foot wide herbaceous corridor along the cross-country sections will be maintained for the life of the Nine pipeline, which will be sufficient to allow pipeline maintenance activities. This is a wider maintenance corridor than recent pipelines rights of ways have requested and been granted. Experience has revealed that a ten-foot wide maintained corridor may not be able to prevent damage to buried pipelines by tree roots, nor does a 10-foot wide corridor provide sufficient working space for maintenance that may include replacing segments of corroded or damaged pipeline. Cross country segments of the Nichols pipeline, however, will retain the 10-foot wide maintained corridor approved in the Nichols Pipeline decision, but an additional 10 feet of right-of-way will be authorized for emergency maintenance (such as to replaced corroded or damaged pipeline).

A 15-foot wide herbaceous right-of-way corridor will be maintained on the road bank sections of the corridor.

This decision will be implemented through issuance of Special Use Permits that meet the requirements of the decision and Forest Service regulations. The permittee will be required to post any necessary bonds and secure any state or federal permits or authorizations required by law. Prior to the commencement of any activity, an on-site, pre-work meeting will be held with the Horseshoe Run LLC representative, the MegaEnergy Inc. representative, the pipeline contractor, road contractor, and the Forest Minerals Specialist. This decision also

includes the following conditions, which result in the project being consistent with the Forest Plan.

Conditions:

1. Activities that require vehicles weighing over 12,000 pounds gross vehicle weight will not be authorized during normal winter shut-down, November 15 to May 15, to minimize resource damage to roads, unless a determination is made that the road is designed to support all season use or is upgraded for all season use. If conditions allow, however the Forest Service may authorize access prior to May 15 and past November 15.
2. No construction or activity with this project will occur during the time that the Class Q road system is open during general deer rifle season. Pipeline installation and reclamation will be completed, or stabilized and shut down for the season, no later than November 15.
3. Merchantable timber that must be cut will be marked by the Forest Service and sold to the permittee at current market rates. All cut merchantable timber and stumps must be removed from National Forest System land or stockpiled in an area agreed upon by the Forest Service.
4. Un-merchantable slash created by pipeline right-of-way and access road construction will be piled in brush piles at least 10 feet wide with breaks at least every 50 feet to provide both wildlife cover and free passage across the right-of-way for wildlife and people.
5. Filtration structures will be constructed prior to any earth-disturbing activity. Sediment fences and staked hay bales will be placed at potential water discharge points and wherever needed to prevent and reduce sediment from discharging into the upper reaches of area streams. Filtration structures will be maintained for a minimum of one year, or until the disturbed areas has stabilized, at which time they will be removed.
6. Gravel surfacing will be placed on the road driving surface as the Forest Service inspector determines necessary to reduce rutting and to control erosion. Road slope or right-of-way, cross drainage (culverts, dips or functioning stream channels) and road surfacing materials will be restored to that of pre-pipeline condition on all Forest Roads.
7. Disturbed areas will not remain bare for more than 14 days after pipeline installation is complete, and will be restored as follows:
 - a. A native genera seed mixture approved by the Forest Service will be used. To assist in erosion control, a nurse crop will be mixed with the native seed. The nurse crop will consist of the following:
 - 15 lbs/acre of annual ryegrass
 - 2 lbs/acre of partridge pea
 - b. Fertilize at 600 lbs/acre of 10-20-10 or the equivalent
 - c. Lime at 2 tons/acre
 - d. Straw at 2 tons/acre

8. If final reclamation is not completed prior to October 15, all exposed areas will be seeded with 120 lbs/acre of winter rye and mulched with 3000 lbs/acre of straw within 14 days. Horseshoe Run, LLC will then return and seed with the Forest Service approved seed mix, fertilizer and straw after May 15. Final reclamation will be completed by June 15.
9. When the pipeline is buried in natural ground, it will be covered with a minimum of 36" of fill.
10. On sections of pipeline buried within the road template, use of construction equipment will be limited to the existing cut and driving surface.
11. Where gas pipeline is buried within or under a Forest System road template, (between the top of the cut and the toe of the fill, inclusive) it will have a minimum of 48" of fill measured from the lowest point in the road drainage over the pipeline. Limestone sand, fine limestone or otherwise visibly detectable material will be placed over the top of the buried gas line. This material will serve as clear warning to an equipment operator of the presence of the buried gas pipeline. Four-inch wide, magnetic-detectable warning tape will then be buried near the top of the pipeline trench during backfilling along the entire length of the pipeline route, to provide warning of the presence of a pipeline.
12. Visible markers, made of durable plastic imprinted to identify the presence of natural gas pipeline, will be placed at intersections of the pipeline and roads and within sight of each other along the pipeline length.
13. Pipeline right-of-way will be blocked to all public motorized use (vehicular and ATV access). Horseshoe Run, LLC will propose an appropriate method and design for right-of-way blockage for Forest Service approval, then will implement and maintain the approved structure. Gates or fences, if used, will meet Manual of Uniform Traffic Control Device standards (Manual of Uniform Traffic Control Devices 1988 Ed., U.S. DOT, Federal Highways Administration).
14. Effective waterbars/interceptor channels or out sloping (if appropriate for conditions) will be constructed and maintained to disperse surface run-off and reduce rill and gully erosion on sections of pipeline right-of-way located off of road templates. Water bars should be installed at intervals not to exceed:
 - i. 100-200 feet on right-of-ways sloping 5%-10%
 - ii. 67-100 feet on slopes 10%-15%
 - iii. 50-67 feet on slopes 15%-20%
 - iv. 50 feet on slopes over 20%.
15. Driving on restored (graded, water-barred and seeded) cross-country or off-road template sections of pipeline is prohibited, except in emergencies. Horseshoe Run, LLC will be responsible for any damage to restored areas and will promptly repair it.

16. Mowing cross-country segments of gas pipeline right-of-way is prohibited between April 1 and July 31, to reduce chances that bird nests in the grassy or herbaceous pipeline right-of-way will be impacted.

II. PURPOSE OF DECISION

I am making this decision in response to a Special Use applicant's request to use National Forest System land.

MegaEnergy, Inc. is preparing to drill two new gas wells on private land; one north and one south of the proposed pipeline. They have determined that if the wells yield economic quantities of natural gas, they need to construct a new line to transport the gas to the point of sale. Horseshoe Run Services, LLC, (the transmission subsidiary of MegaEnergy, Inc.) has concluded that the proposed gas transmission line which will connect with the existing pipeline terminus at the Smith A-1 well on private land is the only reasonably nearby gas pipeline, and that the proposed pipeline is necessary to connect the well to the existing interstate gas transmission system, which would require crossing Forest System lands. They would bury the brine waterline and telephone line within the same right-of-way. A brine waterline is needed to allow waste fluids generated at the wells to be removed without having to transport them by truck from each well site. This would reduce the use of large, heavy trucks on Forest Roads. A telephone line is needed for communication at each well site, since cell phones do not work reliably in the area. The right-of-way corridor is optimally located to meet their objectives of being both technically feasible and economically reasonable, and represents the most direct route while minimizing disturbance to previously undisturbed areas.

I am taking this action in response to the Special Use Permit application because it recognizes that special uses may be allowed if they meet public needs, are consistent with direction for other Forest resources and management prescriptions, and cannot be accommodated off the National Forest (Monongahela National Forest Land and Resource Management Plan, 2006, Chapter II-52, LS17). Additionally, Horseshoe has identified a proposed route that partially shares an existing road corridor which will minimize new clearing of National Forest System (NFS) lands. (MNF Plan, 2006, Chapter II-52, LS19.)

III. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or environmental assessment when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2 as, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment.

I have concluded that this decision is appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment as it is a routine activity within a category of exclusion and there are no extraordinary circumstances

related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment. My conclusion is based on information presented in this document and the entirety of the Record.

A. Category of Exclusion

The decision is within the category of exclusion 31.2(3): “Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land.” The Nine Pipeline utilizes slightly less than 4.5 acres of National Forest System land.

B. Relationship to Extraordinary Circumstances

1. Threatened and Endangered Species or Their Critical Habitat

The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species’ designated critical habitat. In accordance with Section 7(c) of this Act, a list of the listed and proposed, threatened or endangered species that may be present in the project area was requested from the U.S. Fish and Wildlife Service.

The Monongahela National Forest completed a Biological Evaluation (BE) which was forwarded to the U.S. Fish & Wildlife Service for formal consultation. The Service concurred with the findings of the BE. The findings were that the project will have no effect to Bald Eagle, Cheat Mountain salamander, Virginia big-eared bat, West Virginia northern flying squirrel, running buffalo clover, shale barren rock cress, and Virginia spiraea. A determination of may affect, not likely to adversely affect was made for small-whorled pogonia. The BE had a determination of “may affect, likely to adversely affect” the Indiana bat. However, the project will have no additional effects to Indiana bat beyond those that have been previously disclosed and addressed in the Forest Plan Revision Biological Assessment for Threatened and Endangered Species (US Forest Service, 2006) and US Fish and Wildlife Service’s Programmatic Biological Opinion for the Monongahela National Forest 2006 Forest Plan Revision, 2006 Forest Plan Revision for the Monongahela National Forest. Therefore, this decision will result in no significant effects to threatened or endangered species.

2. Floodplains, Wetlands, or Municipal Watersheds

Floodplains: Executive Order 11988 is to avoid adverse impacts associated with the occupancy and modification of floodplains. Floodplains are defined by this order as, “...the lowland and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent [100-year recurrence] or greater chance of flooding in any one year.” The project is not located in or near floodplains. This has been validated by map and site-review. This decision will not affect floodplains.

Wetlands: Executive Order 11990 is to avoid adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, “...areas inundated by surface or ground water with a frequency sufficient to support

and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for right-of-way and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.” The project is not located in or near wetlands. This has been validated by map and site-review. This decision will not affect wetlands.

Municipal Watersheds: Municipal watersheds are managed under multiple use prescriptions in land and resource management plans. This decision will not affect any municipal watersheds.

3. Congressionally Designated Areas

This project is not in nor does this decision affect any Wilderness, Wilderness Study Areas, Wild and Scenic Rivers, or National Recreation Areas.

4. Inventoried Roadless Areas

There are no inventoried roadless areas (RARE II or Forest Plan) in the decision area. This decision will not affect inventoried roadless areas.

5. Research Natural Areas

There are no Research Natural Areas within the project area and this decision will not affect any Research Natural Areas or candidate research natural areas.

6. American Indian and Alaska native religious or cultural sites

The Federal government has trust responsibilities to Tribes under a government-to-government relationship to ensure that the Tribes’ reserved rights are protected. No tribal concerns were identified for this project. Therefore, this decision will not affect American Indian and Alaska native religious or cultural sites.

7. Archaeological sites or historic properties or areas

Consultation requirements with the West Virginia Division of Culture and History have been fulfilled. A determination of “no effect” was made and this decision will not affect archaeological sites, or historic properties or areas.

No other extraordinary circumstances related to the project were identified. Therefore, the categorical exclusion is appropriate because there are no extraordinary circumstances potentially having effects which may significantly affect the environment.

IV. PUBLIC INVOLVEMENT

Public involvement included listing the proposal in the Forest's *Schedule of Proposed Actions*, direct mailings and newspaper legal notices. Legal ads were placed in the Inter-Mountain newspaper in Elkins, West Virginia, and the Parsons Advocate in Parsons, West Virginia. Additionally, scoping packages were mailed to 54 interested and potentially affected individuals, groups, and agencies. Responses were received from eight people related to this decision. These comments were used to refine the project and

analysis and to explore the possibility of extraordinary circumstances and potential effects to those resources.

Comments included support of the fact that the project is located away from any stream channels, and will be completed during the drier time of the year and when trout eggs are not within stream channels within the project area watersheds.

A couple of commenters favored placing the gas pipeline entirely within existing cleared rights-of-way, such as within roads, and found no reason given or justification for the cross country segments or widened right-of-way adjacent to roads. I have provided explanations in this decision (pages 2, and 4-5). In summary, the desirability of burying or having gas pipeline buried within or adjacent to existing roads, or in a new cleared cross country right-of-way depends on site-specific conditions and practicalities. This decision considered the lay of the land and the ability to safely install, operate and maintain the buried gas pipeline for long term public safety, and to avoid the need for extensive blasting to install the pipeline.

Other commenters recommended diligent monitoring of the pipeline installation. Implementation monitoring by Forest Service personnel will occur as part of project administration.

All comments received were considered in reaching this decision (Project Record document, "Issue Sorting Table, Comment Period").

V. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below.

Forest Plan Consistency (National Forest Management Act) – The Act requires all projects and activities be consistent with the Forest Plan. The Monongahela National Forest Land and Resource Management Plan (Forest Plan) (September 2006) has been reviewed in consideration of this project. This decision is consistent with the direction, and standards and guidelines contained in the Plan.

My use of the best available science in analyzing the Nine Pipeline proposal and in reaching this decision is documented in the project record. The need to employ the best science is not new, as Agency decisions have always required a sound technical basis. What constitutes best available science might vary over time and across scientific disciplines. My conclusion is based on a review of the record that shows a thorough review of relevant scientific information, a consideration of responsible views, and, as appropriate, the acknowledgement of incomplete or unavailable information, scientific uncertainty, and risk. Therefore, my decision meets the requirement for projects implementing the Forest Plan to be developed considering the best available science.

Federal Land Policy and Management Act - This Act allows the granting of easements across National Forest System Lands. The regulations at 36 CFR 251 guide the issuance of permits, leases, and easements under this Act. Permits, leases, and easements are granted across National Forest System lands when the need for such is consistent with

planned uses and Forest Service policy and regulations. This decision is consistent with this Act.

Endangered Species Act - See Section II, Item B1 of this document. This decision is consistent with the Endangered Species Act.

Sensitive Species (Forest Service Manual 2670) – This manual direction requires analysis of potential impacts to sensitive species, those species for which the Regional Forester has identified population viability is a concern. Potential effects of this decision on sensitive species have been analyzed and documented in a Biological Evaluation. Although the Nine Pipeline may impact individual timber rattlesnakes, nodding pogonia, and Appalachian blue violet, it is not likely to cause a trend to federal listing or a loss of species viability. This decision is consistent with Forest Service direction with regard to sensitive species.

Clean Water Act – This Act is to restore and maintain the integrity of waters. This decision includes appropriate erosion and sediment controls, and operations will be subject to and are in compliance with State and Federal laws, including the Clean Water Act.

Wetlands (Executive Order 11990) – See Section II, Item B2 of this document. This decision will not affect wetlands.

Floodplains (Executive Order 11988) - See Section II, Item B2 of this document. This decision will not affect floodplains.

Federal Cave Resources Protection Act - This Act is to secure, protect, preserve, and maintain significant caves, to the extent practical. Site features and field review substantiate that no caves are in the area. No known cave resources will be affected by this decision. Therefore, this decision is consistent with the Federal Cave Resources Protection Act.

National Historic Preservation Act and Archaeological Resources Protection Act – See Section II, Item B7 of this document. This decision will not affect archaeological sites, or historic properties or areas, and is therefore consistent with these acts.

Native American Graves Protection and Repatriation Act – See Section II, Item B6 of this document. This decision will not affect American Indian and Alaska native religious or cultural sites, and is consistent with the subject Act.

Wild and Scenic Rivers Act – See Section II, Item B3 of this document. No designated rivers or study rivers are affected by this decision. Therefore, this decision is consistent with the Wild and Scenic Rivers Act.

Environmental Justice (Executive Order 12898) - This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement occurred for this project, the results of which I have considered in this decision-making. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

National Environmental Policy Act - This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

VI. ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This decision is subject to appeal pursuant to 36 CFR 215. An appeal may be filed by those who provided comment or otherwise expressed interest in the proposed action during the

comment period. This decision is also subject to appeal pursuant to 36 CFR 251 by Horseshoe Run, LLC.

To appeal this decision under 36 CFR 215 or 36 CFR 251, a written Notice of Appeal, meeting the content requirements at 36 CFR 215.14 or 36 CFR 251.90, as appropriate, must be postmarked or received within 45 calendar days of when the Legal Notice is published in *The Inter-Mountain* newspaper. However, when the 45-day filing period would end on a Saturday, Sunday, or Federal Holiday, the filing time is extended to the end of the next Federal working day. The date of publication of the Legal Notice is the exclusive means for calculating the time to file an appeal. Those wishing to file an appeal should not rely upon dates provided by any other source.

Send the Notice of Appeal to: Appeal Deciding Officer, Attn: Appeals and Litigation, USDA-Forest Service, Eastern Region, 626 E. Wisconsin Avenue, Milwaukee, WI 53202-4616. The Notice of Appeal may alternately faxed to: Attn: Appeal Deciding Officer, (414) 944-3963 or hand-delivered to the above address, during the normal business hours of 7:30 a.m. to 4:00 p.m., Monday Through Friday. If submitted electronically, appeals should be directed to appeals-eastern-regional-office@fs.fed.us. They should be in TXT, RTF, DOC, PDF or other Microsoft Office-compatible formats. In cases where no identifiable name is attached to an electronic message, a verification of identity will be required.

VII. IMPLEMENTATION DATE

The appeal period for this decision begins the day after notice of this decision is published in *The Inter-Mountain* newspaper. Those wishing to file an appeal must do so within 45 days after the legal notice is published. If no appeals are filed under 36 CFR 215, implementation may begin on, but not before the fifth business day from the close of the appeal filing period (36 CFR 215.9(a)). If an appeal under 36 CFR 215 is received, implementation may occur on, but not before the fifteenth business day following the date of appeal disposition.

VIII. CONTACT PERSON

Further information about this decision can be obtained from Linda Tracy during normal office hours (weekdays, 8:00 a.m. to 4:45 p.m.) at the Monongahela National Forest Supervisor's Office in Elkins, West Virginia; Phone: voice (304) 636-1800, ext. 275; Facsimile: (304) 636-1875.

IX. SIGNATURE AND DATE

/s/ Clyde N. Thompson
CLYDE N. THOMPSON
Forest Supervisor

2/8/08
Date

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